

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

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**HOUSE BILL 953**

Short Title: Sedimentation Act Amendments. (Public)

Sponsors: Representatives Weiss, Hackney (Primary Sponsors); Luebke, G. Allen, and Insko.

Referred to: Finance.

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 113A-54.1 reads as rewritten:

**"§ 113A-54.1. Approval of erosion and sedimentation control plans.**

(a) A draft erosion and sedimentation control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must contain documentation of the owner's consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity. The Commission shall approve, approve with modifications, or disapprove a draft erosion and sedimentation control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion and sedimentation control plan or a revised erosion and sedimentation control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion and sedimentation control plans approved under this Article.

1 (b) If, following commencement of a land-disturbing activity pursuant to an  
2 approved erosion and sedimentation control plan, the Commission determines that the  
3 plan is inadequate to meet the requirements of this Article, the Commission may require  
4 any revision of the plan that is necessary to comply with this Article. Failure to approve,  
5 approve with modifications, or disapprove a revised erosion and sedimentation control  
6 plan within 15 days of receipt shall be deemed approval of the plan.

7 (c) The Commission shall disapprove an erosion and sedimentation control plan  
8 if implementation of the plan would result in a violation of rules adopted by the  
9 Environmental Management Commission to protect riparian buffers along surface  
10 waters. The Director of the Division of Land Resources may disapprove an erosion and  
11 sedimentation control plan upon finding that an applicant or a parent, subsidiary, or  
12 other affiliate of the applicant:

- 13 (1) Is conducting or has conducted land-disturbing activity without an  
14 approved plan, or has received notice of violation of a plan previously  
15 approved by the Commission or a local government pursuant to this  
16 Article and has not complied with the notice within the time specified  
17 in the notice;
- 18 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a  
19 local ordinance adopted pursuant to this Article by the time the  
20 payment is due;
- 21 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or  
22 any criminal provision of a local ordinance adopted pursuant to this  
23 Article; or
- 24 (4) Has failed to substantially comply with State rules or local ordinances  
25 and regulations adopted pursuant to this Article.

26 (d) In the event that an erosion and sedimentation control plan is disapproved by  
27 the Director pursuant to subsection (c) of this section, the Director shall state in writing  
28 the specific reasons that the plan was disapproved. The applicant may appeal the  
29 Director's disapproval of the plan to the Commission. For purposes of this subsection  
30 and subsection (c) of this section, an applicant's record may be considered for only the  
31 two years prior to the application date.

32 (e) An approved erosion and sedimentation control plan shall contain a schedule  
33 for the inspection of the area covered by the plan after each phase of the plan has been  
34 completed and after establishment of temporary ground cover or other adequate  
35 erosion-control devices or structures in accordance with G.S. 113A-57(2). The person  
36 submitting the erosion and sedimentation control plan or an agent of the person  
37 submitting the erosion and sedimentation control plan shall perform each inspection.  
38 The person who performs each inspection shall post a record of the inspection on the  
39 site of the land-disturbing activity. The record shall either certify that the work has been  
40 completed in accordance with the approved erosion and sedimentation control plan and  
41 is being maintained in a manner that satisfies the requirements of this Article or detail  
42 the noncompliant site conditions. Once the noncompliant site conditions are corrected,  
43 the person who performs each inspection shall post a record detailing the actions taken  
44 and the timing of each action that brought the site into compliance. The inspections

1 required by this subsection shall be in addition to inspections required by G.S.  
2 113A-61.1."

3 **SECTION 2.** G.S. 113A-54.2(a) reads as rewritten:

4 "(a) ~~The Commission may establish a fee schedule for the review and approval of~~  
5 ~~erosion and sedimentation control plans under this Article. In establishing the fee~~  
6 ~~schedule, the Commission shall consider the administrative and personnel costs incurred~~  
7 ~~by the Department for reviewing the plans and for related compliance activities. An~~  
8 ~~application fee may not exceed fifty dollars (\$50.00) per acre of disturbed land shown~~  
9 ~~on an erosion and sedimentation control plan or of land actually disturbed during the life~~  
10 ~~of the project. The fee for the review of an erosion and sedimentation control plan and~~  
11 ~~related compliance activities shall be one hundred fifty dollars (\$150.00) per acre, or~~  
12 ~~portion thereof, of disturbed land as shown on an erosion and sedimentation control plan~~  
13 ~~or of land disturbed during the life of the project, whichever is greater."~~

14 **SECTION 3.** G.S. 113A-56 reads as rewritten:

15 "**§ 113A-56. Jurisdiction of the Commission.**

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

- 19 (1) Conducted by the ~~State~~State.
- 20 (2) Conducted by the ~~United States~~States.
- 21 (3) Conducted by ~~persons~~a person having the power of eminent  
22 ~~domain~~domain other than a local government.
- 23 (4) ~~Conducted by local governments; or~~
- 24 (5) Funded in whole or in part by the State or the United States.

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

29 (c) The Commission shall have concurrent jurisdiction with local governments  
30 that administer a delegated erosion and sedimentation control program over all other  
31 land-disturbing activities. In addition to the authority granted to the Commission in G.S.  
32 113A-60(c), the Commission has the following authority with respect to a delegated  
33 erosion and sedimentation control program:

- 34 (1) To review erosion and sedimentation control plan approvals made by a  
35 delegated erosion and sedimentation control program and to require a  
36 revised plan if the Commission determines that a plan does not comply  
37 with the requirements of this Article or the rules adopted pursuant to  
38 this Article.
- 39 (2) To review the compliance activities of a delegated erosion and  
40 sedimentation control program and to take appropriate compliance  
41 action if the Commission determines that the local government has  
42 failed to take appropriate compliance action."

43 **SECTION 4.** G.S. 113A-57 reads as rewritten:

44 "**§ 113A-57. Mandatory standards for land-disturbing activity.**

1 No land-disturbing activity subject to this Article shall be undertaken except in  
2 accordance with the following mandatory requirements:

3 (1) No land-disturbing activity during periods of construction or  
4 improvement to land shall be permitted in proximity to a lake or  
5 natural watercourse unless a buffer zone is provided along the margin  
6 of the watercourse of sufficient width to confine visible siltation within  
7 the twenty-five percent (25%) of the buffer zone nearest the  
8 land-disturbing activity. Waters that have been classified as trout  
9 waters by the Environmental Management Commission shall have an  
10 undisturbed buffer zone 25 feet wide or of sufficient width to confine  
11 visible siltation within the twenty-five percent (25%) of the buffer  
12 zone nearest the land-disturbing activity, whichever is greater.  
13 Provided, however, that the Sedimentation Control Commission may  
14 approve plans which include land-disturbing activity along trout  
15 waters when the duration of said disturbance would be temporary and  
16 the extent of said disturbance would be minimal. This subdivision  
17 shall not apply to a land-disturbing activity in connection with the  
18 construction of facilities to be located on, over, or under a lake or  
19 natural watercourse.

20 (2) The angle for graded slopes and fills shall be no greater than the angle  
21 ~~which that~~ can be retained by vegetative cover or other adequate  
22 erosion-control devices or structures. In any event, slopes left exposed  
23 will, within ~~15-10~~ working days or ~~30-21~~ calendar days of completion  
24 of any phase of grading, whichever period is shorter, be planted or  
25 otherwise provided with ground cover, devices, or structures sufficient  
26 to restrain erosion.

27 (3) Whenever land-disturbing activity that will disturb more than one acre  
28 is undertaken on a ~~tract-tract, comprising more than one acre, if more~~  
29 ~~than one acre is uncovered~~, the person conducting the land-disturbing  
30 activity shall install erosion and sedimentation control devices and  
31 practices that are sufficient to retain the sediment generated by the  
32 land-disturbing activity within the boundaries of the tract during  
33 construction upon and development of the tract, and shall plant or  
34 otherwise provide a permanent ground cover sufficient to restrain  
35 erosion after completion of construction or development within a time  
36 period to be specified by rule of the Commission.

37 (4) No person shall initiate any land-disturbing activity that will disturb  
38 more than one acre on a tract ~~if more than one acre is to be uncovered~~  
39 unless, 30 or more days prior to initiating the activity, an erosion and  
40 sedimentation control plan for such activity is filed with the agency  
41 having jurisdiction. The person shall conduct the land-disturbing  
42 activity in accordance with the approved plan. The agency having  
43 jurisdiction shall forward to the Director of the Division of Water  
44 Quality a copy of each erosion and sedimentation control plan for a

1 land-disturbing activity that involves the utilization of ditches for the  
2 purpose of de-watering or lowering the water table of the tract."

3 **SECTION 5.** G.S. 113A-60 reads as rewritten:

4 **"§ 113A-60. Local erosion and sedimentation control programs.**

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

20 (a1) A local government may request that the Commission approve and delegate a  
21 limited erosion and sedimentation control program that allows the local government  
22 only to inspect land-disturbing activities, assess appropriate fees, and collect fees within  
23 the jurisdiction of the local government. The Commission shall be responsible for  
24 administering all components of the erosion and sedimentation control program other  
25 than the inspection of land-disturbing activities. The local government may adopt  
26 ordinances and regulations necessary to establish a limited erosion and sedimentation  
27 control program. An ordinance adopted by a local government that establishes a limited  
28 program shall at least meet and may exceed the minimum requirements regarding the  
29 inspection of land-disturbing activities of this Article and the rules adopted pursuant to  
30 this Article regarding the inspection of land-disturbing activities. The local government  
31 shall establish a fee to be paid by each person who submits an erosion and  
32 sedimentation control plan to the local government that includes the fee due to the  
33 Department and any amount that the local government requires to cover the cost of  
34 inspection activities. A local government that administers a limited erosion and  
35 sedimentation control program shall collect and pay to the Department a fee equal to  
36 one hundred twenty dollars (\$120.00) per acre of land subject to inspection in order to  
37 cover the Department's costs of erosion and sedimentation control plan review and  
38 enforcement. Fees paid to the Department by a local government shall be deposited in  
39 the Sedimentation Account established by G.S. 113A-54.2(b). A local government may  
40 create or designate agencies or subdivisions of the local government to administer the  
41 limited program. Two or more units of local government may establish a joint limited  
42 program and enter into any agreements necessary for the proper administration of the  
43 limited program. The resolutions establishing any joint limited program must be duly  
44 recorded in the minutes of the governing body of each unit of local government

1 participating in the limited program, and a certified copy of each resolution must be  
2 filed with the Commission.

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

8 (c) If the Commission determines that any local government is failing to  
9 administer or enforce an ~~approved~~ erosion and sedimentation control ~~program, program~~  
10 delegated under subsection (a) of this section or a limited erosion and sedimentation  
11 control program delegated under subsection (a1) of this section, it shall notify the local  
12 government in writing and shall specify the deficiencies of administration and  
13 enforcement. If the local government has not taken corrective action within 30 days of  
14 receipt of notification from the Commission, the Commission shall assume  
15 administration and enforcement of the program until such time as the local government  
16 indicates its willingness and ability to resume administration and enforcement of the  
17 program."

18 **SECTION 6.** Article 4 of Chapter 113A of the General Statutes is amended  
19 by adding a new section to read:

20 "**§ 113A-67. Annual report.**

21 The Department shall report to the Environmental Review Commission on the  
22 implementation of this Article on or before September 1 of each year. The Department  
23 shall include in the report an analysis of how well the implementation of the  
24 Sedimentation Pollution Control Act of 1973 is preventing the sedimentation of streams,  
25 rivers, lakes, and other waters of the State. The report shall also include an evaluation of  
26 whether the fees and civil penalties are adequate to properly administer and enforce this  
27 Article. In addition, the report shall include a review of the effectiveness of local  
28 erosion and sedimentation control programs."

29 **SECTION 7.** The Department of Environment and Natural Resources shall  
30 submit the first report required by G.S. 113A-67, as enacted by Section 6 of this act, to  
31 the Environmental Review Commission on or before 1 September 2004.

32 **SECTION 8.** This act becomes effective 1 August 2003.