

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1128\*

Short Title: Amend Sedimentation Act.

(Public)

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Sponsors: Senators Robinson; and Metcalf.

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Referred to: Agriculture/Environment/Natural Resources.

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April 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE SEDIMENTATION POLLUTION CONTROL ACT OF  
2 1973.

3  
4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 113A-54.1 reads as rewritten:

6 **"§ 113A-54.1. Approval of erosion control plans.**

7 (a) A draft erosion control plan must contain the applicant's address and, if the  
8 applicant is not a resident of North Carolina, designate a North Carolina agent for the  
9 purpose of receiving notice from the Commission or the Secretary of compliance or  
10 noncompliance with the plan, this Article, or any rules adopted pursuant to this Article.

11 The Commission shall approve, approve with modifications, or disapprove a draft erosion  
12 control plan for those land-disturbing activities for which prior plan approval is required  
13 within 30 days of receipt. The Commission shall condition approval of a draft erosion  
14 control plan upon the plan's complying with State and federal water quality laws, rules,  
15 and regulations. The Commission shall disapprove an erosion control plan if the plan,  
16 when implemented, would result in a violation of State or federal water quality laws,  
17 rules, or regulations. The Commission shall disapprove an erosion control plan if the  
18 plan, when implemented, would result in a violation of rules adopted by the  
19 Environmental Management Commission to protect riparian buffers along surface waters.

20 Failure to approve, approve with modifications, or disapprove a completed draft erosion

1 control plan within 30 days of receipt shall be deemed approval of the plan. If the  
2 Commission disapproves a draft erosion control ~~plan, plan or a revised erosion control~~  
3 plan, it must state in writing the specific reasons that the plan was disapproved. Failure  
4 to approve, approve with ~~modifications, modifications or conditions~~, or disapprove a  
5 revised erosion control plan within 15 days of receipt shall be deemed approval of the  
6 plan. The Commission may establish an expiration date for erosion control plans  
7 approved under this Article.

8 (b) If, following commencement of a land-disturbing activity pursuant to an  
9 approved erosion control plan, the Commission determines that the plan is inadequate to  
10 meet the requirements of this Article, the Commission may require any revision of the  
11 plan that is necessary to comply with this Article. Failure to approve, approve with  
12 ~~modifications, modifications or conditions~~, or disapprove a revised erosion control plan  
13 within 15 days of receipt shall be deemed approval of the plan.

14 (c) ~~The Director of the Division of Land Resources shall disapprove an erosion~~  
15 ~~control plan if the plan, when implemented, would result in a violation of rules adopted~~  
16 ~~by the Environmental Management Commission to protect riparian buffers along surface~~  
17 ~~waters.—~~The Director of the Division of Land Resources may disapprove an erosion  
18 control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the  
19 applicant:

- 20 (1) Is conducting or has conducted land-disturbing activity without an  
21 approved plan, or has received notice of violation of a plan previously  
22 approved by the Commission or a local government pursuant to this  
23 Article and has not complied with the notice within the time specified in  
24 the notice;
- 25 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a  
26 local ordinance adopted pursuant to this Article by the time the payment  
27 is due;
- 28 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or  
29 any criminal provision of a local ordinance adopted pursuant to this  
30 Article; or
- 31 (4) Has failed to substantially comply with State rules or local ordinances  
32 and regulations adopted pursuant to this Article.

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

39 Section 2. G.S. 113A-57 is amended by adding two new subdivisions to read:

- 40 "(5) No person shall initiate any land-disturbing activity on a tract comprised  
41 of more than one acre if the land-disturbing activity includes ditching or  
42 channelization that may increase the transport of sediment from the

1 tract, unless, 30 or more days prior to initiating the activity, an erosion  
2 control plan for the activity is filed with the agency having jurisdiction.

- 3 (6) No person shall initiate any land-disturbing activity on a tract if more  
4 than one-half acre and no more than one acre is to be uncovered unless,  
5 prior to obtaining a building permit and 30 or more days prior to  
6 initiating the activity, that person files an erosion control plan with the  
7 local government agency that issues building permits. A building  
8 permit shall not be issued if an erosion control plan is not filed as  
9 required by this subdivision. A building permit is not valid if the  
10 erosion control plan, when implemented, fails to comply with this  
11 Article."

12 Section 3. G.S. 113A-61(b1) reads as rewritten:

13 "(b1) A local government shall disapprove an erosion control plan if the plan, when  
14 implemented, would result in a violation of State or federal water quality laws, rules, or  
15 regulations. A local government shall disapprove an erosion control plan if the plan,  
16 when implemented, would result in a violation of rules adopted by the Environmental  
17 Management Commission to protect riparian buffers along surface waters. A local  
18 government may disapprove an erosion control plan upon finding that an applicant or a  
19 parent, subsidiary, or other affiliate of the applicant:

- 20 (1) Is conducting or has conducted land-disturbing activity without an  
21 approved plan, or has received notice of violation of a plan previously  
22 approved by the Commission or a local government pursuant to this  
23 Article and has not complied with the notice within the time specified in  
24 the notice;  
25 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a  
26 local ordinance adopted pursuant to this Article by the time the payment  
27 is due;  
28 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or  
29 any criminal provision of a local ordinance adopted pursuant to this  
30 Article; or  
31 (4) Has failed to substantially comply with State rules or local ordinances  
32 and regulations adopted pursuant to this Article."

33 Section 4. G.S. 113A-64(a) reads as rewritten:

34 "(a) Civil Penalties. –

- 35 (1) Any person who violates any of the provisions of this Article or any  
36 ordinance, rule, or order adopted or issued pursuant to this Article by  
37 the Commission or by a local government, or who initiates or continues  
38 a land-disturbing activity for which an erosion control plan is required  
39 except in accordance with the terms, conditions, and provisions of an  
40 approved plan, is subject to a civil penalty. The maximum civil penalty  
41 for a violation, ~~other than a violation of a stop-work order issued under G.S.~~  
42 ~~113A-65.1, is five hundred dollars (\$500.00). The maximum civil penalty for~~  
43 ~~a violation of a stop-work order violation~~ is five thousand dollars (\$5,000).

1           No penalty shall be assessed until the person alleged to be in violation has  
2           been notified of the violation as provided in G.S. 113A-61.1(b).—A civil  
3           penalty may be assessed from the date ~~the notice of violation is served.~~ the  
4           violation is documented. Each day of a continuing violation shall  
5           constitute a separate violation.

6           (2) The Secretary or a local government that administers an erosion and  
7           sediment control program approved under G.S. 113A-60 shall determine  
8           the amount of the civil penalty and shall notify the person who is  
9           assessed the civil penalty of the amount of the penalty and the reason for  
10          assessing the penalty. The notice of assessment shall be served by any  
11          means authorized under G.S. 1A-1, Rule 4, and shall direct the violator  
12          to either pay the assessment or contest the assessment within 30 days by  
13          filing a petition for a contested case under Article 3 of Chapter 150B of  
14          the General Statutes. If a violator does not pay a civil penalty assessed  
15          by the Secretary within 30 days after it is due, the Department shall  
16          request the Attorney General to institute a civil action to recover the  
17          amount of the assessment. If a violator does not pay a civil penalty  
18          assessed by a local government within 30 days after it is due, the local  
19          government may institute a civil action to recover the amount of the  
20          assessment. The civil action may be brought in the superior court of any  
21          county where the violation occurred or the violator's residence or  
22          principal place of business is located. A civil action must be filed within  
23          three years of the date the assessment was due. An assessment that is  
24          not contested is due when the violator is served with a notice of  
25          assessment. An assessment that is contested is due at the conclusion of  
26          the administrative and judicial review of the assessment.

27          (3) In determining the amount of the penalty, the Secretary shall consider  
28          the degree and extent of harm caused by the violation, the cost of  
29          rectifying the damage, the amount of money the violator saved by  
30          noncompliance, whether the violation was committed willfully and the  
31          prior record of the violator in complying or failing to comply with this  
32          Article.

33          (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

34          (5) The clear proceeds of civil penalties collected by the Department or  
35          other State agency under this subsection shall be remitted to the Civil  
36          Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Civil  
37          penalties collected by a local government under this subsection shall be  
38          credited to the general fund of the local government as nontax revenue."

39          Section 5. G.S. 113A-61.1(c) reads as rewritten:

40          "(c) If the Secretary, a local government that administers an erosion and sediment  
41          control program approved under G.S. 113A-60, or other approving authority determines  
42          that the person engaged in the land-disturbing activity has failed to comply with this  
43          Article, the Secretary, local government, or other approving authority shall immediately

1 serve a notice of violation upon that person. The notice may be served by any means  
2 authorized under G.S. 1A-1, Rule 4. A notice of violation shall specify a date by which  
3 the person must comply with this Article and inform the person of the actions that need to  
4 be taken to comply with this Article. Any person who fails to comply within the time  
5 specified is subject to the additional civil and criminal penalties for continuing violations  
6 provided in G.S. 113A-64."

7 Section 6. G.S. 113A-54.2(a) reads as rewritten:

8 "(a) The Commission may establish a fee schedule for the review and approval of  
9 erosion control plans under this Article. In establishing the fee schedule, the Commission  
10 shall consider the administrative and personnel costs incurred by the Department for  
11 reviewing the plans and for related compliance activities. ~~The total amount of fees collected~~  
12 ~~under this section in any fiscal year may not exceed one third of the total administrative and~~  
13 ~~personnel costs incurred by the Department for reviewing the plans and for related compliance~~  
14 ~~activities in the prior fiscal year.~~—An application fee may not exceed fifty dollars (\$50.00)  
15 per acre of disturbed land shown on an erosion control plan or of land actually disturbed  
16 during the life of the project."

17 Section 7. This act becomes effective October 1, 1999, and applies to land-  
18 disturbing activity that occurs on or after that date.