

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1114
Agriculture/Environment/Natural Resources Committee Substitute Adopted
5/31/05

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

(Public)

Sponsors:

Referred to:

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 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 accordance with the plan. The record shall set out any 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 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.

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

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

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

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

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

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

19 (2) To review the compliance activities of a delegated erosion and
20 sedimentation control program and to take appropriate compliance
21 action if the Commission determines that the local government has
22 failed to take appropriate compliance action."

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

24 **"§ 113A-60. Local erosion and sedimentation control programs.**

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

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

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

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

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

43 "(f) Local Government Fee Authority Not Impaired. – This section shall not be
44 construed to limit the authority of a local government to assess or collect a fee for the

1 review of an application for a permit or a mitigation plan under any local program that
2 is approved by the Commission under this Article."

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

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

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