

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1203
Committee Substitute Favorable 5/9/89

Short Title: Erosion Control Plan/New Criteria.

(Public)

Sponsors:

Referred to:

April 12, 1989

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE NORTH CAROLINA SEDIMENTATION
2 COMMISSION AND LOCAL GOVERNMENTS TO CONSIDER THE
3 FINANCIAL CAPABILITY AND PERFORMANCE HISTORY OF AN
4 APPLICANT SUBMITTING AN EROSION CONTROL PLAN PRIOR TO
5 APPROVING SUCH A PLAN.
6

7 The General Assembly of North Carolina enacts:

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

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

- 11 (1) Assist and encourage local governments in developing erosion and
12 sediment control programs and as part of such assistance to develop a
13 model local erosion control ordinance, and approve, approve as
14 modified, or disapprove local plans submitted to it pursuant to G.S.
15 113A-60;
- 16 (2) Assist and encourage other State agencies in developing erosion and
17 sedimentation control programs to be administered in their
18 jurisdictions, and to approve, approve as modified, or disapprove such
19 programs submitted pursuant to G.S. 113A-56 and from time to time
20 review such programs for compliance with regulations issued by the
21 Commission and for adequate enforcement;
- 22 (3) Develop recommended methods of control of sedimentation and
23 prepare and make available for distribution publications and other

- 1 materials dealing with sedimentation control techniques appropriate
2 for use by persons engaged in land-disturbing activities, general
3 educational materials on erosion and sedimentation control, and
4 instructional materials for persons involved in the enforcement of
5 erosion control regulations, ordinances, and plans;
- 6 (4) Require submission of erosion control plans by those responsible for
7 initiating land-disturbing activities for approval prior to
8 commencement of the activities. As to those activities requiring prior
9 plan approval, the Commission must either approve or disapprove the
10 plan within 30 days of receipt. The draft plan must contain the
11 applicant's address and, if the applicant is not a resident of North
12 Carolina, designate a North Carolina agent for the purpose of receiving
13 notice from the Commission or the Secretary of compliance or
14 noncompliance with the plan, this Article, or any rules adopted
15 pursuant to this Article. Failure to approve or disapprove a complete
16 erosion and sedimentation control plan within 30 days of receipt shall
17 be deemed approval. Denial of a plan must specifically state in writing
18 the reasons for denial. The Commission must approve or deny a
19 revised plan within 15 days of receipt, or it is deemed to be approved.
- 20 If, following commencement of a land-disturbing activity pursuant to an
21 approved plan, the Commission determines that the plan is inadequate
22 to meet the requirements of this Article, the Commission may require
23 such revisions as are necessary to comply with this act. The
24 Commission must approve or deny the revised plan within 15 days of
25 receipt, or it is deemed to be approved. The Commission shall
26 delegate the authority to disapprove a plan to the Director of the
27 Division of Land Resources if the disapproval is based on sub-
28 subdivisions a. through e. below. For purposes of this subsection, an
29 applicant's record may only be considered for the two years prior to the
30 application date. The Director may disapprove a plan upon finding
31 that an applicant, or any parent or subsidiary corporation if the
32 applicant is a corporation:
- 33 a. Is conducting or has conducted land-disturbing activity without
34 an approved plan, or has received notice of violation of a plan
35 previously approved by the Commission or a local government
36 pursuant to this Article and has not complied with the notice
37 within the time specified in the notice;
- 38 b. Has failed to pay a civil penalty assessed pursuant to this
39 Article or a local ordinance adopted pursuant to this Article
40 which is due and for which no appeal is pending;
- 41 c. Has been convicted of a misdemeanor pursuant to G.S. 113A-
42 64(b) or any criminal provision of a local ordinance adopted
43 pursuant to this Article;

- 1 d. Has failed to substantially comply with State rules and local
 2 laws relating to the Sedimentation Pollution Control Act; or
 3 e. Is not financially qualified to carry out the erosion and
 4 sedimentation control plan as submitted.

5 In the event a plan is disapproved by the Director based on sub-
 6 subdivisions a. through e. above, the Director shall provide the reasons
 7 for disapproval of the plan to the applicant in writing upon
 8 disapproval. The applicant may appeal the Director's disapproval of
 9 the plan to the Commission."

10 Sec. 2. G.S. 113A-61 reads as rewritten:

11 "**§ 113A-61. Approval of ~~plans.~~ plans; review applicant's prior compliance with**
 12 **environmental protection measures.**

13 (a) Each local government's erosion and sediment control program shall require
 14 that for those land-disturbing activities requiring prior approval of an erosion control
 15 plan, such plan shall be submitted to the appropriate soil and water conservation district
 16 at the same time it is submitted to the local government for approval. The soil and water
 17 conservation district or districts, within 20 days after receipt of the proposed plan, or
 18 within such additional time as may be prescribed by the local government, shall review
 19 the plan and submit its comments and recommendations to the local government.
 20 Failure of the soil and water conservation district to submit its comments and
 21 recommendations within 20 days or within the prescribed additional time shall not delay
 22 final action on the proposed plan by the local government.

23 (b) Local governments shall review each erosion control plan submitted to them
 24 and within 30 days of receipt thereof shall notify the person submitting the plan that it
 25 has been approved, approved with modifications, or disapproved. A local government
 26 shall only approve a plan upon determining that it complies with all applicable State and
 27 local regulations for erosion and sediment control. For purposes of this subsection, an
 28 applicant's record may only be considered for the two years prior to the application date.
 29 A local government may disapprove a plan upon finding that an applicant, or any parent
 30 or subsidiary corporation if the applicant is a corporation:

- 31 (1) Is conducting or has conducted land-disturbing activity without an
 32 approved plan, or has received notice of violation of a plan previously
 33 approved by the Commission or a local government pursuant to this
 34 Article and has not complied with the notice within the time specified
 35 in the notice;
 36 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a
 37 local ordinance adopted pursuant to this Article which is due and for
 38 which no appeal is pending;
 39 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or
 40 any criminal provision of a local ordinance adopted pursuant to this
 41 Article;
 42 (4) Has failed to substantially comply with State rules and local laws
 43 relating to the Sedimentation and Pollution Control Act; or

1 (5) Is not financially qualified to carry out the erosion and sedimentation
2 control plan as submitted.

3 In the event a plan is disapproved by the local government based on subdivisions (1)
4 through (5) above, the local government shall notify the Director of the
5 Division of Land Resources in writing, within 10 days. The local government shall
6 provide the reasons for disapproval of the plan to the applicant in writing upon
7 disapproval. Notwithstanding the provisions of G.S. 113A-61(c), the applicant may
8 appeal the local government's disapproval of the plan directly to the Commission.

9 (c) The disapproval or modification of any proposed erosion control plan by a
10 local government shall entitle the person submitting the plan to a public hearing if such
11 person submits written demand for a hearing within 15 days after receipt of written
12 notice of the disapproval or modification. The hearings shall be conducted pursuant to
13 procedures adopted by the local government. If the local government upholds the
14 disapproval or modification of a proposed erosion control plan following the public
15 hearing, the person submitting the erosion control plan shall be entitled to appeal the
16 local government's action disapproving or modifying the plan to the Commission. The
17 Commission, by regulation, shall direct the Secretary to appoint such employees of the
18 Department as may be necessary to hear appeals from the disapproval or modification
19 of erosion control plans by local governments. In addition to providing for the appeal of
20 local government decisions disapproving or modifying erosion control plans to
21 designated employees of the Department, the Commission shall designate an erosion
22 control plan review committee consisting of three members of the Commission. The
23 person submitting the erosion control plan may appeal the decision of an employee of
24 the Department who has heard an appeal of a local government action disapproving or
25 modifying an erosion control plan to the erosion plan review committee of the
26 Commission. Judicial review of the final action of the erosion plan review committee of
27 the Commission may be had in the superior court of the county in which the local
28 government is situated.

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

42 Sec. 3. This act is effective upon ratification and shall apply to any erosion
43 control plan submitted after July 1, 1989.