

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 1114

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

(Public)

Sponsors: Senator Albertson.

Referred to: Agriculture/Environment/Natural Resources.

March 24, 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 person submitting the erosion and sedimentation control plan or an agent of the person submitting the erosion and sedimentation control plan shall perform each inspection. The person who performs each inspection shall post a record of the inspection on the site of the land-disturbing activity. The record shall certify that the work has been completed in accordance with the approved erosion and sedimentation control plan and is being maintained in a manner that satisfies the requirements of this Article. 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.**

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

- (1) Conducted by the ~~State~~;State.
- (2) Conducted by the United ~~States~~;States.
- (3) Conducted by persons having the power of eminent ~~domain~~;domain other than a local government.

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

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

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

7 (c) The Commission shall have concurrent jurisdiction with local governments  
8 that administer an approved local erosion and sedimentation control program pursuant  
9 to G.S. 113A-60 over all other land-disturbing activities."

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

11 "**§ 113A-60. Local erosion and sedimentation control programs.**

12 (a) A local government may submit to the Commission for its approval an  
13 erosion and sedimentation control program for its jurisdiction, and to this end local  
14 governments are authorized to adopt ordinances and regulations necessary to establish  
15 and enforce erosion and sedimentation control programs. An ordinance adopted by a  
16 local government may establish a fee for the review of an erosion and sedimentation  
17 control plan and related activities. Local governments are authorized to create or  
18 designate agencies or subdivisions of local government to administer and enforce the  
19 programs. An ordinance adopted by a local government shall at least meet and may  
20 exceed the minimum requirements of this Article and the rules adopted pursuant to this  
21 Article. Two or more units of local government are authorized to establish a joint  
22 program and to enter into any agreements that are necessary for the proper  
23 administration and enforcement of the program. The resolutions establishing any joint  
24 program must be duly recorded in the minutes of the governing body of each unit of  
25 local government participating in the program, and a certified copy of each resolution  
26 must be filed with the Commission.

27 (a1) The Commission may review any approval of an erosion and sedimentation  
28 control plan by a local government and, if the Commission determines that the plan  
29 does not comply with the requirements of this Article and rules adopted pursuant to this  
30 Article, the Commission may require that the erosion and sedimentation control plan be  
31 revised to correct any deficiencies. The Commission may review any enforcement  
32 action or failure to take an enforcement action by a local government and, if the  
33 Commission determines that the enforcement action is inappropriate or insufficient, the  
34 Commission may modify the enforcement action taken by the local government, or the  
35 Commission may take appropriate enforcement action.

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

41 (c) If the Commission determines that any local government is failing to  
42 administer or enforce an approved erosion and sedimentation control program, it shall  
43 notify the local government in writing and shall specify the deficiencies of  
44 administration and enforcement. If the local government has not taken corrective action

1 within 30 days of receipt of notification from the Commission, the Commission shall  
2 assume administration and enforcement of the program until such time as the local  
3 government indicates its willingness and ability to resume administration and  
4 enforcement of the program.

5 (d) A local government may submit to the Commission for its approval a limited  
6 erosion and sedimentation control program for its jurisdiction that grants the local  
7 government the responsibility only for the assessment and collection of fees and for the  
8 inspection of land-disturbing activities within the jurisdiction of the local government.  
9 The Commission shall be responsible for the administration and enforcement of all  
10 other components of the erosion and sedimentation control program and the  
11 requirements of this Article. The local government may adopt ordinances and  
12 regulations necessary to establish a limited erosion and sedimentation control program.  
13 An ordinance adopted by a local government that establishes a limited program shall at  
14 least meet and may exceed the minimum requirements regarding the inspection of  
15 land-disturbing activities of this Article and the rules adopted pursuant to this Article  
16 regarding the inspection of land-disturbing activities. The local government shall  
17 establish a fee to be paid by each person who submits an erosion and sedimentation  
18 control plan to the local government. The amount of the fee shall be the amount that  
19 would be due to the Commission pursuant to G.S. 113A-54.2(a) and any amount that  
20 the local government requires to cover the cost of inspection and program  
21 administration activities by the local government. A local government that administers a  
22 limited erosion and sedimentation control program shall collect and pay to the  
23 Commission an amount equal to eighty percent (80%) of the fee established pursuant to  
24 G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and  
25 enforcement of other components of the erosion and sedimentation control program.  
26 Fees paid to the Commission by a local government shall be deposited in the  
27 Sedimentation Account established by G.S. 113A-54.2(b). A local government may  
28 create or designate agencies or subdivisions of the local government to administer the  
29 limited program. Two or more units of local government may establish a joint limited  
30 program and enter into any agreements necessary for the proper administration of the  
31 limited program. The resolutions establishing any joint limited program must be duly  
32 recorded in the minutes of the governing body of each unit of local government  
33 participating in the limited program, and a certified copy of each resolution must be  
34 filed with the Commission. Subsections (b) and (c) of this section apply to the approval  
35 and oversight of limited programs."

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

38 "(f) Local Government Fee Authority Not Impaired. – This section shall not be  
39 construed to limit the authority of a local government to assess or collect a fee for the  
40 review of an application for a permit or a mitigation plan under any local program that  
41 is approved by the Commission under this Article."

42 **SECTION 5.** G.S. 143-215.6A(j) reads as rewritten:

43 "(j) Local governments certified and approved by the Commission to administer  
44 and enforce pretreatment programs by the Commission pursuant to G.S. 143

1 ~~215.3(a)(14)~~ G.S. 143-215.3(a)(14), stormwater programs pursuant to G.S. 143-214.7,  
2 or riparian buffer protection programs pursuant to G.S. 143-214.23 may assess civil  
3 penalties for violations of their respective programs in accordance with the powers  
4 conferred upon the Commission and the Secretary in this section, except that actions for  
5 collection of unpaid civil penalties shall be referred to the attorney representing the  
6 assessing local government. The total of the civil penalty assessed by a local  
7 government and the civil penalty assessed by the Secretary for any violation may not  
8 exceed the maximum civil penalty for such violation under this section."

9 **SECTION 6.** This act becomes effective 1 September 2005.