

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2093

Short Title: Erosion Control Plan/Penalty Fees.

(Public)

Sponsors: Representative Beall.

Referred to: Basic Resources.

May 24, 1990

A BILL TO BE ENTITLED

AN ACT TO ALLOW ANY LOCAL GOVERNMENT WHICH HAS ESTABLISHED AN EROSION AND SEDIMENT CONTROL PLAN APPROVED BY THE NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION TO RECEIVE THE PENALTY FEES IMPOSED FOR FAILURE TO SUBMIT AN EROSION CONTROL PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-64(a) reads as rewritten:

"(a) Civil Penalties.

- (1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of not more than one hundred dollars (\$100.00), except that the penalty for failure to submit an erosion control plan shall be as provided in subdivision (3) of this subsection. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Each day of a continuing violation shall constitute a separate violation.
- (2) The Secretary, for violations under the Commission's jurisdiction, or the governing body of any local government having jurisdiction, shall determine the amount of the civil penalty to be assessed under G.S. 113A-64(a) and shall make written demand for payment upon the

1 person responsible for the violation, and shall set forth in detail the
2 violation for which the penalty has been invoked. If payment is not
3 received or equitable settlement reached within 30 days after demand
4 for payment is made, the Secretary shall refer the matter to the
5 Attorney General for the institution of a civil action in the name of the
6 State in the superior court of the county in which the violation is
7 alleged to have occurred to recover the amount of the penalty, and
8 local governments shall refer such matters to their respective attorneys
9 for the institution of a civil action in the name of the local government
10 in the appropriate division of the General Court of Justice of the
11 county in which the violation is alleged to have occurred for recovery
12 of the penalty. Any sums recovered shall be used to carry out the
13 purposes and requirements of this Article.

14 (3) In determining the amount of the penalty, the Secretary shall consider
15 the degree and extent of harm caused by the violation, the cost of
16 rectifying the damage, the amount of money the violator saved by his
17 noncompliance, whether the violation was committed willfully, and
18 the prior record of the violator in complying or failing to comply with
19 this Article.

20 (4) Any person who fails to submit an erosion control plan for approval by
21 the Commission pursuant to G.S. 113A-54(d)(4) or by a local
22 government pursuant to G.S. 113A-61 shall be subject to a single,
23 noncontinuing civil penalty of not more than one thousand dollars
24 (\$1,000). Any penalty which is recovered ~~pursuant to this subdivision~~
25 for failure to submit an erosion control plan for approval by the
26 Commission pursuant to G.S. 113A-54(d)(4) shall be deposited in the
27 General Fund. Any penalty which is recovered for failure to submit an
28 erosion control plan for approval by a local government pursuant to
29 G.S. 113A-61 shall be paid to the local government. Any person who
30 is subject to a civil penalty under this subdivision may be subject to
31 additional civil penalties for violation of any other provision of this
32 Article or any ordinance, rule, or order adopted or issued pursuant to
33 this Article by the Commission or a local government."

34 Sec. 2. This act shall become effective July 1, 1990. ♦