

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 760

Short Title: Per Diem Erosion Control Penalties. (Public)

Sponsors: Senators McKissick; Atwater, Berger of Franklin, Clary, Davis, Foriest, Jones, Kinnaird, Snow, and Vaughan.

Referred to: Agriculture/Environment/Natural Resources.

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ASSESSMENT OF A CIVIL PENALTY PRIOR TO THE RESTORATION OF THE LAND FOR CONTINUING VIOLATIONS UNDER THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 AND, FOR VIOLATORS WHO FAIL TO CONTEST THE AMOUNT OF THE PENALTY FOR CONTINUING VIOLATIONS WITHIN THIRTY DAYS AFTER THE PENALTY IS DUE, TO BAR SUBSEQUENT CHALLENGES OF THE AMOUNT OF THE PENALTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-64(a)(2) reads as rewritten:

"(2) The Secretary or a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60 shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty ~~of the amount of the penalty and the reason for assessing the penalty.~~ penalty and:

a. If the violation has ceased, the total amount of the penalty.

b. If the violation is a continuing violation, the per diem amount of the penalty.

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

(2b) If a violator receives a notice of assessment for a continuing violation under subdivision (2) of this subsection and fails to contest the amount of the



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1 penalty within 30 days after it is due, the violator is barred from
2 subsequently challenging the amount of the penalty under subdivision (2a)
3 of this subsection."

4 **SECTION 2.** This act becomes effective October 1, 2009, and applies to violations
5 that occur on or after that date.