

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH30250-RTf-10A* (03/15)

Short Title: Enhance Local Govt. Adm. of Env. Prgms. (Public)

Sponsors: Representatives L. Allen, Hackney, Justice, and Weiss (Primary Sponsors).

Referred to:

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.

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

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

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

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

14 **"§ 113A-60. Local erosion and sedimentation control programs.**

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

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

39 (b) The Commission shall review each program submitted and within 90 days of
40 receipt thereof shall notify the local government submitting the program that it has been
41 approved, approved with modifications, or disapproved. The Commission shall only
42 approve a program upon determining that its standards equal or exceed those of this
43 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 a fee to be paid by each person who submits an erosion and sedimentation
22 control plan to the local government. The amount of the fee shall be the amount that
23 would be due to the Commission pursuant to G.S. 113A-54.2(a) and any amount that
24 the local government requires to cover the cost of inspection and program
25 administration activities by the local government. A local government that administers a
26 limited erosion and sedimentation control program shall collect and pay to the
27 Commission an amount equal to eighty percent (80%) of the fee established pursuant to
28 G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and
29 enforcement of other components of the erosion and sedimentation control program.
30 Fees paid to the Commission by a local government shall be deposited in the
31 Sedimentation Account established by G.S. 113A-54.2(b). A local government may
32 create or designate agencies or subdivisions of the local government to administer the
33 limited program. Two or more units of local government may establish a joint limited
34 program and enter into any agreements necessary for the proper administration of the
35 limited program. The resolutions establishing any joint limited program must be duly
36 recorded in the minutes of the governing body of each unit of local government
37 participating in the limited program, and a certified copy of each resolution must be
38 filed with the Commission. Subsections (b) and (c) of this section apply to the approval
39 and oversight of limited programs."

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

42 "(f) Local Government Fee Authority Not Impaired. – This section shall not be
43 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.