

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1128*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/1/99

Short Title: Amend Sedimentation Act.

(Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 AND TO REQUIRE THAT THE EXAMINATION FOR A GENERAL CONTRACTOR'S LICENSE INCLUDE QUESTIONS THAT TEST AN APPLICANT'S KNOWLEDGE OF THE REQUIREMENTS OF THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-54.1 reads as rewritten:

"§ 113A-54.1. Approval of erosion control plans.

(a) A draft erosion control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. The Commission shall approve, approve with modifications, or disapprove a draft erosion control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion control plan within 30 days of receipt shall be deemed approval

1 of the plan. If the Commission disapproves a draft erosion control plan or a revised
2 erosion control plan, it must state in writing the specific reasons that the plan was
3 disapproved. Failure to approve, approve with modifications, or disapprove a revised
4 erosion control plan within 15 days of receipt shall be deemed approval of the plan. The
5 Commission may establish an expiration date for erosion control plans approved under
6 this Article.

7 (b) If, following commencement of a land-disturbing activity pursuant to an
8 approved erosion control plan, the Commission determines that the plan is inadequate to
9 meet the requirements of this Article, the Commission may require any revision of the
10 plan that is necessary to comply with this Article. Failure to approve, approve with
11 modifications, or disapprove a revised erosion control plan within 15 days of receipt shall
12 be deemed approval of the plan.

13 (c) ~~The Director of the Division of Land Resources~~ Commission shall disapprove an
14 erosion control plan if ~~the plan, when implemented,~~ implementation of the plan would
15 result in a violation of rules adopted by the Environmental Management Commission to
16 protect riparian buffers along surface waters. The Director of the Division of Land
17 Resources may disapprove an erosion control plan upon finding that an applicant or a
18 parent, subsidiary, or other affiliate of the applicant:

- 19 (1) Is conducting or has conducted land-disturbing activity without an
20 approved plan, or has received notice of violation of a plan previously
21 approved by the Commission or a local government pursuant to this
22 Article and has not complied with the notice within the time specified in
23 the notice;
- 24 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a
25 local ordinance adopted pursuant to this Article by the time the payment
26 is due;
- 27 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or
28 any criminal provision of a local ordinance adopted pursuant to this
29 Article; or
- 30 (4) Has failed to substantially comply with State rules or local ordinances
31 and regulations adopted pursuant to this Article.

32 (d) In the event that an erosion control plan is disapproved by the Director
33 pursuant to subsection (c) of this section, the Director shall state in writing the specific
34 reasons that the plan was disapproved. The applicant may appeal the Director's
35 disapproval of the plan to the Commission. For purposes of this subsection and
36 subsection (c) of this section, an applicant's record may be considered for only the two
37 years prior to the application date."

38 Section 2. G.S. 113A-57(4) reads as rewritten:

- 39 "(4) No person shall initiate any land-disturbing activity on a tract if more
40 than one acre is to be uncovered unless, 30 or more days prior to
41 initiating the activity, an erosion and sedimentation control plan for such
42 activity is filed with the agency having jurisdiction. The agency having
43 jurisdiction shall forward to the Director of the Division of Water

1 Quality a copy of each erosion and sedimentation control plan for a
2 land-disturbing activity that involves the utilization of ditches for the
3 purpose of de-watering or lowering the water table of the tract."

4 Section 3. G.S. 113A-61(b1) reads as rewritten:

5 "(b1) A local government shall condition approval of a draft erosion control plan
6 upon the applicant's compliance with federal and State water quality laws, regulations,
7 and rules. A local government shall disapprove an erosion control plan if ~~the plan, when~~
8 ~~implemented, implementation of the plan~~ would result in a violation of rules adopted by
9 the Environmental Management Commission to protect riparian buffers along surface
10 waters. A local government may disapprove an erosion control plan upon finding that an
11 applicant or a parent, subsidiary, or other affiliate of the applicant:

- 12 (1) Is conducting or has conducted land-disturbing activity without an
13 approved plan, or has received notice of violation of a plan previously
14 approved by the Commission or a local government pursuant to this
15 Article and has not complied with the notice within the time specified in
16 the notice;
- 17 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a
18 local ordinance adopted pursuant to this Article by the time the payment
19 is due;
- 20 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or
21 any criminal provision of a local ordinance adopted pursuant to this
22 Article; or
- 23 (4) Has failed to substantially comply with State rules or local ordinances
24 and regulations adopted pursuant to this Article."

25 Section 4. G.S. 113A-64(a) reads as rewritten:

26 "(a) Civil Penalties. –

- 27 (1) Any person who violates any of the provisions of this Article or any
28 ordinance, rule, or order adopted or issued pursuant to this Article by
29 the Commission or by a local government, or who initiates or continues
30 a land-disturbing activity for which an erosion control plan is required
31 except in accordance with the terms, conditions, and provisions of an
32 approved plan, is subject to a civil penalty. ~~The maximum civil penalty~~
33 ~~for a violation, other than a violation of a stop work order issued under G.S.~~
34 ~~113A-65.1, is five hundred dollars (\$500.00). The maximum civil penalty for~~
35 ~~a violation of a stop work order violation is five thousand dollars (\$5,000).~~
36 ~~No penalty shall be assessed until the person alleged to be in violation has~~
37 ~~been notified of the violation as provided in G.S. 113A-61.1(b).—A civil~~
38 ~~penalty may be assessed from the date the notice of violation is served. of~~
39 the violation. Each day of a continuing violation shall constitute a
40 separate violation.
- 41 (2) The Secretary or a local government that administers an erosion and
42 sediment control program approved under G.S. 113A-60 shall determine
43 the amount of the civil penalty and shall notify the person who is

1 assessed the civil penalty of the amount of the penalty and the reason for
2 assessing the penalty. The notice of assessment shall be served by any
3 means authorized under G.S. 1A-1, Rule 4, and shall direct the violator
4 to either pay the assessment or contest the assessment within 30 days by
5 filing a petition for a contested case under Article 3 of Chapter 150B of
6 the General Statutes. If a violator does not pay a civil penalty assessed
7 by the Secretary within 30 days after it is due, the Department shall
8 request the Attorney General to institute a civil action to recover the
9 amount of the assessment. If a violator does not pay a civil penalty
10 assessed by a local government within 30 days after it is due, the local
11 government may institute a civil action to recover the amount of the
12 assessment. The civil action may be brought in the superior court of any
13 county where the violation occurred or the violator's residence or
14 principal place of business is located. A civil action must be filed within
15 three years of the date the assessment was due. An assessment that is
16 not contested is due when the violator is served with a notice of
17 assessment. An assessment that is contested is due at the conclusion of
18 the administrative and judicial review of the assessment.

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

25 (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

26 (5) The clear proceeds of civil penalties collected by the Department or
27 other State agency under this subsection shall be remitted to the Civil
28 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Civil
29 penalties collected by a local government under this subsection shall be
30 credited to the general fund of the local government as nontax revenue."

31 Section 5. G.S. 113A-54.2(a) reads as rewritten:

32 "(a) The Commission may establish a fee schedule for the review and approval of
33 erosion control plans under this Article. In establishing the fee schedule, the Commission
34 shall consider the administrative and personnel costs incurred by the Department for
35 reviewing the plans and for related compliance activities. ~~The total amount of fees collected~~
36 ~~under this section in any fiscal year may not exceed one-third of the total administrative and~~
37 ~~personnel costs incurred by the Department for reviewing the plans and for related compliance~~
38 ~~activities in the prior fiscal year.~~—An application fee may not exceed fifty dollars (\$50.00)
39 per acre of disturbed land shown on an erosion control plan or of land actually disturbed
40 during the life of the project."

41 Section 6. G.S. 113A-61.1(c) reads as rewritten:

42 "(c) If the Secretary, a local government that administers an erosion and sediment
43 control program approved under G.S. 113A-60, or other approving authority determines

1 that the person engaged in the land-disturbing activity has failed to comply with this
2 Article, the Secretary, local government, or other approving authority shall immediately
3 serve a notice of violation upon that person. The notice may be served by any means
4 authorized under G.S. 1A-1, Rule 4. A notice of violation shall specify a date by which
5 the person must comply with this Article and inform the person of the actions that need to
6 be taken to comply with this Article. Any person who fails to comply within the time
7 specified is subject to ~~the~~ additional civil and criminal penalties for a continuing violation
8 as provided in G.S. 113A-64."

9 Section 7. G.S. 87-10(b), as amended by Section 1 of S.L. 1999-123, reads as
10 rewritten:

11 "(b) The Board shall conduct an examination, either oral or written, of all applicants
12 for license to ~~ascertain~~ ascertain, for the classification of license for which the applicant
13 has applied: (i) the ability of the applicant to make a practical application of his ~~the~~
14 applicant's knowledge of the profession of ~~contracting, contracting; under the classification~~
15 ~~contained in the application, and to ascertain~~ (ii) the qualifications of the applicant in reading
16 plans and specifications, knowledge of estimating costs, construction, ethics ~~ethics~~, and
17 other similar matters pertaining to the contracting ~~business~~ business; (iii) the knowledge
18 of the applicant as to the responsibilities of a contractor to the public and of the
19 requirements of the laws of the State of North Carolina relating to contractors,
20 ~~construction and liens~~ construction, and liens; and (iv) the applicant's knowledge of
21 requirements of the Sedimentation Pollution Control Act of 1973, Article 4 of Chapter
22 113A of the General Statutes, and the rules adopted pursuant to that Article. If the results
23 of the examination of the applicant shall be satisfactory to the Board, then the Board shall
24 issue to the applicant a certificate to engage as a general contractor in the State of North
25 Carolina, as provided in said certificate, which may be limited into five classifications as
26 ~~the common use of the terms are known~~ that is, follows:

27 (1) Building contractor, which shall include private, public, commercial,
28 industrial and residential buildings of all ~~types;~~ types.

29 (1a) Residential contractor, which shall include any general contractor
30 constructing only residences which are required to conform to the
31 residential building code adopted by the Building Code Council
32 pursuant to G.S. ~~143-138;~~ 143-138.

33 (2) Highway ~~contractor;~~ contractor.

34 (3) Public utilities contractors, which shall include those whose operations
35 are the performance of construction work on the following
36 subclassifications of facilities:

37 a. Water and sewer ~~mains and mains,~~ water service lines ~~lines,~~ and
38 house and building sewer lines as defined in the North Carolina
39 State Building Code, and water storage tanks, lift stations,
40 pumping stations, and appurtenances to water storage tanks, lift
41 ~~stations~~ stations, and pumping ~~stations;~~ stations.

42 b. Water and wastewater treatment facilities and appurtenances
43 ~~thereto;~~ thereto.

- 1 c. Electrical power transmission facilities, and primary and
2 secondary distribution facilities ahead of the point of delivery of
3 electric service to the ~~customer;~~ customer.
4 d. Public communication distribution ~~facilities; and facilities.~~
5 e. Natural gas and other petroleum products distribution facilities;
6 provided the General Contractors Licensing Board may issue
7 license to a public utilities contractor limited to any of the above
8 subclassifications for which the general contractor ~~qualifies, and~~
9 qualifies.
- 10 (4) Specialty contractor, which shall include those whose operations as such
11 are the performance of construction work requiring special skill and
12 involving the use of specialized building trades or crafts, but which shall
13 not include any operations now or hereafter under the jurisdiction, for
14 the issuance of license, by any board or commission pursuant to the
15 laws of the State of North Carolina.

16 (b1) Public utilities contractors constructing water service lines and house and
17 building sewer lines as provided in ~~(3)a above~~ sub-subdivision a. of subdivision (3) of
18 subsection (b) of this section shall terminate said lines at a valve, box, meter, or manhole
19 or cleanout at which the facilities from the building may be connected. Public utilities
20 contractors constructing fire service mains for connection to fire sprinkler systems shall
21 terminate those lines at a flange, cap, plug, or valve inside the building one foot above the
22 finished floor. All fire service mains shall comply with the NFPA standards for fire
23 service mains as incorporated into and made applicable by Volume V of the North
24 Carolina Building Code."

25 Section 8. This act becomes effective 1 October 1999 and applies to land-
26 disturbing activity that occurs on or after that date.