

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

H

4

HOUSE BILL 1413*
Committee Substitute Favorable 8/11/05
Senate Agriculture/Environment/Natural Resources Committee Substitute
Adopted 6/15/06
Senate Finance Committee Substitute Adopted 7/19/06

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

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR LOCAL
2 GOVERNMENTS THAT ADMINISTER APPROVED LOCAL
3 ENVIRONMENTAL PROGRAMS AND TO PROVIDE ADDITIONAL
4 INCENTIVES FOR LOCAL GOVERNMENTS TO REQUEST THE
5 AUTHORITY TO ADMINISTER ALL OR A PORTION OF CERTAIN
6 ENVIRONMENTAL PROGRAMS; TO REQUIRE MUNICIPAL
7 MAINTENANCE OF QUALIFYING SUBDIVISION STREETS IN THE
8 EXTRATERRITORIAL PLANNING JURISDICTION OF CERTAIN CITIES;
9 AND TO ALLOW LOCAL GOVERNMENT EMPLOYEES TO STAND IN, ON,
10 OR NEAR A PUBLIC STREET OR HIGHWAY OWNED, LEASED, OR
11 CONTROLLED BY THE STATE TO SOLICIT CHARITABLE
12 CONTRIBUTIONS SO LONG AS THE PERSON SOLICITING IS AN
13 EMPLOYEE OR AGENT OF THE LOCAL GOVERNMENT AND MEETS
14 CERTAIN RESTRICTIONS AND GUIDELINES.
15

16 The General Assembly of North Carolina enacts:

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

19 "(e) The landowner, the financially responsible party, or the landowner's or the
20 financially responsible party's agent shall perform an inspection of the area covered by
21 the plan after each phase of the plan has been completed and after establishment of
22 temporary ground cover in accordance with G.S. 113A-57(2). The person who performs
23 the inspection shall maintain and make available a record of the inspection at the site of
24 the land-disturbing activity. The record shall set out any significant deviation from the
25 approved erosion control plan, identify any measures that may be required to correct the
26 deviation, and document the completion of those measures. The record shall be

1 maintained until permanent ground cover has been established as required by the
2 approved erosion and sedimentation control plan. The inspections required by this
3 subsection shall be in addition to inspections required by G.S. 113A-61.1."

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

5 **"§ 113A-56. Jurisdiction of the Commission.**

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

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

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

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

12 (4) Conducted by ~~local governments~~;ora local government.

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

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

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

23 (1) To review erosion and sedimentation control plan approvals made by a
24 delegated erosion and sedimentation control program and to require a
25 revised plan if the Commission determines that a plan does not comply
26 with the requirements of this Article or the rules adopted pursuant to
27 this Article.

28 (2) To review the compliance activities of a delegated erosion and
29 sedimentation control program and to take appropriate compliance
30 action if the Commission determines that the local government has
31 failed to take appropriate compliance action."

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

33 **"§ 113A-60. Local erosion and sedimentation control programs.**

34 (a) A local government may submit to the Commission for its approval an
35 erosion and sedimentation control program for its jurisdiction, and to this end local
36 governments are authorized to adopt ordinances and regulations necessary to establish
37 and enforce erosion and sedimentation control programs. An ordinance adopted by a
38 local government may establish a fee for the review of an erosion and sedimentation
39 control plan and related activities. Local governments are authorized to create or
40 designate agencies or subdivisions of local government to administer and enforce the
41 programs. An ordinance adopted by a local government shall at least meet and may
42 exceed the minimum requirements of this Article and the rules adopted pursuant to this
43 Article. Two or more units of local government are authorized to establish a joint
44 program and to enter into any agreements that are necessary for the proper

1 administration and enforcement of the program. The resolutions establishing any joint
2 program must be duly recorded in the minutes of the governing body of each unit of
3 local government participating in the program, and a certified copy of each resolution
4 must be filed with the Commission.

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

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

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

1 subdivisions of the local government to administer the limited program. Two or more
2 units of local government may establish a joint limited program and enter into any
3 agreements necessary for the proper administration of the limited program. The
4 resolutions establishing any joint limited program must be duly recorded in the minutes
5 of the governing body of each unit of local government participating in the limited
6 program, and a certified copy of each resolution must be filed with the Commission.
7 Subsections (b) and (c) of this section apply to the approval and oversight of limited
8 programs.

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

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

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

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

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

1 statement submitted by any local government, commission, authority, or board the
2 Commission shall certify any local program ~~that~~that does all of the following:

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

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

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

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

37 "(j) Local governments certified and approved by the Commission to administer
38 and enforce pretreatment programs ~~by the Commission~~ pursuant to
39 ~~G.S. 143-215.3(a)(14)~~G.S. 143-215.3(a)(14), stormwater programs pursuant to
40 G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23 may
41 assess civil penalties for violations of their respective programs in accordance with the
42 powers conferred upon the Commission and the Secretary in this section, except that
43 actions for collection of unpaid civil penalties shall be referred to the attorney
44 representing the assessing local government. The total of the civil penalty assessed by a

1 local government and the civil penalty assessed by the Secretary for any violation may
2 not exceed the maximum civil penalty for such violation under this section."

3 **SECTION 7.(a)** Notwithstanding any other provision of law, if a
4 municipality, as part of the approval of any zoning request, subdivision application, site
5 plan review, or permit issuance within its extraterritorial planning and zoning
6 jurisdiction, imposes any requirement or condition relating to the location, design, or
7 construction of a subdivision street or a driveway connection to a subdivision street
8 which would cause the affected street to be ineligible for acceptance as part of the State
9 highway system, (considering the then-current North Carolina Department of
10 Transportation standards for the streets or driveways), then the municipality shall accept
11 for municipal maintenance the affected street when offered for dedication by the
12 developer or owner if the area of the extraterritorial jurisdiction where the street is
13 located is not annexed within two years of the date of construction of the street or the
14 driveway connection to the street and if the street meets the city's street maintenance
15 standards. The city may inspect a subdivision street to determine whether the street
16 meets the city's street maintenance standards.

17 **SECTION 7.(b)** Notwithstanding any other provision of law, the acceptance
18 of streets in the extraterritorial planning jurisdiction for municipal maintenance pursuant
19 to subsection (a) of this section shall not affect distributions under G.S. 136-41.1
20 (Powell Bill).

21 **SECTION 7.(c)** Words and phrases used in this section have the same
22 meaning as in Chapter 136 of the General Statutes and in Article 19 of Chapter 160A of
23 the General Statutes, as appropriate.

24 **SECTION 7.(d)** This section applies only to municipalities having a
25 population of 600,000 or more according to the most recent federal decennial census.

26 **SECTION 8.(a)** G.S. 20-175(d) reads as rewritten:

27 "(d) Local governments may enact ordinances restricting or prohibiting a person
28 from standing on any street, highway, or right-of-way excluding sidewalks while
29 soliciting, or attempting to solicit, any employment, business, or contributions from the
30 driver or occupants of any vehicle. This subsection does not permit additional
31 restrictions or prohibitions on the activities of licensees, employees, or contractors of
32 the Department of Transportation or of any municipality engaged in construction or
33 maintenance or in making traffic or engineering ~~surveys~~ surveys ~~except as provided in~~
34 subsection (e) of this section."

35 **SECTION 8.(b)** G.S. 20-175 is amended by adding a new subsection to
36 read:

37 "(e) A local government shall have the authority to grant authorization for a
38 person to stand in, on, or near a street or State roadway, within the local government's
39 municipal corporate limits, to solicit a charitable contribution if the requirements of this
40 subsection are met.

41 A person seeking authorization under this subsection to solicit charitable
42 contributions shall file a written application with the local government. This application
43 shall be filed not later than seven days before the date the solicitation event is to occur.
44 If there are multiple events or one event occurring on more than one day, each event

1 shall be subject to the application and permit requirements of this subsection for each
2 day the event is to be held, to include the application fee.

3 The application must include:

4 (1) The date and time when the solicitation is to occur;

5 (2) Each location at which the solicitation is to occur; and

6 (3) The number of solicitors to be involved in the solicitation at each
7 location.

8 This subsection does not prohibit a local government from charging a fee for a
9 permit, but in no case shall the fee be greater than twenty-five dollars (\$25.00) per day
10 per event.

11 The applicant shall also furnish to the local government advance proof of liability
12 insurance in the amount of at least two million dollars (\$2,000,000) to cover damages
13 that may arise from the solicitation. The insurance coverage must provide coverage for
14 claims against any solicitor and agree to hold the local government harmless.

15 A local government, by acting under this section, does not waive, or limit, any
16 immunity or create any new liability for the local government. The issuance of an
17 authorization under this section and the conducting of the solicitation authorized are not
18 considered governmental functions of the local government.

19 In the event the solicitation event or the solicitors shall create a nuisance, delay
20 traffic, create threatening or hostile situations, any law enforcement officer with proper
21 jurisdiction may order the solicitations to cease. Any individual failing to follow a law
22 enforcement officer's lawful order to cease solicitation shall be guilty of a Class 2
23 misdemeanor."

24 **SECTION 9.** Sections 1 through 6 of this act become effective 1 September
25 2006. Section 8 of this act becomes effective December 1, 2006, and applies to offenses
26 committed on or after that date. The remainder of this act is effective when it becomes
27 law.