

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1601\*

Short Title: Env. Tech. Corr. 1992.

(Public)

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Sponsors: Representative Privette.

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Referred to: Environment.

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June 5, 1992

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL  
AMENDMENTS TO VARIOUS LAWS RELATING TO ENVIRONMENT,  
HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 104G-6(b)(1b) reads as rewritten:

"(1b) Article 3D of Chapter 143 (Procurement of ~~Architectural and  
Engineering Architectural, Engineering, and Surveying Services~~);"

Sec. 2. G.S. 113-29(a) reads as rewritten:

"(a) In this Article, unless the context requires otherwise, ~~the expression~~  
'Department' means the Department of Environment, Health, and Natural ~~Resources:~~  
Resources; and 'Secretary' means the Secretary of Environment, Health, and Natural  
Resources."

Sec. 3. G.S. 113-61(a) reads as rewritten:

"(a) In this Article, unless the context requires otherwise, ~~the expression~~  
'Department' means the Department of Environment, Health, and Natural ~~Resources:~~  
Resources; and 'Secretary' means the Secretary of Environment, Health, and Natural  
Resources."

Sec. 4. G.S. 113-138(b)(2) reads as rewritten:

"(2) The best ~~interest-interests~~ of the conservation of marine and estuarine  
and wildlife resources managed by the adopting Commission will  
benefit by conferring law-enforcement authority on the employees of  
the United States Fish and Wildlife Service or the National Marine  
Fisheries Service."

1           Sec. 5. G.S. 113-151.1(b) reads as rewritten:

2           "(b) License agents shall be compensated by adding a surcharge of one dollar  
3 (\$1.00) ~~to~~ to each license sold and retaining the one dollar (\$1.00) surcharge. If more  
4 than one license is listed on a consolidated license form, the license agent shall be  
5 compensated as if a single license were sold. It is unlawful for a license agent to add  
6 more than the surcharge authorized by this section to the fee for each license sold."

7           Sec. 6. G.S. 113-228 reads as rewritten:

8           "**§ 113-228. Adoption of federal regulations.**

9           To the extent that the Department is granted authority in this Subchapter over  
10 subject matter as to which there is concurrent federal jurisdiction, the Marine Fisheries  
11 Commission in its discretion may by reference in its rules adopt relevant provisions of  
12 federal laws and regulations as State rules. To prevent confusion or conflict of  
13 jurisdiction in enforcement, the Marine Fisheries Commission is exempt from any  
14 conflicting limitations in G.S. ~~450B-14-150B-21.6~~ so that it may provide for automatic  
15 incorporation by reference into its rules of future changes within any particular set of  
16 federal laws or regulations relating to some subject clearly within the jurisdiction of the  
17 Department."

18           Sec. 7. G.S. 113A-126(d)(3) reads as rewritten:

19           "(3) The Commission may assess the penalties provided for in this  
20 subsection. The Commission shall notify a person who is assessed a  
21 penalty by registered or certified mail. The notice shall state the  
22 reasons for the penalty. A person may contest a penalty by filing a  
23 petition for a contested case under G.S. 150B-23 within 20 days after  
24 receiving the notice of assessment. If a person fails to pay a penalty,  
25 the Commission shall refer the matter to the Attorney General for  
26 collection. ~~Such civil actions~~ An action to collect a penalty must be  
27 filed ~~within three years of~~ after the date the final agency decision was  
28 served on the violator."

29           Sec. 8. G.S. 130A-12 reads as rewritten:

30           "**§ 130A-12. Confidentiality of records.**

31           All privileged patient medical records in the possession of the Department or the  
32 Department of Human Resources or local health departments shall be confidential and  
33 shall not be public records pursuant to G.S. 132-1."

34           Sec. 9. G.S. 130A-310.23 reads as rewritten:

35           "**§ 130A-310.23. Filing notices of Superfund liens.**

36           Notices of liens and certificates of notices affecting liens for obligations payable to  
37 the United States under ~~Superfund-CERCLA/SARA~~ (42 U.S.C. § 9607(l)) shall be filed  
38 in accordance with Article 11A of Chapter 44 of the General Statutes."

39           Sec. 10. G.S. 139-47(d) reads as rewritten:

40           "(d) Every preliminary project investigation or recommended report concerning a  
41 watershed improvement project or drainage project that involves channelization shall be  
42 submitted to the Soil and Water Conservation Commission for review and for approval  
43 or disapproval. Such review shall be prior to, and in addition to, the review of watershed  
44 work plans provided for by G.S. 139-35. The Soil and Water Conservation Commission

1 shall approve such investigation or report, following the public hearing held pursuant to  
2 subsection (c) of this section, if, in its judgment, the investigation or report shows that  
3 any channelization features of the proposed project are necessary to the project and that  
4 no other feasible alternatives are available. No work of improvement may be  
5 constructed or established without the approval of the preliminary project investigation  
6 or recommended report by the Soil and Water Conservation Commission pursuant to  
7 this section. The construction or establishment of any such work of improvement  
8 without such approval, or without conforming to a preliminary project investigation or  
9 recommended report approved by the Soil and Water Conservation Commission, may  
10 be enjoined. Provided, however, the provisions of this section shall not apply to the  
11 activities and functions of the North Carolina Department of ~~Human-Environment,~~  
12 Health, and Natural Resources and local health departments that are engaged in  
13 mosquito control for the protection of the health and welfare of the people of the coastal  
14 area of North Carolina as provided under G.S. ~~130-206-130A-346~~ through ~~130-209-G.S.~~  
15 130A-349. The Soil and Water Conservation Commission may institute an action for  
16 injunctive relief in the superior court of any county wherein such construction or  
17 establishment takes place, and the procedure in such action shall be as provided in  
18 Article 37, Chapter 1 of the General Statutes."

19 Sec. 11. G.S. 143-214.5(e) reads as rewritten:

20 "(e) Assumption of Local Programs. – The Commission shall assume  
21 responsibility for water supply watershed protection, within all or the affected portion of  
22 a water supply watershed, if a local government fails to adopt a program that meets the  
23 requirements of this section or whenever a local government fails to adequately  
24 administer and enforce the provisions of its program. The Commission shall not assume  
25 responsibility for an approved local ~~a~~-water supply watershed protection program until it  
26 or its designee notifies the local government in writing by certified mail, return receipt  
27 requested, of local program deficiencies, recommendations for changes and  
28 improvements in the local program, and the deadline for compliance. The Commission  
29 shall allow a local government a minimum of 120 days to bring its program into  
30 compliance. The Commission shall order assumption of an approved local program if it  
31 finds that the local government has made no substantial progress toward compliance.  
32 The Commission may make such finding at any time between 120 days and 365 days  
33 after receipt of notice under this subsection by the local government, with no further  
34 notice. Proceedings to review such orders by the Commission shall be conducted by the  
35 superior court pursuant to Article 4 of Chapter 150B of the General Statutes based on  
36 the agency record submitted to the Commission by the Secretary."

37 Sec. 12. G.S. 143-215(e) reads as rewritten:

38 "(e) Except as required by federal law or regulations, the Commission may not  
39 adopt effluent standards or limitations applicable to animal and poultry feeding  
40 operations. Notwithstanding the foregoing, where manmade pipes, ditches, or other  
41 conveyances have been constructed for the purpose of willfully discharging pollutants  
42 to the waters of the State, the ~~Commission-Secretary~~ shall have the authority to assess  
43 fines and penalties not to exceed five thousand dollars (\$5,000) for the first offense.

1 The definitions and provisions of 40 Code of Federal Regulations § 122.23 (July 1,  
2 1990 Edition) shall apply to this subsection."

3 Sec. 13. G.S. 143-215.3(a)(8) reads as rewritten:

4 "(8) After issuance of an appropriate order, to withhold the granting of any  
5 permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for  
6 the construction or operation of any new or additional disposal system  
7 or systems or air-cleaning device or devices in any area of the State.  
8 Such order may be issued only upon determination by the  
9 Commission, after public hearing, that the permitting of any new or  
10 additional source or sources of water or air pollution will result in a  
11 generalized condition of water or air pollution within the area contrary  
12 to the public interest, detrimental to the public health, safety, and  
13 welfare, and contrary to the policy and intent declared in this Article or  
14 Article 21B of this Chapter. The Commission may make reasonable  
15 distinctions among the various sources of water and air pollution and  
16 may direct that its order shall apply only to those sources which it  
17 determines will result in a generalized condition of water or air  
18 pollution.

19 The determination of the Commission shall be supported by  
20 detailed findings of fact and conclusions set forth in the order and  
21 based upon competent evidence of record. The order shall describe the  
22 geographical area of the State affected thereby with particularity and  
23 shall prohibit the issuance of permits pending a determination by the  
24 Commission that the generalized condition of water or air pollution  
25 has ceased.

26 Notice of hearing shall be given in accordance with the provisions  
27 of G.S. ~~150B-12.~~ 150B-21.2.

28 A person aggrieved by an order of the Commission under this  
29 subdivision may seek judicial review of the order under Article 4 of  
30 Chapter 150B of the General Statutes without first commencing a  
31 contested case. An order may not be stayed while it is being  
32 reviewed."

33 Sec. 14. The catch line to G.S. 143-215.94D reads as rewritten:

34 "**§ 143-215.94D. (Expires December 31, 1998) Noncommercial leaking petroleum**  
35 **~~underground storage tank cleanup fund.~~ Leaking Petroleum Underground**  
36 **Storage Tank Cleanup Fund.**"

37 Sec. 15. G.S. 143-215.114A(g) reads as rewritten:

38 "(g) The Secretary may delegate his powers and duties under this section to the  
39 Director of the Division of Environmental Management ~~of the Department.~~ or other  
40 appropriate division director."

41 Sec. 16. G.S. 143-358 reads as rewritten:

42 "**§ 143-358. Cooperation of State officials and agencies.**

43 All State agencies and officials shall cooperate with and assist the ~~State~~ Commission  
44 in enforcing and carrying out the provisions of this Article and ~~the rules, regulations and~~

1 ~~policies adopted by the Commission pursuant thereto.~~ rules adopted by the Commission  
2 under this Article."

3           Sec. 17. G.S. 143B-301.1 reads as rewritten:

4 **"§ 143B-301.1. Definitions.**

5           The definitions set out in G.S. 90A-46 shall apply ~~through~~ throughout this Part."

6           Sec. 1. This act is effective upon ratification.