

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 676
HOUSE BILL 1203

AN ACT TO AUTHORIZE THE NORTH CAROLINA SEDIMENTATION COMMISSION AND LOCAL GOVERNMENTS TO CONSIDER THE PERFORMANCE HISTORY OF AN APPLICANT SUBMITTING AN EROSION CONTROL PLAN PRIOR TO APPROVING SUCH A PLAN, TO PROVIDE FOR A SETBACK FOR LAND-DISTURBING ACTIVITY OCCURRING NEAR CERTAIN TROUT WATERS, TO INCREASE THE CIVIL PENALTY FOR VIOLATIONS OF THE SEDIMENTATION POLLUTION CONTROL ACT, AND TO AUTHORIZE THE COASTAL RESOURCES COMMISSION AND LOCAL GOVERNMENTS TO CONSIDER THE PERFORMANCE HISTORY OF AN APPLICANT FOR A PERMIT REQUIRED BY THE COASTAL AREA MANAGEMENT ACT PRIOR TO APPROVING A PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-54(d) reads as rewritten:

"(d) In implementing the erosion and sedimentation control program, the Commission ~~is authorized and directed to:~~ shall:

- (1) Assist and encourage local governments in developing erosion and sediment control programs and as part of such assistance to develop a model local erosion control ordinance, and approve, approve as modified, or disapprove local plans submitted to it pursuant to G.S. 113A-60;
- (2) Assist and encourage other State agencies in developing erosion and sedimentation control programs to be administered in their jurisdictions, and to approve, approve as modified, or disapprove such programs submitted pursuant to G.S. 113A-56 and from time to time review such programs for compliance with regulations issued by the Commission and for adequate enforcement;
- (3) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land-disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of erosion control regulations, ordinances, and plans;
- (4) Require submission of erosion control plans by those responsible for initiating land-disturbing activities for approval prior to

~~commencement of the activities. As to those activities requiring prior plan approval, the Commission must either approve or disapprove the plan within 30 days of receipt. The draft 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. Failure to approve or disapprove a complete erosion and sedimentation control plan within 30 days of receipt shall be deemed approval. Denial of a plan must specifically state in writing the reasons for denial. The Commission must approve or deny a revised plan within 15 days of receipt, or it is deemed to be approved.~~

~~If, following commencement of a land disturbing activity pursuant to an approved plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require such revisions as are necessary to comply with this act. The Commission must approve or deny the revised plan within 15 days of receipt, or it is deemed to be approved."~~

Sec. 2. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

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

(a) A draft erosion 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. The Commission must either approve or disapprove a draft erosion control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. Failure to approve or disapprove a completed draft erosion control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan.

(b) If, following commencement of a land-disturbing activity pursuant to an approved erosion control plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require such revisions of the plan as are necessary to comply with this Article. Failure to approve or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan.

(c) The Director of the Division of Land Resources may disapprove an erosion control plan upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this

Article and has not complied with the notice within the time specified in the notice;

- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article which is due and for which no appeal is pending;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

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

Sec. 3. G.S. 113A-57(1) reads as rewritten:

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

Sec. 4. G.S. 113A-61 reads as rewritten:

"§ 113A-61. Approval of plans. Local approval of erosion control plans.

(a) Each local government's erosion and sediment control program shall require that for those land-disturbing activities requiring prior approval of an erosion control plan, such plan shall be submitted to the appropriate soil and water conservation district at the same time it is submitted to the local government for approval. The soil and water conservation district or districts, within 20 days after receipt of the proposed plan, or within such additional time as may be prescribed by the local government, shall review the plan and submit its comments and recommendations to the local government.

Failure of the soil and water conservation district to submit its comments and recommendations within 20 days or within the prescribed additional time shall not delay final action on the proposed plan by the local government.

(b) Local governments shall review each erosion control plan submitted to them and within 30 days of receipt thereof shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. A local government shall only approve a plan upon determining that it complies with all applicable State and local regulations for erosion and sediment control.

(b1) A local government may disapprove an erosion control plan upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article which is due and for which no appeal is pending;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(b2) In the event that an erosion control plan is disapproved by a local government pursuant to subsection (b1) of this section, the local government shall so notify the Director of the Division of Land Resources within 10 days of such disapproval. The local government shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of subsection (c) of this section, the applicant may appeal the local government's disapproval of the plan directly to the Commission. For purposes of this subsection and subsection (b1) of this section, an applicant's record may be considered for only the two years prior to the application date.

(c) The disapproval or modification of any proposed erosion control plan by a local government shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval or modification. The hearings shall be conducted pursuant to procedures adopted by the local government. If the local government upholds the disapproval or modification of a proposed erosion control plan following the public hearing, the person submitting the erosion control plan shall be entitled to appeal the local government's action disapproving or modifying the plan to the Commission. The Commission, by regulation, shall direct the Secretary to appoint such employees of the Department as may be necessary to hear appeals from the disapproval or modification of erosion control plans by local governments. In addition to providing for the appeal of local government decisions disapproving or modifying erosion control plans to

designated employees of the Department, the Commission shall designate an erosion control plan review committee consisting of three members of the Commission. The person submitting the erosion control plan may appeal the decision of an employee of the Department who has heard an appeal of a local government action disapproving or modifying an erosion control plan to the erosion plan review committee of the Commission. Judicial review of the final action of the erosion plan review committee of the Commission may be had in the superior court of the county in which the local government is situated.

~~(d) With respect to approved plans for erosion control in connection with land-disturbing activities, the approving authority, either the Commission or a local government, shall provide for periodic inspections of the land-disturbing activity to insure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from the land-disturbing activities. Notice of such right of inspection shall be included in the certificate of approval for the plan. If the approving authority determines that the person engaged in the land-disturbing activities has failed to comply with the plan, the authority shall immediately serve upon that person by registered mail a notice to comply. The notice shall set forth the measures needed to come into compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activities fails to comply within the time specified, he shall be deemed in violation of this Article."~~

Sec. 5. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-61.1. Periodic inspection of land-disturbing activity.

With respect to approved plans for erosion control in connection with land-disturbing activities, the approving authority, either the Commission or a local government, shall provide for periodic inspection of the land-disturbing activity to ensure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from the land-disturbing activities. Notice of such right of inspection shall be included in the certificate of approval for the plan. If the approving authority determines that the person engaged in the land-disturbing activities has failed to comply with the plan, the authority shall immediately serve upon that person by registered mail a notice to comply. The notice shall set forth the measures needed to come into compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activities fails to comply within the time specified, he shall be deemed in violation of this Article."

Sec. 6. G.S. 113A-64(a)(1) reads as rewritten:

"(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of

not more than ~~one hundred dollars (\$100.00)~~, five hundred dollars (\$500.00), except that the penalty for failure to submit an erosion control plan shall be as provided in subdivision ~~(3)~~(4) of this subsection. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Each day of a continuing violation shall constitute a separate violation."

Sec. 7. G.S. 113A-120 as amended by Chapter 51 of the 1989 Session Laws reads as rewritten:

"§ 113A-120. Grant or denial of permits.

(a) The responsible official or body shall deny an application for a permit upon finding:

- (1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.
- (2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).
- (3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in ~~paragraphs a to c of subsection (b)(3) of G.S. 113A-113.~~ subdivisions a. through c. of G.S. 113A-113(b)(3).
- (4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in ~~paragraphs a to h of subsection (b)(4) of G.S. 113A-113.~~ subdivisions a. through h. of G.S. 113A-113(b)(4).
- (5) In the case of areas covered by G.S. 113A-113(b)(5), that the development will jeopardize the public rights or interests specified in said subdivision.
- (6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in ~~paragraphs a to e of subsection (b)(6) [of G.S. 113A-113]~~ subdivisions a. through e. of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.
- (7) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land-use plans, or would contravene any of the provisions of subdivisions (1) to (6) of this subsection.
- (8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.
- (9) In any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish

the overall project purposes with less adverse impact on the public resources.

- (10) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the guidelines set forth in subdivisions (1) through ~~(9)~~ (9) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.

(b) In the absence of such findings, a permit shall be granted. The permit may be conditioned upon the applicant's amending his proposal to take whatever measures or agreeing to carry out whatever terms of operation or use of the development that are reasonably necessary to protect the public interest with respect to the factors enumerated in subsection (a) of this section.

(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

- (1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with other federal and State laws, regulations, and rules for the protection of the environment.

(b2) For purposes of subsection (b1) of this section, an applicant's record may be considered for only the two years prior to the application date.

~~(c) Variances.— Any person may petition the Commission for a variance granting permission to use his land in a manner otherwise prohibited by rules, standards, or limitations prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. When it finds that (i) practical difficulties or unnecessary hardships would result from strict application of the guidelines, rules, standards, or other restrictions applicable to the property, (ii) such difficulties or hardships result from conditions which are peculiar to the property involved, (iii) such conditions could~~

~~not reasonably have been anticipated when the applicable guidelines, rules, standards, or restrictions were adopted or amended, the Commission may vary or modify the application of the restrictions to the property so that the spirit, purpose, and intent of the restrictions are preserved, public safety and welfare secured, and substantial justice preserved. In granting a variance, the Commission may impose reasonable and appropriate conditions and safeguards upon any permit it issues. The Commission may conduct a hearing within 45 days from the receipt of the petition and shall notify such persons and agencies that may have an interest in the subject matter of the time and place of the hearing."~~

Sec. 8. Part 4 of Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-120.1. Variances.

Any person may petition the Commission for a variance granting permission to use his land in a manner otherwise prohibited by rules, standards, or limitations prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. When it finds that (i) practical difficulties or unnecessary hardships would result from strict application of the guidelines, rules, standards, or other restrictions applicable to the property, (ii) such difficulties or hardships result from conditions which are peculiar to the property involved, (iii) such conditions could not reasonably have been anticipated when the applicable guidelines, rules, standards, or restrictions were adopted or amended, the Commission may vary or modify the application of the restrictions to the property so that the spirit, purpose, and intent of the restrictions are preserved, public safety and welfare secured, and substantial justice preserved. In granting a variance, the Commission may impose reasonable and appropriate conditions and safeguards upon any permit it issues. The Commission may conduct a hearing within 45 days from the receipt of the petition and shall notify such persons and agencies that may have an interest in the subject matter of the time and place of the hearing."

Sec. 9. This act shall apply to any erosion control plan and to any application for a permit under the Coastal Area Management Act submitted on or after 1 October 1989. Section 6 of this act shall apply to offenses occurring on or after 1 October 1989.

Sec. 10. This act is effective October 1, 1989.

In the General Assembly read three times and ratified this the 25th day of July, 1989.