

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

2

HOUSE BILL 1413*
Committee Substitute Favorable 8/11/05

Short Title: Enhance Local Govt. Adm. of Env. Prgms.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR LOCAL
2 GOVERNMENTS THAT ADMINISTER APPROVED LOCAL
3 ENVIRONMENTAL PROGRAMS AND TO PROVIDE ADDITIONAL
4 INCENTIVES FOR LOCAL GOVERNMENTS TO REQUEST THE
5 AUTHORITY TO ADMINISTER ALL OR A PORTION OF CERTAIN
6 ENVIRONMENTAL PROGRAMS.
7

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 113A-54.1 is amended by adding a new subsection to
10 read:

11 "(e) An approved erosion and sedimentation control plan shall contain a schedule
12 for the inspection of the area covered by the plan after each phase of the plan has been
13 completed and after establishment of temporary ground cover in accordance with
14 G.S. 113A-57(2). The landowner, the financially responsible party, or their agent shall
15 perform each inspection. The person who performs each inspection shall maintain and
16 make available a record of the inspection at the site of the land-disturbing activity. The
17 record shall indicate whether the erosion control measures required by the plan have
18 been installed in the correct sequence and whether the measures are being maintained in
19 substantial accordance with the plan. The record shall set out any significant deviation
20 from the approved erosion control plan, identify any measures that may be required to
21 correct the deviation, and document the completion of those measures. The record shall
22 be maintained until permanent ground cover has been established as required by the
23 approved erosion and sedimentation control plan. The inspections required by this
24 subsection shall be in addition to inspections required by G.S. 113A-61.1."

25 **SECTION 2.** G.S. 113A-56 reads as rewritten:

26 **"§ 113A-56. Jurisdiction of the Commission.**

27 (a) The Commission shall have jurisdiction, to the exclusion of local
28 governments, to adopt rules concerning land-disturbing activities that are:

29 (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 a delegated erosion and sedimentation control program over all other
12 land-disturbing activities. In addition to the authority granted to the Commission in
13 G.S. 113A-60(c), the Commission has the following authority with respect to a
14 delegated erosion and sedimentation control program:

- 15 (1) To review erosion and sedimentation control plan approvals made by a
16 delegated erosion and sedimentation control program and to require a
17 revised plan if the Commission determines that a plan does not comply
18 with the requirements of this Article or the rules adopted pursuant to
19 this Article.
20 (2) To review the compliance activities of a delegated erosion and
21 sedimentation control program and to take appropriate compliance
22 action if the Commission determines that the local government has
23 failed to take appropriate compliance action."

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

25 **"§ 113A-60. Local erosion and sedimentation control programs.**

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

41 (b) The Commission shall review each program submitted and within 90 days of
42 receipt thereof shall notify the local government submitting the program that it has been
43 approved, approved with modifications, or disapproved. The Commission shall only

1 approve a program upon determining that its standards equal or exceed those of this
2 Article and rules adopted pursuant to this Article.

3 (c) If the Commission determines that any local government is failing to
4 administer or enforce an approved erosion and sedimentation control program, it shall
5 notify the local government in writing and shall specify the deficiencies of
6 administration and enforcement. If the local government has not taken corrective action
7 within 30 days of receipt of notification from the Commission, the Commission shall
8 assume administration and enforcement of the program until such time as the local
9 government indicates its willingness and ability to resume administration and
10 enforcement of the program.

11 (d) A local government may submit to the Commission for its approval a limited
12 erosion and sedimentation control program for its jurisdiction that grants the local
13 government the responsibility only for the assessment and collection of fees and for the
14 inspection of land-disturbing activities within the jurisdiction of the local government.
15 The Commission shall be responsible for the administration and enforcement of all
16 other components of the erosion and sedimentation control program and the
17 requirements of this Article. The local government may adopt ordinances and
18 regulations necessary to establish a limited erosion and sedimentation control program.
19 An ordinance adopted by a local government that establishes a limited program shall
20 conform to the minimum requirements regarding the inspection of land-disturbing
21 activities of this Article and the rules adopted pursuant to this Article regarding the
22 inspection of land-disturbing activities. The local government shall establish and collect
23 a fee to be paid by each person who submits an erosion and sedimentation control plan
24 to the local government. The amount of the fee shall be an amount equal to eighty
25 percent (80%) of the amount established by the Commission pursuant to
26 G.S. 113A-54.2(a) plus any amount that the local government requires to cover the cost
27 of inspection and program administration activities by the local government. The total
28 fee shall not exceed one hundred dollars (\$100.00) per acre. A local government that
29 administers a limited erosion and sedimentation control program shall pay to the
30 Commission the portion of the fee that equals eighty percent (80%) of the fee
31 established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the
32 administration and enforcement of other components of the erosion and sedimentation
33 control program. Fees paid to the Commission by a local government shall be deposited
34 in the Sedimentation Account established by G.S. 113A-54.2(b). A local government
35 that administers a limited erosion and sedimentation control program and that receives
36 an erosion control plan and fee under this subsection shall immediately transmit the plan
37 to the Commission for review. A local government may create or designate agencies or
38 subdivisions of the local government to administer the limited program. Two or more
39 units of local government may establish a joint limited program and enter into any
40 agreements necessary for the proper administration of the limited program. The
41 resolutions establishing any joint limited program must be duly recorded in the minutes
42 of the governing body of each unit of local government participating in the limited
43 program, and a certified copy of each resolution must be filed with the Commission.

1 Subsections (b) and (c) of this section apply to the approval and oversight of limited
2 programs.

3 (e) Notwithstanding G.S. 113A-61.1, a local government with a limited erosion
4 and sedimentation control program shall not issue a notice of violation if inspection
5 indicates that the person engaged in land-disturbing activity has failed to comply with
6 this Article, rules adopted pursuant to this Article, or an approved erosion and
7 sedimentation control plan. The local government shall notify the Commission if any
8 person has initiated land-disturbing activity for which an erosion and sedimentation
9 control plan is required in the absence of an approved plan. If a local government with a
10 limited program determines that a person engaged in a land-disturbing activity has
11 failed to comply with an approved erosion and sedimentation control plan, the local
12 government shall refer the matter to the Commission for inspection and enforcement
13 pursuant to G.S. 113A-61.1."

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

16 "(f) Local Government Fee Authority Not Impaired. – This section shall not be
17 construed to limit any authority that a unit of local government may have pursuant to
18 any other provision of law to assess or collect a fee for the review of an application for a
19 permit, the review of a mitigation plan, or the inspection of a site or a facility under any
20 local program that is approved by the Commission under this Article."

21 **SECTION 5.** G.S. 143-215.1(f) reads as rewritten:

22 "(f) Local Permit Programs for Sewer ~~Extension~~. Extension and Reclaimed Water
23 Utilization. – Municipalities, counties, local boards or commissions, water and sewer
24 authorities, or groups of municipalities and counties may establish and administer
25 within their utility service areas their own general permit programs in lieu of State
26 permit required in G.S. 143-215.1(a)(2), (3), and (8) above, for construction, operation,
27 alteration, extension, change of proposed or existing sewer system, subject to the prior
28 certification of the Commission. For purposes of this subsection, the service area of a
29 municipality shall include only that area within the corporate limits of the municipality
30 and that area outside a municipality in its extraterritorial jurisdiction where sewer
31 service or a reclaimed water utilization system is already being provided by the
32 municipality to the permit applicant or connection to the municipal sewer system or a
33 reclaimed water utilization system is immediately available to the applicant; the service
34 areas of counties and the other entities or groups shall include only those areas where
35 sewer service or a reclaimed water utilization system is already being provided to the
36 applicant by the permitting authority or connection to the permitting authority's system
37 is immediately available. No later than the 180th day after the receipt of a program and
38 statement submitted by any local government, commission, authority, or board the
39 Commission shall certify any local program ~~that~~ does all of the following:

- 40 (1) Provides by ordinance or local law for requirements compatible with
41 those imposed by this Part and the rules implementing this ~~Part~~ Part.
- 42 (2) Provides that the Department receives notice and a copy of each
43 application for a permit and that it receives copies of approved permits
44 and plans upon request by the ~~Commission~~ Commission.

- 1 (3) Provides that plans and specifications for all construction, extensions,
2 alterations, and changes be prepared by or under the direct supervision
3 of an engineer licensed to practice in this ~~State;~~State.
- 4 (4) Provides for the adequate enforcement of the program requirements by
5 appropriate administrative and judicial ~~process;~~process.
- 6 (5) Provides for the adequate administrative organization, engineering
7 staff, financial and other resources necessary to effectively carry out its
8 plan review ~~program;~~program.
- 9 (6) Provides that the system is capable of interconnection at an appropriate
10 time with an expanding municipal, county, or regional ~~system;~~system.
- 11 (7) Provides for the adequate arrangement for the continued operation,
12 service, and maintenance of the sewer ~~system;~~ and system or a
13 reclaimed water utilization system.
- 14 (8) Is approved by the Commission as adequate to meet the requirements
15 of this Part and the rules implementing this Part.

16 (f1) The Commission may deny, suspend, or revoke certification of a local
17 program upon a finding that a violation of the provisions in subsection (f) of this section
18 has occurred. A denial, suspension, or revocation of a certification of a local program
19 shall be made only after notice and a public hearing. If the failure of a local program to
20 carry out this subsection creates an imminent hazard, the Commission may summarily
21 revoke the certification of the local program. Chapter 150B of the General Statutes does
22 not apply to proceedings under this subsection.

23 (f2) Notwithstanding any other provision of ~~this subsection,~~ subsections (f) and
24 (f1) of this section, if the Commission determines that a sewer system, treatment works,
25 or disposal system is operating in violation of the provisions of this Article and that the
26 appropriate local authorities have not acted to enforce those provisions, the Commission
27 may, after written notice to the appropriate local government, take enforcement action
28 in accordance with the provisions of this Article."

29 **SECTION 6.** G.S. 143-215.6A(j) reads as rewritten:

30 "(j) Local governments certified and approved by the Commission to administer
31 and enforce pretreatment programs ~~by the Commission~~ pursuant to
32 ~~G.S. 143-215.3(a)(14)~~ G.S. 143-215.3(a)(14), stormwater programs pursuant to
33 G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23 may
34 assess civil penalties for violations of their respective programs in accordance with the
35 powers conferred upon the Commission and the Secretary in this section, except that
36 actions for collection of unpaid civil penalties shall be referred to the attorney
37 representing the assessing local government. The total of the civil penalty assessed by a
38 local government and the civil penalty assessed by the Secretary for any violation may
39 not exceed the maximum civil penalty for such violation under this section."

40 **SECTION 7.** This act becomes effective 1 September 2005.