

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 541  
Committee Substitute Favorable 5/6/91

Short Title: Disclosure of Env. Limitations.

(Public)

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Sponsors:

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Referred to:

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April 1, 1991

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

4 The General Assembly of North Carolina enacts:

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

7 **"ARTICLE 16.**

8 **"ENVIRONMENTAL LIMITATIONS DISCLOSURE ACT.**

9 **"§ 113A-230. Title.**

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

12 **"§ 113A-231. Purposes.**

13 The purposes of this Article are to:

14 (1) Require disclosure of environmental limitations and liabilities by  
15 recordation of the same in the office of the Register of Deeds in each  
16 county in the State;

17 (2) Ensure that persons involved in real estate transactions are made aware  
18 of the existing environmental limitations and liabilities associated with  
19 the real property involved including past use and environmental status  
20 of the properties; and

21 (3) Provide a procedure for the disclosure of environmental limitations  
22 and liabilities by recordation.

23 **"§ 113A-232. Definitions.**

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

- 3            (1) 'Agency' means every department, agency, institution, public authority,  
4 board, commission, bureau, division, council, member of the Council  
5 of State, or officer of the State, but does not include units of local  
6 government or their governing bodies, other municipal corporations or  
7 political subdivisions of the State, county or city boards of education,  
8 other local special-purpose public districts, units, or bodies of any  
9 kind, or private corporations created by act of the General Assembly,  
10 except in those instances where programs, projects, and actions of  
11 local governmental units or bodies are subject to review, approval, or  
12 licensing by State environmental agencies or create environmental  
13 limitations and liabilities required to be recorded by the State agency  
14 authorized to review, approve, or license the local governmental units  
15 or bodies.
- 16            (2) 'Department' means the Department of Environment, Health, and  
17 Natural Resources.
- 18            (3) 'Disposal' shall have the same meaning as in G.S. 130A-290(a)(6).
- 19            (4) 'Environmental agencies' means agencies of the Department of  
20 Environment, Health, and Natural Resources which administer  
21 programs intended to protect the environment, the North Carolina  
22 Pesticide Board, and local governmental units or bodies whose  
23 programs, projects, and actions are subject to review, approval, or  
24 licensing by agencies of the Department of Environment, Health, and  
25 Natural Resources.
- 26            (5) 'Environmental document' means any permit, notice, registration, or  
27 lease listed in G.S. 113A-234(d).
- 28            (6) '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. Imposes limitations or gives notice of disposal of toxic or  
39 hazardous substances or solid or hazardous waste at a facility or  
40 site;
- 41                d. Limits or restricts protection of a facility from erosion or  
42 rebuilding of a facility damaged by erosion; or
- 43            (7) 'Facility' means all buildings, equipment, structures, and other  
44 stationary fixtures that are located on a single site.

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

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

7 **"§ 113A-233. Powers and duties of environmental agencies.**

8       Every environmental agency shall periodically review its regulatory programs,  
9       including those administered in whole or in part by local governmental units or bodies,  
10       to identify environmental limitations and liabilities which may arise from the operation  
11       of such programs that should be disclosed in the public registry. Environmental  
12       agencies shall review each new or modified regulatory program to determine if  
13       environmental limitations and liabilities will arise from the operation of new or  
14       modified regulatory programs. If such review reveals environmental limitations or  
15       liabilities that should be disclosed in the public registry under this Article, the agency  
16       shall recommend to the Environmental Review Commission that those environmental  
17       limitations and liabilities be added to G.S. 113A-234(d).

18 **"§ 113A-234. Duty to disclose.**

19       (a) Appropriate documents shall be filed in the office of the Register of Deeds in  
20       the county or counties where property affected by an environmental document is located  
21       by the owner of the property, or in the name of the owner of the property by the person  
22       to whom a permit is issued or by whom a registration is made within 30 days of the  
23       issuance of the permit by, or registration with, the environmental agency.

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

28       (c) If the person responsible for filing a disclosure document sells, leases,  
29       conveys, or transfers the property before the disclosure document is recorded, a copy of  
30       the disclosure document required to be filed by this Article shall be provided to the  
31       transferee, or his attorney, at least three days before the deed or other instrument  
32       conveying any interest described above is executed.

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

36           (1) Permits issued pursuant to G.S. 74-50;

37           (2) Leases entered into under G.S. 113-202.1;

38           (3) Permits for development of property bordering on the Atlantic Ocean  
39           and its inlets or which include use and maintenance conditions issued  
40           pursuant to G.S. 113A-118;

41           (4) Permits issued pursuant to G.S. 130A-294;

42           (5) Notices required to be recorded in accordance with rules adopted  
43           pursuant to G.S. 130A-294;

44           (6) Permits issued pursuant to G.S. 130A-309.57;

- 1           (7) Notices of closed unpermitted solid waste disposal sites recorded in  
2 accordance with rules adopted under G.S. 130A-249;
- 3           (8) Notice recorded pursuant to G.S. 130A-310.8;
- 4           (9) Permits issued pursuant to G.S. 143-215.1;
- 5           (10) Registrations under G.S. 143-215.94T;
- 6           (11) Registrations filed with the State pursuant to Title VI, § 601 of the  
7 Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-  
8 616.42 U.S.C. § 6991, et seq., as amended;
- 9           (12) Permits issued pursuant to G.S. 143-215.108;
- 10          (13) Permits issued by environmental agencies which include use and  
11 maintenance conditions to control stormwater runoff; and
- 12          (14) Pesticide dealers licensed pursuant to G.S. 143-448.

13 **§ 113A-235. Disclosure documents.**

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

- 15           (1) A legal description of the site that would be sufficient as a description  
16 in an instrument of conveyance and shall identify the location and  
17 dimensions of the facility or site features constituting an environmental  
18 limitation and liability with respect to permanently surveyed  
19 benchmarks;
- 20           (2) Any requirement of the environmental agency which creates or limits a  
21 liability or potential liability for a subsequent owner;
- 22           (3) Information identifying the permit or registration including the issuing  
23 agency, permit, or registration number, and the name of the permit  
24 holder;
- 25           (4) Names of the property owners as they appear on the deed and the book  
26 and page number of the source of title of such owner; and
- 27           (5) If the disclosure document is filed by someone other than the owner of  
28 the property, verified consent of the property owner to the recordation  
29 of the disclosure document.

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

35       (c) The Register of Deeds shall record the disclosure document and index it in  
36 the grantor index for deeds and deeds of trust under the names of the owners of the  
37 property.

38       (d) The Secretary shall cancel a disclosure document upon request whenever the  
39 environmental document no longer affects use of the facility or site. The request must  
40 be accompanied by a certified check in the amount of the filing fee required by law  
41 made payable to the appropriate Register of Deeds. Within 30 days of receipt of the  
42 request and filing fee, the Secretary shall transmit a statement that the requirement of a  
43 disclosure document no longer exists to the Register of Deeds of every county where the  
44 document is recorded together with a request that the disclosure document be cancelled

1 of record. The Secretary's statement shall include the names of the owners of the  
2 property as shown in the disclosure document and shall reference the book and page  
3 where the disclosure document is recorded. The Register of Deeds shall record the  
4 Secretary's statement in the deed books and index it in the grantor index for deeds and  
5 deeds of trust 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.' If the Secretary refuses to make a requested  
8 cancellation, the Secretary shall transmit to the person making the request a written  
9 denial of the request which shall be based on a determination that the environmental  
10 documents continue to affect use of the facility or site.

11 (e) When the disclosure document is required for a program regulated by the  
12 North Carolina Pesticide Board, its chairman is substituted for the Secretary in this  
13 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 Sec. 2. The review by environmental agencies of regulatory programs to  
27 identify environmental limitations and liabilities required by G.S. 113A-233(a), as  
28 enacted by Section 1 of this act, shall begin upon ratification of this act. Every  
29 environmental agency to which this act applies shall complete the initial review of  
30 environmental regulatory programs within one year after the ratification of this act.  
31 Environmental agencies shall adopt all rules necessary to the implementation of this act  
32 prior to 1 July 1992.

33 Sec. 3. Section 1 of this act becomes effective 1 July 1992. Section 2 is  
34 effective upon ratification.