

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 279

Short Title: Transfer Environmental Permits. (Public)

Sponsors: Representatives Millis, Hager, McElraft, and Moffitt (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Environment, if favorable, Regulatory Reform.

March 13, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL
3 RESOURCES TO TRANSFER CERTAIN ENVIRONMENTAL PERMITS
4 ASSOCIATED WITH PROPERTY DEVELOPMENT WHEN THE ORIGINAL
5 PROPERTY OWNER IS UNWILLING OR UNABLE TO AGREE TO THE PERMIT
6 TRANSFER.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 143-214.7 is amended by adding a new subsection to read:
9 **"§ 143-214.7. Stormwater runoff rules and programs.**

10 ...
11 (c5) The Department shall transfer a permit issued under this section to a new party in
12 cases where the current permit holder is unwilling or unable to agree to the transfer if the
13 Department finds the following:

- 14 (1) The proposed new permittee has the sole legal right to develop the
15 permitted project.
16 (2) The proposed new permittee intends to use the permit for the purposes
17 for which it was issued.
18 (3) There will be no change or modification of the permitted project
19 substantially impacting the permitted activity. For purposes of this
20 subdivision, a change in applicable laws and regulations occurring after
21 the issuance of a permit to the original permit holder shall not be
22 considered a change or modification of the permitted project
23 substantially impacting the permitted activity.

24"
25 **SECTION 2.** G.S. 113A-54.1 is amended by adding a new subsection to read:
26 **"§ 113A-54.1. Approval of erosion control plans.**

27 ...
28 (c) The Commission shall disapprove an erosion and sedimentation control plan if
29 implementation of the plan would result in a violation of rules adopted by the Environmental
30 Management Commission to protect riparian buffers along surface waters. The Director of the
31 Division of Energy, Mineral, and Land Resources may disapprove an erosion and
32 sedimentation control plan or disapprove a transfer of a plan under subsection (d1) of this
33 section upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- 34 (1) Is conducting or has conducted land-disturbing activity without an approved
35 plan, or has received notice of violation of a plan previously approved by the



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1 Commission or a local government pursuant to this Article and has not
2 complied with the notice within the time specified in the notice;

- 3 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local
4 ordinance adopted pursuant to this Article by the time the payment is due;
5 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any
6 criminal provision of a local ordinance adopted pursuant to this Article; or
7 (4) Has failed to substantially comply with State rules or local ordinances and
8 regulations adopted pursuant to this Article.

9 (d) In the event that an erosion and sedimentation control plan or a transfer of a plan is
10 disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in
11 writing the specific reasons that the plan was disapproved. The applicant or the proposed
12 transferee may appeal the Director's disapproval of the plan to the Commission. For purposes
13 of this subsection and subsection (c) of this section, an applicant's record or a proposed
14 transferee's record may be considered for only the two years prior to the application date.

15 (d1) The Director shall transfer an erosion and sedimentation control plan approved
16 under this section if the Director finds the following:

- 17 (1) The proposed transferee is the owner of the land to be disturbed or has
18 the owner's written consent to conduct the land-disturbing activity.
19 (2) The proposed transferee intends to use the plan for the purposes for
20 which it was issued.
21 (3) There will be no substantial change or modification of the project
22 covered by the plan that would affect any requirement of the plan. For
23 purposes of this subdivision, a change in applicable laws and regulations
24 occurring after the issuance of a permit to the original permit holder shall
25 not be considered a substantial change or modification of the project
26 covered by the plan that would affect any requirement of the plan."

27 **SECTION 3.** G.S. 113A-61 reads as rewritten:

28 "**§ 113A-61. Local approval of erosion and sedimentation control plans.**

29 ...
30 (b1) A local government shall condition approval of a draft erosion and sedimentation
31 control plan upon the applicant's compliance with federal and State water quality laws,
32 regulations, and rules. A local government shall disapprove an erosion and sedimentation
33 control plan if implementation of the plan would result in a violation of rules adopted by the
34 Environmental Management Commission to protect riparian buffers along surface waters. A
35 local government may disapprove an erosion and sedimentation control plan or disapprove a
36 transfer of a plan under subsection (b3) of this section upon finding that an applicant or a
37 parent, subsidiary, or other affiliate of the applicant:

- 38 (1) Is conducting or has conducted land-disturbing activity without an approved
39 plan, or has received notice of violation of a plan previously approved by the
40 Commission or a local government pursuant to this Article and has not
41 complied with the notice within the time specified in the notice.
42 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local
43 ordinance adopted pursuant to this Article by the time the payment is due.
44 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any
45 criminal provision of a local ordinance adopted pursuant to this Article.
46 (4) Has failed to substantially comply with State rules or local ordinances and
47 regulations adopted pursuant to this Article.

48 (b2) In the event that an erosion and sedimentation control plan or a transfer of a plan is
49 disapproved by a local government pursuant to subsection (b1) of this section, the local
50 government shall so notify the Director of the Division of Energy, Mineral, and Land
51 Resources within 10 days of the disapproval. The local government shall advise the applicant

1 or the proposed transferee and the Director in writing as to the specific reasons that the plan
2 was disapproved. Notwithstanding the provisions of subsection (c) of this section, the applicant
3 may appeal the local government's disapproval of the plan directly to the Commission. For
4 purposes of this subsection and subsection (b1) of this section, an applicant's record or a
5 proposed transferee's record may be considered for only the two years prior to the application
6 date.

7 (b3) A local government administering an erosion and sedimentation control program
8 shall transfer an erosion and sedimentation control plan approved under this section if the local
9 government finds the following:

10 (1) The proposed transferee is the owner of the land to be disturbed or has
11 the owner's written consent to conduct the land-disturbing activity.

12 (2) The proposed transferee intends to use the plan for the purposes for
13 which it was issued.

14 (3) There will be no substantial change or modification of the project
15 covered by the plan that would affect any requirement of the plan. For
16 purposes of this subdivision, a change in applicable laws and regulations
17 occurring after the issuance of a permit to the original permit holder shall
18 not be considered a substantial change or modification of the project
19 covered by the plan that would affect any requirement of the plan.

20"

21 **SECTION 4.** This act is effective when it becomes law.