

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1601*

Short Title: Env. Tech. Corr. 1992.

(Public)

Sponsors: Representative Privette.

Referred to: Environment.

June 5, 1992

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL
AMENDMENTS TO VARIOUS LAWS RELATING TO ENVIRONMENT,
HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 104G-6(b)(1b) reads as rewritten:

"(1b) Article 3D of Chapter 143 (Procurement of ~~Architectural and
Engineering Architectural, Engineering, and Surveying Services~~);"

Sec. 2. G.S. 113-29(a) reads as rewritten:

"(a) In this Article, unless the context requires otherwise, ~~the expression~~
'Department' means the Department of Environment, Health, and Natural ~~Resources:~~
Resources; and 'Secretary' means the Secretary of Environment, Health, and Natural
Resources."

Sec. 3. G.S. 113-61(a) reads as rewritten:

"(a) In this Article, unless the context requires otherwise, ~~the expression~~
'Department' means the Department of Environment, Health, and Natural ~~Resources:~~
Resources; and 'Secretary' means the Secretary of Environment, Health, and Natural
Resources."

Sec. 4. G.S. 113-138(b)(2) reads as rewritten:

"(2) The best ~~interest-interests~~ of the conservation of marine and estuarine
and wildlife resources managed by the adopting Commission will
benefit by conferring law-enforcement authority on the employees of
the United States Fish and Wildlife Service or the National Marine
Fisheries Service."

1 Sec. 5. G.S. 113-151.1(b) reads as rewritten:

2 "(b) License agents shall be compensated by adding a surcharge of one dollar
3 (\$1.00) ~~to~~ to each license sold and retaining the one dollar (\$1.00) surcharge. If more
4 than one license is listed on a consolidated license form, the license agent shall be
5 compensated as if a single license were sold. It is unlawful for a license agent to add
6 more than the surcharge authorized by this section to the fee for each license sold."

7 Sec. 6. G.S. 113-228 reads as rewritten:

8 "**§ 113-228. Adoption of federal regulations.**

9 To the extent that the Department is granted authority in this Subchapter over
10 subject matter as to which there is concurrent federal jurisdiction, the Marine Fisheries
11 Commission in its discretion may by reference in its rules adopt relevant provisions of
12 federal laws and regulations as State rules. To prevent confusion or conflict of
13 jurisdiction in enforcement, the Marine Fisheries Commission is exempt from any
14 conflicting limitations in G.S. ~~450B-14-150B-21.6~~ so that it may provide for automatic
15 incorporation by reference into its rules of future changes within any particular set of
16 federal laws or regulations relating to some subject clearly within the jurisdiction of the
17 Department."

18 Sec. 7. G.S. 113A-126(d)(3) reads as rewritten:

19 "(3) The Commission may assess the penalties provided for in this
20 subsection. The Commission shall notify a person who is assessed a
21 penalty by registered or certified mail. The notice shall state the
22 reasons for the penalty. A person may contest a penalty by filing a
23 petition for a contested case under G.S. 150B-23 within 20 days after
24 receiving the notice of assessment. If a person fails to pay a penalty,
25 the Commission shall refer the matter to the Attorney General for
26 collection. ~~Such civil actions~~ An action to collect a penalty must be
27 filed ~~within three years of~~ after the date the final agency decision was
28 served on the violator."

29 Sec. 8. G.S. 130A-12 reads as rewritten:

30 "**§ 130A-12. Confidentiality of records.**

31 All privileged patient medical records in the possession of the Department or the
32 Department of Human Resources or local health departments shall be confidential and
33 shall not be public records pursuant to G.S. 132-1."

34 Sec. 9. G.S. 130A-310.23 reads as rewritten:

35 "**§ 130A-310.23. Filing notices of Superfund liens.**

36 Notices of liens and certificates of notices affecting liens for obligations payable to
37 the United States under ~~Superfund-CERCLA/SARA~~ (42 U.S.C. § 9607(l)) shall be filed
38 in accordance with Article 11A of Chapter 44 of the General Statutes."

39 Sec. 10. G.S. 139-47(d) reads as rewritten:

40 "(d) Every preliminary project investigation or recommended report concerning a
41 watershed improvement project or drainage project that involves channelization shall be
42 submitted to the Soil and Water Conservation Commission for review and for approval
43 or disapproval. Such review shall be prior to, and in addition to, the review of watershed
44 work plans provided for by G.S. 139-35. The Soil and Water Conservation Commission

1 shall approve such investigation or report, following the public hearing held pursuant to
2 subsection (c) of this section, if, in its judgment, the investigation or report shows that
3 any channelization features of the proposed project are necessary to the project and that
4 no other feasible alternatives are available. No work of improvement may be
5 constructed or established without the approval of the preliminary project investigation
6 or recommended report by the Soil and Water Conservation Commission pursuant to
7 this section. The construction or establishment of any such work of improvement
8 without such approval, or without conforming to a preliminary project investigation or
9 recommended report approved by the Soil and Water Conservation Commission, may
10 be enjoined. Provided, however, the provisions of this section shall not apply to the
11 activities and functions of the North Carolina Department of ~~Human-Environment,~~
12 Health, and Natural Resources and local health departments that are engaged in
13 mosquito control for the protection of the health and welfare of the people of the coastal
14 area of North Carolina as provided under G.S. ~~130-206-130A-346~~ through ~~130-209-G.S.~~
15 130A-349. The Soil and Water Conservation Commission may institute an action for
16 injunctive relief in the superior court of any county wherein such construction or
17 establishment takes place, and the procedure in such action shall be as provided in
18 Article 37, Chapter 1 of the General Statutes."

19 Sec. 11. G.S. 143-214.5(e) reads as rewritten:

20 "(e) Assumption of Local Programs. – The Commission shall assume
21 responsibility for water supply watershed protection, within all or the affected portion of
22 a water supply watershed, if a local government fails to adopt a program that meets the
23 requirements of this section or whenever a local government fails to adequately
24 administer and enforce the provisions of its program. The Commission shall not assume
25 responsibility for an approved local ~~a-~~water supply watershed protection program until it
26 or its designee notifies the local government in writing by certified mail, return receipt
27 requested, of local program deficiencies, recommendations for changes and
28 improvements in the local program, and the deadline for compliance. The Commission
29 shall allow a local government a minimum of 120 days to bring its program into
30 compliance. The Commission shall order assumption of an approved local program if it
31 finds that the local government has made no substantial progress toward compliance.
32 The Commission may make such finding at any time between 120 days and 365 days
33 after receipt of notice under this subsection by the local government, with no further
34 notice. Proceedings to review such orders by the Commission shall be conducted by the
35 superior court pursuant to Article 4 of Chapter 150B of the General Statutes based on
36 the agency record submitted to the Commission by the Secretary."

37 Sec. 12. G.S. 143-215(e) reads as rewritten:

38 "(e) Except as required by federal law or regulations, the Commission may not
39 adopt effluent standards or limitations applicable to animal and poultry feeding
40 operations. Notwithstanding the foregoing, where manmade pipes, ditches, or other
41 conveyances have been constructed for the purpose of willfully discharging pollutants
42 to the waters of the State, the ~~Commission-Secretary~~ shall have the authority to assess
43 fines and penalties not to exceed five thousand dollars (\$5,000) for the first offense.

1 The definitions and provisions of 40 Code of Federal Regulations § 122.23 (July 1,
2 1990 Edition) shall apply to this subsection."

3 Sec. 13. G.S. 143-215.3(a)(8) reads as rewritten:

4 "(8) After issuance of an appropriate order, to withhold the granting of any
5 permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for
6 the construction or operation of any new or additional disposal system
7 or systems or air-cleaning device or devices in any area of the State.
8 Such order may be issued only upon determination by the
9 Commission, after public hearing, that the permitting of any new or
10 additional source or sources of water or air pollution will result in a
11 generalized condition of water or air pollution within the area contrary
12 to the public interest, detrimental to the public health, safety, and
13 welfare, and contrary to the policy and intent declared in this Article or
14 Article 21B of this Chapter. The Commission may make reasonable
15 distinctions among the various sources of water and air pollution and
16 may direct that its order shall apply only to those sources which it
17 determines will result in a generalized condition of water or air
18 pollution.

19 The determination of the Commission shall be supported by
20 detailed findings of fact and conclusions set forth in the order and
21 based upon competent evidence of record. The order shall describe the
22 geographical area of the State affected thereby with particularity and
23 shall prohibit the issuance of permits pending a determination by the
24 Commission that the generalized condition of water or air pollution
25 has ceased.

26 Notice of hearing shall be given in accordance with the provisions
27 of G.S. ~~150B-12.~~ 150B-21.2.

28 A person aggrieved by an order of the Commission under this
29 subdivision may seek judicial review of the order under Article 4 of
30 Chapter 150B of the General Statutes without first commencing a
31 contested case. An order may not be stayed while it is being
32 reviewed."

33 Sec. 14. The catch line to G.S. 143-215.94D reads as rewritten:

34 "**§ 143-215.94D. (Expires December 31, 1998) Noncommercial leaking petroleum**
35 **~~underground storage tank cleanup fund.~~ Leaking Petroleum Underground**
36 **Storage Tank Cleanup Fund.**"

37 Sec. 15. G.S. 143-215.114A(g) reads as rewritten:

38 "(g) The Secretary may delegate his powers and duties under this section to the
39 Director of the Division of Environmental Management ~~of the Department.~~ or other
40 appropriate division director."

41 Sec. 16. G.S. 143-358 reads as rewritten:

42 "**§ 143-358. Cooperation of State officials and agencies.**

43 All State agencies and officials shall cooperate with and assist the ~~State~~ Commission
44 in enforcing and carrying out the provisions of this Article and ~~the rules, regulations and~~

1 ~~policies adopted by the Commission pursuant thereto.~~ rules adopted by the Commission
2 under this Article."

3 Sec. 17. G.S. 143B-301.1 reads as rewritten:

4 **"§ 143B-301.1. Definitions.**

5 The definitions set out in G.S. 90A-46 shall apply ~~through~~ throughout this Part."

6 Sec. 1. This act is effective upon ratification.