

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 989

Short Title: Water and Seafood Protection Act.

(Public)

Sponsors: Senators Reeves; Gulley, Kinnaird, and Lucas.

Referred to: Agriculture/Environment/Natural Resources.

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT WATER QUALITY AND SEAFOOD HABITATS BY
STRENGTHENING THE LAWS REGARDING SEDIMENTATION POLLUTION
CONTROL TO REDUCE SEDIMENTATION, THE NUMBER ONE CAUSE OF
WATER QUALITY DEGRADATION IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-54.1 is amended by adding three new subsections 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.

(f) No later than September 1, 2004, the Commission shall develop a protocol for developers and other applicants. This protocol shall include all of the following:

(1) Information to enable the applicant, when planning a development project and prior to making a significant economic investment, to assess the risks associated with erosion and sedimentation control at the proposed development site.

(2) Disincentives to develop highly vulnerable sites.

(3) Incentives to control potential impacts of erosion and sedimentation.

(g) The protocol under subsection (f) of this section shall include an assessment of the vulnerability of the proposed development site to the export of erosion and

1 sedimentation and of any mitigating conservation measures that can be taken at that site.
2 The assessment of the vulnerability of the proposed development site shall consider the
3 soil type, the slope of the land, the size of the site, the proximity of the site to waters,
4 and any other factors the Commission determines relevant. The assessment of
5 mitigating conservation measures that can be taken at that site shall consider best
6 management practices, the time of the exposure, the design density, the phasing of
7 construction, and any other factors the Commission determines relevant."

8 **SECTION 2.** G.S. 113A-54.2 reads as rewritten:

9 **"§ 113A-54.2. Approval Fees.**

10 (a) ~~The Commission may establish a fee schedule for the review and approval of~~
11 ~~erosion and sedimentation control plans under this Article. In establishing the fee~~
12 ~~schedule, the Commission shall consider the administrative and personnel costs incurred~~
13 ~~by the Department for reviewing the plans and for related compliance activities. An~~
14 ~~application fee may not exceed fifty dollars (\$50.00) per acre of disturbed land shown~~
15 ~~on an erosion and sedimentation control plan or of land actually disturbed during the life~~
16 ~~of the project. Subject to subsection (a1) of this section, the fee for the review of an~~
17 ~~erosion and sedimentation control plan and related compliance activities shall be one~~
18 ~~hundred fifty dollars (\$150.00) per acre of disturbed land as shown on an erosion and~~
19 ~~sedimentation control plan or of land disturbed during the life of the project, whichever~~
20 ~~is greater.~~

21 (a1) The Commission shall increase the fee for the review and approval of erosion
22 and sedimentation control plans under subsection (a) of this section for plans that
23 involve land-disturbing activities in a one hundred year flood plain. This incremental
24 portion of the fee shall not exceed twenty-five dollars (\$25.00) per acre of disturbed
25 land shown on an erosion and sedimentation control plan or of land actually disturbed
26 during the life of the project.

27 (b) The Sedimentation Account is established as a nonreverting account within
28 the Department. Fees collected under subsection (a) of this section shall be credited to
29 the Sedimentation Account and shall be applied to the costs of administering this
30 Article. The Floodplain Protection Account is established as a nonreverting account
31 within the Department. The incremental portion of the fees collected under subsection
32 (a1) of this section shall be credited to the Floodplain Protection Account and shall be
33 applied to the costs of the compliance activities of the Department under this Article.

34 (c) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 1039, s. 3.

35 (d) This section may not limit the existing authority of local governments that
36 establish local programs approved pursuant to this Article to assess fees for the approval
37 of erosion and sedimentation control plans. When establishing its fee schedule, the local
38 government shall increase the fee for the review and approval of erosion and
39 sedimentation control plans for plans that involve land-disturbing activities in a one
40 hundred year flood plain. This incremental portion of the fee shall not exceed
41 twenty-five dollars (\$25.00) per acre of disturbed land shown on an erosion and
42 sedimentation control plan or of land actually disturbed during the life of the project.
43 The local government shall use this incremental portion of the fee for the costs of the
44 compliance activities of its local program."

1 **SECTION 3.** G.S. 113A-56 reads as rewritten:

2 "**§ 113A-56. Jurisdiction of the Commission.**

3 (a) The Commission shall have jurisdiction, to the exclusion of local
4 governments, to adopt rules concerning land-disturbing activities that ~~are:~~ are any of the
5 following:

6 (1) Conducted by the ~~State;~~ State.

7 (2) Conducted by the United ~~States;~~ States.

8 (3) Conducted by persons having the power of eminent ~~domain;~~ domain
9 other than a local government.

10 (4) ~~Conducted by local governments;~~ or

11 (5) Funded in whole or in part by the State or the United States.

12 (b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a),
13 in whole or in part, to any other State agency that has submitted an erosion and
14 sedimentation control program to be administered by it, if the program has been
15 approved by the Commission as being in conformity with the general State program.

16 (c) The Commission shall have concurrent jurisdiction with local governments
17 that have an approved erosion and sedimentation control program over all other
18 land-disturbing activities. In addition to the authority granted to the Commission in G.S.
19 113A-60(c), the Commission has the following authority with respect to an approved
20 erosion and sedimentation control program:

21 (1) To review and amend an erosion and sedimentation control plan
22 approved by an approved erosion and sedimentation control program if
23 the Commission determines that the plan does not comply with the
24 requirements of this Article and the rules adopted pursuant to this
25 Article.

26 (2) To take inspection and enforcement action if the Commission
27 determines that the local government has failed to take appropriate
28 inspection or enforcement action."

29 **SECTION 4.** G.S. 113A-57 reads as rewritten:

30 "**§ 113A-57. Mandatory standards for land-disturbing activity.**

31 No land-disturbing activity subject to this Article shall be undertaken except in
32 accordance with the following mandatory requirements:

33 (1) No land-disturbing activity during periods of construction or
34 improvement to land shall be permitted in proximity to a lake or
35 natural watercourse unless a ~~buffer-zone~~ of undisturbed vegetation is
36 provided along the margin of the watercourse of sufficient width to
37 confine visible siltation within the twenty-five percent (25%) of the
38 ~~buffer-zone~~ of undisturbed vegetation nearest the land-disturbing
39 activity. No later than September 1, 2004, the Commission shall
40 develop an erosion and sedimentation control best management
41 practice that determines the required width of the zone of undisturbed
42 vegetation based upon the slope of the site, the ability to ensure
43 compliance with the requirement under this subdivision that all visible
44 siltation be retained within the first twenty-five percent (25%) of the

1 zone of undisturbed vegetation nearest the land-disturbing activity,
2 even in the event of a failure of other erosion and sedimentation
3 control measures and best management practices, and other factors
4 determined by the Commission to be relevant. Waters that have been
5 classified as trout waters by the Environmental Management
6 Commission shall have an undisturbed buffer zone 25 feet wide or of
7 sufficient width to confine visible siltation within the twenty-five
8 percent (25%) of the buffer zone nearest the land-disturbing activity,
9 whichever is greater. Provided, however, that the Sedimentation
10 Control Commission may approve plans which include land-disturbing
11 activity along trout waters when the duration of said disturbance would
12 be temporary and the extent of said disturbance would be minimal.
13 This subdivision shall not apply to a land-disturbing activity in
14 connection with the construction of facilities to be located on, over, or
15 under a lake or natural watercourse.

16 (2) The angle for graded slopes and fills shall be no greater than the angle
17 ~~which~~that can be retained by vegetative cover or other adequate
18 erosion-control devices or structures. In any event, slopes left exposed
19 will, within ~~15-10~~ working days or ~~30-21~~ calendar days of completion
20 of any phase of grading, whichever period is shorter, be planted or
21 otherwise provided with ground cover, devices, or structures sufficient
22 to restrain erosion.

23 (3) Whenever land-disturbing activity is undertaken on a tract comprising
24 more than one acre, if more than one acre is uncovered, the person
25 conducting the land-disturbing activity shall install erosion and
26 sedimentation control devices and practices that are sufficient to retain
27 the sediment generated by the land-disturbing activity within the
28 boundaries of the tract during construction upon and development of
29 the tract, and shall plant or otherwise provide a permanent ground
30 cover sufficient to restrain erosion after completion of construction or
31 development within a time period to be specified by rule of the
32 Commission.

33 (4) No person shall initiate any land-disturbing activity that will disturb
34 more than one acre on a tract ~~if more than one acre is to be uncovered~~
35 unless, 30 or more days prior to initiating the activity, an erosion and
36 sedimentation control plan for such activity is filed with the agency
37 having jurisdiction. The agency having jurisdiction shall forward to the
38 Director of the Division of Water Quality a copy of each erosion and
39 sedimentation control plan for a land-disturbing activity that involves
40 the utilization of ditches for the purpose of de-watering or lowering the
41 water table of the tract."

42 **SECTION 5.** G.S. 113A-58 reads as rewritten:

43 **"§ 113A-58. Enforcement authority of the Commission.**

1 (a) In implementing the provisions of this Article the Commission is authorized
2 and directed to:

3 (1) Inspect or cause to be inspected the sites of land-disturbing activities to
4 determine whether applicable laws, regulations or erosion and
5 sedimentation control plans are being complied with;

6 (2) Make requests, or delegate to the Secretary authority to make requests,
7 of the Attorney General or solicitors for prosecutions of violations of
8 this Article.

9 (b) No later than September 1, 2004, the Commission shall develop a policy that
10 clarifies the circumstances under which restoration is required of streams that are
11 damaged by erosion and sedimentation."

12 **SECTION 6.** 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 compliance activities. Local governments are authorized to
20 create or designate agencies or subdivisions of local government to administer and
21 enforce the programs. An ordinance adopted by a local government shall at least meet
22 and may exceed the minimum requirements of this Article and the rules adopted
23 pursuant to this Article. Two or more units of local government are authorized to
24 establish a joint program and to enter into any agreements that are necessary for the
25 proper administration and enforcement of the program. The resolutions establishing any
26 joint program must be duly recorded in the minutes of the governing body of each unit
27 of local government participating in the program, and a certified copy of each resolution
28 must be filed with the Commission.

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

34 (c) If the Commission determines that any local government is failing to
35 administer or enforce an approved erosion and sedimentation control program, it shall
36 notify the local government in writing and shall specify the deficiencies of
37 administration and enforcement. If the local government has not taken corrective action
38 within 30 days of receipt of notification from the Commission, the Commission shall
39 assume administration and enforcement of the program until such time as the local
40 government indicates its willingness and ability to resume administration and
41 enforcement of the program.

42 (d) A local government may submit to the Commission for its approval a limited
43 erosion and sedimentation control program for its jurisdiction that grants the local
44 government the responsibility only for the inspection of land-disturbing activities within

1 the jurisdiction of the local government. The Commission shall be responsible for
2 administering all components of the erosion and sedimentation control program other
3 than the inspection of land-disturbing activities. The local government may adopt
4 ordinances and regulations necessary to establish and enforce a limited erosion and
5 sedimentation control program and establish a fee for the Commission's review of an
6 erosion and sedimentation control plan and related compliance activities performed
7 under the direction of the local government or the Commission. A local government that
8 administers a limited erosion and sedimentation control program shall pay an amount
9 equal to one hundred twenty dollars (\$120.00) per acre of disturbed land subject to
10 inspection under the limited erosion and sedimentation control program to the
11 Department of Environment and Natural Resources for deposit in the Sedimentation
12 Account established by G.S. 113A-54.2(b). A local government may create or designate
13 agencies or subdivisions of the local government to administer and enforce the limited
14 program. An ordinance adopted by a local government that establishes a limited
15 program shall at least meet and may exceed the minimum requirements regarding the
16 inspection of land-disturbing activities of this Article and the rules adopted pursuant to
17 this Article regarding the inspection of land-disturbing activities. Two or more units of
18 local government may establish a joint limited program and enter into any agreements
19 necessary for the proper administration and enforcement of the limited program. The
20 resolutions establishing any joint limited program must be duly recorded in the minutes
21 of the governing body of each unit of local government participating in the limited
22 program, and a certified copy of each resolution must be filed with the Commission.
23 Subsections (b) and (c) of this section apply to the approval and oversight of limited
24 programs."

25 **SECTION 7.** G.S. 113A-64(a)(1) reads as rewritten:

26 "(1) Any person who violates any of the provisions of this Article or any
27 ordinance, rule, or order adopted or issued pursuant to this Article by
28 the Commission or by a local government, or who initiates or
29 continues a land-disturbing activity for which an erosion and
30 sedimentation control plan is required except in accordance with the
31 terms, conditions, and provisions of an approved plan, is subject to a
32 civil penalty. The maximum civil penalty for a violation is five
33 thousand dollars ~~(\$5,000).~~(\$5,000), except the Secretary may assess a
34 civil penalty of up to ten thousand dollars (\$10,000) for the first day of
35 a violation. A civil penalty may be assessed from the date of the
36 violation. Each day of a continuing violation shall constitute a separate
37 violation."

38 **SECTION 8.** Article 4 of Chapter 113A of the General Statutes is amended
39 by adding a new section to read:

40 "**§ 113A-67. Annual report.**

41 The Department of Environment and Natural Resources shall report to the
42 Environmental Review Commission on the implementation of this Article on or before
43 1 September of each year. The Department shall include in the report an analysis of how
44 well the implementation of the Sedimentation Pollution Control Act of 1973 is

1 preventing the sedimentation of streams, rivers, lakes, and other waters of the State. The
2 report shall also include an evaluation of whether the fees and civil penalties are
3 adequate to properly administer and enforce this Article. In addition, the report shall
4 include a review of the effectiveness of local erosion and sedimentation control
5 programs."

6 **SECTION 9.** The Department of Environment and Natural Resources shall
7 submit the first report required by G.S. 113A-67, as enacted by Section 5 of this act, to
8 the Environmental Review Commission on or before September 1, 2004.

9 **SECTION 10.** This act becomes effective August 1, 2003.