

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1413*

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

Sponsors: Representatives L. Allen, Hackney, Justice, Weiss (Primary Sponsors);
Alexander, Carney, Fisher, Harrison, Insko, and Womble.

Referred to: Environment and Natural Resources.

April 21, 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 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.
- (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 an approved local erosion and sedimentation control program pursuant
11 to G.S. 113A-60 over all other land-disturbing activities."

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

13 **"§ 113A-60. Local erosion and sedimentation control programs.**

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

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

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

43 (c) If the Commission determines that any local government is failing to
44 administer or enforce an approved erosion and sedimentation control program, it shall

1 notify the local government in writing and shall specify the deficiencies of
2 administration and enforcement. If the local government has not taken corrective action
3 within 30 days of receipt of notification from the Commission, the Commission shall
4 assume administration and enforcement of the program until such time as the local
5 government indicates its willingness and ability to resume administration and
6 enforcement of the program.

7 (d) A local government may submit to the Commission for its approval a limited
8 erosion and sedimentation control program for its jurisdiction that grants the local
9 government the responsibility only for the assessment and collection of fees and for the
10 inspection of land-disturbing activities within the jurisdiction of the local government.
11 The Commission shall be responsible for the administration and enforcement of all
12 other components of the erosion and sedimentation control program and the
13 requirements of this Article. The local government may adopt ordinances and
14 regulations necessary to establish a limited erosion and sedimentation control program.
15 An ordinance adopted by a local government that establishes a limited program shall at
16 least meet and may exceed the minimum requirements regarding the inspection of
17 land-disturbing activities of this Article and the rules adopted pursuant to this Article
18 regarding the inspection of land-disturbing activities. The local government shall
19 establish a fee to be paid by each person who submits an erosion and sedimentation
20 control plan to the local government. The amount of the fee shall be the amount that
21 would be due to the Commission pursuant to G.S. 113A-54.2(a) and any amount that
22 the local government requires to cover the cost of inspection and program
23 administration activities by the local government. A local government that administers a
24 limited erosion and sedimentation control program shall collect and pay to the
25 Commission an amount equal to eighty percent (80%) of the fee established pursuant to
26 G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and
27 enforcement of other components of the erosion and sedimentation control program.
28 Fees paid to the Commission by a local government shall be deposited in the
29 Sedimentation Account established by G.S. 113A-54.2(b). A local government may
30 create or designate agencies or subdivisions of the local government to administer the
31 limited program. Two or more units of local government may establish a joint limited
32 program and enter into any agreements necessary for the proper administration of the
33 limited program. The resolutions establishing any joint limited program must be duly
34 recorded in the minutes of the governing body of each unit of local government
35 participating in the limited program, and a certified copy of each resolution must be
36 filed with the Commission. Subsections (b) and (c) of this section apply to the approval
37 and oversight of limited programs."

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

40 "(f) Local Government Fee Authority Not Impaired. – This section shall not be
41 construed to limit the authority of a local government to assess or collect a fee for the
42 review of an application for a permit or a mitigation plan under any local program that
43 is approved by the Commission under this Article."

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

1 "(j) Local governments certified and approved by the Commission to administer
2 and enforce pretreatment programs ~~by the Commission~~ pursuant to ~~G.S. 143~~
3 ~~215.3(a)(14)~~ G.S. 143-215.3(a)(14), stormwater programs pursuant to G.S. 143-214.7,
4 or riparian buffer protection programs pursuant to G.S. 143-214.23 may assess civil
5 penalties for violations of their respective programs in accordance with the powers
6 conferred upon the Commission and the Secretary in this section, except that actions for
7 collection of unpaid civil penalties shall be referred to the attorney representing the
8 assessing local government. The total of the civil penalty assessed by a local
9 government and the civil penalty assessed by the Secretary for any violation may not
10 exceed the maximum civil penalty for such violation under this section."

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