

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 541

Short Title: Disclosure of Env. Limitations.

(Public)

Sponsors: Representatives DeVane; N.J. Crawford and Privette.

Referred to: Environment.

April 1, 1991

A BILL TO BE ENTITLED
AN ACT TO REQUIRE DISCLOSURE AND RECORDATION OF
ENVIRONMENTAL LIMITATIONS AND LIABILITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 113A of the General Statutes is amended by adding a new
Article to read:

"ARTICLE 16.

"ENVIRONMENTAL LIMITATIONS DISCLOSURE ACT.

"§ 113A-230. Title.

This Article shall be known and may be cited as the North Carolina Environmental
Limitations Disclosure Act of 1991.

"§ 113A-231. Purposes.

The purposes of this Article are to:

- (1) Require disclosure of environmental limitations and liabilities by recordation of the same in the office of the Register of Deeds in each county in the State;
- (2) Ensure that persons involved in real estate transactions are made aware of the existing environmental limitations and liabilities associated with the real property involved including past use and environmental status of the properties;
- (3) Require environmental agencies to determine which permits, registrations, and limitations issued by or filed by or with the agency should be disclosed by recordation; and

- 1 (4) Provide a procedure for the disclosure of environmental limitations
2 and liabilities by recordation.

3 **"§ 113A-232. Definitions.**

4 Unless a different meaning is required by the context, the following definitions shall
5 apply throughout this Article:

- 6 (1) 'Agency' means every department, agency, institution, public authority,
7 board, commission, bureau, division, council, member of the Council
8 of State, or officer of the State, but does not include units of local
9 government or their governing bodies, other municipal corporations or
10 political subdivisions of the State, county or city boards of education,
11 other local special-purpose public districts, units, or bodies of any
12 kind, or private corporations created by act of the General Assembly,
13 except in those instances where programs, projects, and actions of
14 local governmental units or bodies are subject to review, approval, or
15 licensing by State environmental agencies or create environmental
16 limitations and liabilities required to be recorded by the State agency
17 authorized to review, approve, or license the local governmental units
18 or bodies.
- 19 (2) 'Department' means the Department of Environment, Health, and
20 Natural Resources.
- 21 (3) 'Environmental agencies' means agencies of the Department of
22 Environment, Health, and Natural Resources which administer
23 programs intended to protect the environment, the North Carolina
24 Pesticide Board, and local governmental units or bodies whose
25 programs, projects, and actions are subject to review, approval, or
26 licensing by agencies of the Department of Environment, Health, and
27 Natural Resources.
- 28 (4) 'Environmental limitations and liabilities' means any permit or
29 registration which:
- 30 a. Authorizes the construction, development, operation, or use of
31 facilities or sites that manufacture, process, use, handle, treat,
32 store, or dispose of hazardous or toxic substances or hazardous
33 wastes;
- 34 b. Imposes continuing maintenance, operation, or and use
35 conditions on any permitted activity at a facility or site that
36 must be complied with after ownership of the facility or site is
37 transferred to another owner;
- 38 c. Limits or restricts protection of a facility from erosion or
39 rebuilding of a facility damaged by erosion; or
- 40 d. Is required to be recorded by G.S. 113-324(d).
- 41 (5) 'Facility' means all buildings, equipment, structures, and other
42 stationary fixtures that are located on a single site.
- 43 (6) 'Permit' means any permit, license, certificate, notice of approval, or
44 other evidence, by whatever name called, of a right or privilege to

1 engage in any activity including the construction, development,
2 operation, use, or maintenance of a facility or site.

3 (7) 'Person' means a natural person, individual, firm, partnership,
4 association, institution, corporation, county, municipality, other
5 political subdivision, governmental agencies, organization, society or
6 other entity which may sue or be sued under a common name.

7 (8) 'Registration' means any instrument or form through which a person
8 makes known to an environmental agency the location of a facility or
9 site which has or may have environmental limitations and liabilities.

10 (9) 'Secretary' means the Secretary of the Department of Environment,
11 Health, and Natural Resources.

12 **"§ 113A-233. Powers and duties of environmental agencies.**

13 (a) Every environmental agency shall periodically review its regulatory
14 programs, including those administered in whole or in part by local governmental units
15 or bodies, to identify environmental limitations and liabilities which may arise from the
16 operation of such programs, including those which may result from registrations with
17 the environmental agency. Environmental agencies shall review each new or modified
18 regulatory program to determine if environmental limitations and liabilities will arise
19 from the operation of new or modified regulatory programs.

20 (b) Each environmental agency shall adopt rules requiring disclosure of
21 environmental limitations and liabilities by recordation of appropriate disclosure
22 documents in the office of the Register of Deeds of the county or counties where the
23 affected property is located. Rules shall be adopted in accordance with Chapter 150B of
24 the General Statutes.

25 (c) An environmental agency may determine that a specific environmental
26 limitation or liability need not be recorded if the agency finds that recordation of such
27 limitation or liability is not necessary or consistent with the purposes of this Article.
28 The agency shall report any such determination in writing to the Environmental Review
29 Commission within 30 days of such determination.

30 **"§ 113A-234. Duty to disclose.**

31 (a) Appropriate disclosure documents shall be filed in the office of the Register
32 of Deeds in the county or counties where property affected by an environmental
33 limitation or liability is located by the owner of the property, or in the name of the
34 owner of the property by the person to whom a permit is issued or by whom a
35 registration is made within 30 days of the issuance of the permit by, or registration with,
36 the environmental agency.

37 (b) The person filing the disclosure document shall notify the appropriate
38 environmental agency in writing of the book and page number assigned to the
39 disclosure document by the Register of Deeds. Notification shall be made within 10
40 days of recordation in the office of the Register of Deeds.

41 (c) If the person responsible for filing a disclosure document sells, leases,
42 conveys, or transfers the property before the disclosure document is recorded, a copy of
43 the disclosure document required to be filed by this Article shall be provided to the

1 transferee, or his attorney, at least three days before the deed or other instrument
2 conveying any interest described above is executed.

3 (d) Disclosure documents shall be filed in accordance with permit conditions or
4 rules adopted by environmental agencies and for the following permits, registrations, or
5 leases:

- 6 (1) Permits issued pursuant to G.S. 74-50;
- 7 (2) Leases entered into under G.S. 113-202.1;
- 8 (3) Permits for development of property bordering on the Atlantic Ocean
9 and its inlets or which include use and maintenance conditions issued
10 pursuant to G.S. 113A-118;
- 11 (4) Permits issued pursuant to G.S. 130A-294;
- 12 (5) Notices recorded pursuant to G.S. 130A-310.8;
- 13 (6) Permits issued pursuant to G.S. 143-215.1;
- 14 (7) Registrations under G.S. 143-215.94T;
- 15 (8) Permits issued pursuant to G.S. 143-215.108; and
- 16 (9) Permits issued by environmental agencies which include use and
17 maintenance conditions to control stormwater runoff.

18 **"§ 113A-235. Disclosure documents.**

19 (a) Each disclosure document shall include, at a minimum:

- 20 (1) A legal description of the site that would be sufficient as a description
21 in an instrument of conveyance and shall identify the location and
22 dimensions of the facility or site features constituting an environmental
23 limitation and liability with respect to permanently surveyed
24 benchmarks;
- 25 (2) Any requirement of the environmental agency which creates or limits a
26 liability or potential liability for a subsequent owner;
- 27 (3) Information identifying the permit or registration including the issuing
28 agency, permit, or registration number, and the name of the permit
29 holder; and
- 30 (4) Names of the property owners.

31 (b) The disclosure document shall include a map or plat which meets the
32 requirements of G.S. 47-30 when a map or plat is required as a part of a permit
33 application, when a site map or plat is required in connection with registration with the
34 environmental agency, when a map is required to be included in the disclosure
35 document by a rule adopted by the environmental agency, or when a map or plat is
36 required to be included in the disclosure document by another provision of law.

37 (c) The Register of Deeds shall record the disclosure document and index it in
38 the grantor index under the names of the owners of the property.

39 (d) The Secretary shall cancel a disclosure document upon request whenever the
40 environmental limitations and liabilities no longer affect use of the facility or site. The
41 Secretary shall transmit a statement that a disclosure document has been cancelled to
42 the Register of Deeds of every county where the disclosure document is recorded
43 together with a request that the disclosure document be cancelled of record. The
44 Secretary's request shall include a statement that the environmental limitations and

1 liabilities no longer affect the facility or site. The Secretary's statement shall include the
2 names of the owners of the property as shown in the disclosure document and shall
3 reference the book and page where the disclosure document is recorded. The Register
4 of Deeds shall record the Secretary's statement in the deed books and index it in the
5 grantor index in the name of the owner of the property as shown in the disclosure
6 document and on the grantee index in the name of the 'Secretary of Environment,
7 Health, and Natural Resources.' The Register of Deeds shall make a marginal entry on
8 the disclosure document showing the date of cancellation and the book and page where
9 the Secretary's statement is recorded, and the Registrar shall sign the entry. If a
10 marginal entry is impracticable because of the method used to record maps and plats,
11 the Register of Deeds is not required to make a marginal entry.

12 (e) When the disclosure document is required by the North Carolina Pesticide
13 Board, its chairman is substituted for the Secretary in this section.

14 (f) The requirements of this section supplement any other disclosure
15 requirements under federal or State law.

16 **"§ 113A-236. Enforcement.**

17 (a) Any person who knowingly or willfully fails to file a disclosure document or
18 who knowingly makes a false statement, representation, or certification in any
19 disclosure document required to be filed under this Article shall be guilty of a
20 misdemeanor.

21 (b) An environmental agency may revoke or modify a permit for failure to file a
22 disclosure document in accordance with this Article. An environmental agency which
23 proposes to modify or revoke a permit under this subsection shall follow the notice
24 requirements and other procedures generally applicable to modification or revocation of
25 permits of that type.

26 (c) In addition to any other right to revoke an offer or cancel a sale or contract,
27 failure of the transferor to comply with the provisions of this Article is grounds for
28 voiding the sale, lease or transfer of the facility or any real property associated with the
29 facility by the transferee and entitles the transferee to recover damages from the
30 transferor."

31 Sec. 2. The review by environmental agencies of regulatory programs to
32 identify environmental limitations and liabilities required by G.S. 113A-233(a), as
33 enacted by Section 1 of this act, shall begin upon ratification of this act. Every
34 environmental agency to which this act applies shall complete the initial review of
35 environmental regulatory programs within one year after the ratification of this act.
36 Environmental agencies shall adopt all rules necessary to the implementation of this act
37 prior to 1 July 1992.

38 Sec. 3. Section 1 of this act becomes effective 1 July 1992. Sections 2 and 3
39 of this act are effective upon ratification.