

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1413\*  
Committee Substitute Favorable 8/11/05  
Senate Agriculture/Environment/Natural Resources Committee Substitute  
Adopted 6/15/06

Short Title: Enhance Local Govt. Adm. of Env. Prgms.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR LOCAL GOVERNMENTS THAT ADMINISTER APPROVED LOCAL ENVIRONMENTAL PROGRAMS AND TO PROVIDE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO REQUEST THE AUTHORITY TO ADMINISTER ALL OR A PORTION OF CERTAIN ENVIRONMENTAL PROGRAMS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 113A-54.1 is amended by adding a new subsection to read:

"(e) An approved erosion and sedimentation control plan shall contain a schedule for the inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The landowner, the financially responsible party, or their agent shall perform each inspection. The person who performs each inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall indicate whether the erosion control measures required by the plan have been installed in the correct sequence and whether the measures are being maintained in substantial accordance with the plan. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1."

**SECTION 2.** G.S. 113A-56 reads as rewritten:

**"§ 113A-56. Jurisdiction of the Commission.**

1 (a) The Commission shall have jurisdiction, to the exclusion of local  
2 governments, to adopt rules concerning land-disturbing activities that are:

3 (1) Conducted by the ~~State;~~State.

4 (2) Conducted by the United ~~States;~~States.

5 (3) Conducted by persons having the power of eminent ~~domain;~~domain  
6 other than a local government.

7 (4) Conducted by ~~local governments;~~ or a local government.

8 (5) Funded in whole or in part by the State or the United States.

9 (b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a),  
10 in whole or in part, to any other State agency that has submitted an erosion and  
11 sedimentation control program to be administered by it, if the program has been  
12 approved by the Commission as being in conformity with the general State program.

13 (c) The Commission shall have concurrent jurisdiction with local governments  
14 that administer a delegated erosion and sedimentation control program over all other  
15 land-disturbing activities. In addition to the authority granted to the Commission in  
16 G.S. 113A-60(c), the Commission has the following authority with respect to a  
17 delegated erosion and sedimentation control program:

18 (1) To review erosion and sedimentation control plan approvals made by a  
19 delegated erosion and sedimentation control program and to require a  
20 revised plan if the Commission determines that a plan does not comply  
21 with the requirements of this Article or the rules adopted pursuant to  
22 this Article.

23 (2) To review the compliance activities of a delegated erosion and  
24 sedimentation control program and to take appropriate compliance  
25 action if the Commission determines that the local government has  
26 failed to take appropriate compliance action."

27 **SECTION 3.** G.S. 113A-60 reads as rewritten:

28 **"§ 113A-60. Local erosion and sedimentation control programs.**

29 (a) A local government may submit to the Commission for its approval an  
30 erosion and sedimentation control program for its jurisdiction, and to this end local  
31 governments are authorized to adopt ordinances and regulations necessary to establish  
32 and enforce erosion and sedimentation control programs. An ordinance adopted by a  
33 local government may establish a fee for the review of an erosion and sedimentation  
34 control plan and related activities. Local governments are authorized to create or  
35 designate agencies or subdivisions of local government to administer and enforce the  
36 programs. An ordinance adopted by a local government shall at least meet and may  
37 exceed the minimum requirements of this Article and the rules adopted pursuant to this  
38 Article. Two or more units of local government are authorized to establish a joint  
39 program and to enter into any agreements that are necessary for the proper  
40 administration and enforcement of the program. The resolutions establishing any joint  
41 program must be duly recorded in the minutes of the governing body of each unit of  
42 local government participating in the program, and a certified copy of each resolution  
43 must be filed with the Commission.

1 (b) The Commission shall review each program submitted and within 90 days of  
2 receipt thereof shall notify the local government submitting the program that it has been  
3 approved, approved with modifications, or disapproved. The Commission shall only  
4 approve a program upon determining that its standards equal or exceed those of this  
5 Article and rules adopted pursuant to this Article.

6 (c) If the Commission determines that any local government is failing to  
7 administer or enforce an approved erosion and sedimentation control program, it shall  
8 notify the local government in writing and shall specify the deficiencies of  
9 administration and enforcement. If the local government has not taken corrective action  
10 within 30 days of receipt of notification from the Commission, the Commission shall  
11 assume administration and enforcement of the program until such time as the local  
12 government indicates its willingness and ability to resume administration and  
13 enforcement of the program.

14 (d) A local government may submit to the Commission for its approval a limited  
15 erosion and sedimentation control program for its jurisdiction that grants the local  
16 government the responsibility only for the assessment and collection of fees and for the  
17 inspection of land-disturbing activities within the jurisdiction of the local government.  
18 The Commission shall be responsible for the administration and enforcement of all  
19 other components of the erosion and sedimentation control program and the  
20 requirements of this Article. The local government may adopt ordinances and  
21 regulations necessary to establish a limited erosion and sedimentation control program.  
22 An ordinance adopted by a local government that establishes a limited program shall  
23 conform to the minimum requirements regarding the inspection of land-disturbing  
24 activities of this Article and the rules adopted pursuant to this Article regarding the  
25 inspection of land-disturbing activities. The local government shall establish and collect  
26 a fee to be paid by each person who submits an erosion and sedimentation control plan  
27 to the local government. The amount of the fee shall be an amount equal to eighty  
28 percent (80%) of the amount established by the Commission pursuant to  
29 G.S. 113A-54.2(a) plus any amount that the local government requires to cover the cost  
30 of inspection and program administration activities by the local government. The total  
31 fee shall not exceed one hundred dollars (\$100.00) per acre. A local government that  
32 administers a limited erosion and sedimentation control program shall pay to the  
33 Commission the portion of the fee that equals eighty percent (80%) of the fee  
34 established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the  
35 administration and enforcement of other components of the erosion and sedimentation  
36 control program. Fees paid to the Commission by a local government shall be deposited  
37 in the Sedimentation Account established by G.S. 113A-54.2(b). A local government  
38 that administers a limited erosion and sedimentation control program and that receives  
39 an erosion control plan and fee under this subsection shall immediately transmit the plan  
40 to the Commission for review. A local government may create or designate agencies or  
41 subdivisions of the local government to administer the limited program. Two or more  
42 units of local government may establish a joint limited program and enter into any  
43 agreements necessary for the proper administration of the limited program. The  
44 resolutions establishing any joint limited program must be duly recorded in the minutes

1 of the governing body of each unit of local government participating in the limited  
2 program, and a certified copy of each resolution must be filed with the Commission.  
3 Subsections (b) and (c) of this section apply to the approval and oversight of limited  
4 programs.

5 (e) Notwithstanding G.S. 113A-61.1, a local government with a limited erosion  
6 and sedimentation control program shall not issue a notice of violation if inspection  
7 indicates that the person engaged in land-disturbing activity has failed to comply with  
8 this Article, rules adopted pursuant to this Article, or an approved erosion and  
9 sedimentation control plan. The local government shall notify the Commission if any  
10 person has initiated land-disturbing activity for which an erosion and sedimentation  
11 control plan is required in the absence of an approved plan. If a local government with a  
12 limited program determines that a person engaged in a land-disturbing activity has  
13 failed to comply with an approved erosion and sedimentation control plan, the local  
14 government shall refer the matter to the Commission for inspection and enforcement  
15 pursuant to G.S. 113A-61.1."

16 **SECTION 4.** G.S. 143-215.3D is amended by adding a new subsection to  
17 read:

18 "(f) Local Government Fee Authority Not Impaired. – This section shall not be  
19 construed to limit any authority that a unit of local government may have pursuant to  
20 any other provision of law to assess or collect a fee for the review of an application for a  
21 permit, the review of a mitigation plan, or the inspection of a site or a facility under any  
22 local program that is approved by the Commission under this Article."

23 **SECTION 5.** G.S. 143-215.1(f) reads as rewritten:

24 "(f) Local Permit Programs for Sewer ~~Extension~~. Extension and Reclaimed Water  
25 Utilization. – Municipalities, counties, local boards or commissions, water and sewer  
26 authorities, or groups of municipalities and counties may establish and administer  
27 within their utility service areas their own general permit programs in lieu of State  
28 permit required in G.S. 143-215.1(a)(2), (3), and (8) above, for construction, operation,  
29 alteration, extension, change of proposed or existing sewer system, subject to the prior  
30 certification of the Commission. For purposes of this subsection, the service area of a  
31 municipality shall include only that area within the corporate limits of the municipality  
32 and that area outside a municipality in its extraterritorial jurisdiction where sewer  
33 service or a reclaimed water utilization system is already being provided by the  
34 municipality to the permit applicant or connection to the municipal sewer system or a  
35 reclaimed water utilization system is immediately available to the applicant; the service  
36 areas of counties and the other entities or groups shall include only those areas where  
37 sewer service or a reclaimed water utilization system is already being provided to the  
38 applicant by the permitting authority or connection to the permitting authority's system  
39 is immediately available. No later than the 180th day after the receipt of a program and  
40 statement submitted by any local government, commission, authority, or board the  
41 Commission shall certify any local program ~~that does all of the following:~~

42 (1) Provides by ordinance or local law for requirements compatible with  
43 those imposed by this Part and the rules implementing this ~~Part~~Part.

- 1 (2) Provides that the Department receives notice and a copy of each  
2 application for a permit and that it receives copies of approved permits  
3 and plans upon request by the ~~Commission~~Commission.
- 4 (3) Provides that plans and specifications for all construction, extensions,  
5 alterations, and changes be prepared by or under the direct supervision  
6 of an engineer licensed to practice in this ~~State~~State.
- 7 (4) Provides for the adequate enforcement of the program requirements by  
8 appropriate administrative and judicial ~~process~~process.
- 9 (5) Provides for the adequate administrative organization, engineering  
10 staff, financial and other resources necessary to effectively carry out its  
11 plan review ~~program~~program.
- 12 (6) Provides that the system is capable of interconnection at an appropriate  
13 time with an expanding municipal, county, or regional ~~system~~system.
- 14 (7) Provides for the adequate arrangement for the continued operation,  
15 service, and maintenance of the sewer ~~system~~and system or a  
16 reclaimed water utilization system.
- 17 (8) Is approved by the Commission as adequate to meet the requirements  
18 of this Part and the rules implementing this Part.

19 (f1) The Commission may deny, suspend, or revoke certification of a local  
20 program upon a finding that a violation of the provisions in subsection (f) of this section  
21 has occurred. A denial, suspension, or revocation of a certification of a local program  
22 shall be made only after notice and a public hearing. If the failure of a local program to  
23 carry out this subsection creates an imminent hazard, the Commission may summarily  
24 revoke the certification of the local program. Chapter 150B of the General Statutes does  
25 not apply to proceedings under this subsection.

26 (f2) Notwithstanding any other provision of ~~this subsection~~, subsections (f) and  
27 (f1) of this section, if the Commission determines that a sewer system, treatment works,  
28 or disposal system is operating in violation of the provisions of this Article and that the  
29 appropriate local authorities have not acted to enforce those provisions, the Commission  
30 may, after written notice to the appropriate local government, take enforcement action  
31 in accordance with the provisions of this Article."

32 **SECTION 6.** G.S. 143-215.6A(j) reads as rewritten:

33 "(j) Local governments certified and approved by the Commission to administer  
34 and enforce pretreatment programs ~~by the Commission~~ pursuant to  
35 ~~G.S. 143-215.3(a)(14)~~ G.S. 143-215.3(a)(14), stormwater programs pursuant to  
36 G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23 may  
37 assess civil penalties for violations of their respective programs in accordance with the  
38 powers conferred upon the Commission and the Secretary in this section, except that  
39 actions for collection of unpaid civil penalties shall be referred to the attorney  
40 representing the assessing local government. The total of the civil penalty assessed by a  
41 local government and the civil penalty assessed by the Secretary for any violation may  
42 not exceed the maximum civil penalty for such violation under this section."

43 **SECTION 7.** This act becomes effective 1 September 2006.