

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1203

Committee Substitute Favorable 5/9/89

Environment & Natural Resources Senate Committee Substitute Adopted 7/6/89

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

12 The General Assembly of North Carolina enacts:

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

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

- 16 (1) Assist and encourage local governments in developing erosion and
17 sediment control programs and as part of such assistance to develop a
18 model local erosion control ordinance, and approve, approve as
19 modified, or disapprove local plans submitted to it pursuant to G.S.
20 113A-60;
21

- 1 (2) Assist and encourage other State agencies in developing erosion and
2 sedimentation control programs to be administered in their
3 jurisdictions, and to approve, approve as modified, or disapprove such
4 programs submitted pursuant to G.S. 113A-56 and from time to time
5 review such programs for compliance with regulations issued by the
6 Commission and for adequate enforcement;
- 7 (3) Develop recommended methods of control of sedimentation and
8 prepare and make available for distribution publications and other
9 materials dealing with sedimentation control techniques appropriate
10 for use by persons engaged in land-disturbing activities, general
11 educational materials on erosion and sedimentation control, and
12 instructional materials for persons involved in the enforcement of
13 erosion control regulations, ordinances, and plans;
- 14 (4) Require submission of erosion control plans by those responsible for
15 initiating land-disturbing activities for approval prior to
16 commencement of the activities. ~~As to those activities requiring prior
17 plan approval, the Commission must either approve or disapprove the plan
18 within 30 days of receipt. The draft plan must contain the applicant's
19 address and, if the applicant is not a resident of North Carolina, designate a
20 North Carolina agent for the purpose of receiving notice from the
21 Commission or the Secretary of compliance or noncompliance with the plan,
22 this Article, or any rules adopted pursuant to this Article. Failure to approve
23 or disapprove a complete erosion and sedimentation control plan within 30
24 days of receipt shall be deemed approval. Denial of a plan must specifically
25 state in writing the reasons for denial. The Commission must approve or
26 deny a revised plan within 15 days of receipt, or it is deemed to be approved.
27 If, following commencement of a land-disturbing activity pursuant
28 to an approved plan, the Commission determines that the plan is
29 inadequate to meet the requirements of this Article, the Commission
30 may require such revisions as are necessary to comply with this act.
31 The Commission must approve or deny the revised plan within 15
32 days of receipt, or it is deemed to be approved."~~

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

35 "**§ 113A-54.1. Approval of erosion control plans.**

36 (a) A draft erosion control plan must contain the applicant's address and, if the
37 applicant is not a resident of North Carolina, designate a North Carolina agent for the
38 purpose of receiving notice from the Commission or the Secretary of compliance or
39 noncompliance with the plan, this Article, or any rules adopted pursuant to this Article.
40 The Commission must either approve or disapprove a draft erosion control plan for
41 those land-disturbing activities for which prior plan approval is required within 30 days
42 of receipt. Failure to approve or disapprove a completed draft erosion control plan
43 within 30 days of receipt shall be deemed approval of the plan. If the Commission
44 disapproves a draft erosion control plan, it must state in writing the specific reasons that

1 the plan was disapproved. Failure to approve or disapprove a revised erosion control
2 plan within 15 days of receipt shall be deemed approval of the plan.

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

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

12 (1) Is conducting or has conducted land-disturbing activity without an
13 approved plan, or has received notice of violation of a plan previously
14 approved by the Commission or a local government pursuant to this
15 Article and has not complied with the notice within the time specified
16 in the notice;

17 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a
18 local ordinance adopted pursuant to this Article which is due and for
19 which no appeal is pending;

20 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or
21 any criminal provision of a local ordinance adopted pursuant to this
22 Article; or

23 (4) Has failed to substantially comply with State rules or local ordinances
24 and regulations adopted pursuant to this Article.

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

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

32 "(1) No land-disturbing activity during periods of construction or
33 improvement to land shall be ~~permitted in proximity to a lake or shall be~~
34 permitted in proximity to a lake or natural watercourse unless a buffer
35 zone is provided along the margin of the watercourse of sufficient
36 width to confine visible siltation within the twenty-five percent (25%)
37 of the buffer zone ~~nearer~~ nearest the land-disturbing activity, ~~provided~~
38 that this activity. Waters that have been classified as trout waters by
39 the Environmental Management Commission shall have an
40 undisturbed buffer zone 25 feet wide or of sufficient width to confine
41 visible siltation within the twenty-five percent (25%) of the buffer
42 zone nearest the land-disturbing activity, whichever is greater. This
43 subdivision ~~(4)~~ shall not apply to a land-disturbing activity in

1 connection with the construction of facilities to be located on, over, or
2 under a lake or natural watercourse."

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

4 **"§ 113A-61. Approval of plans. Local approval of erosion control plans.**

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

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

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

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

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

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

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

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

36 "**§ 113A-61.1. Periodic inspection of land-disturbing activity.**

37 With respect to approved plans for erosion control in connection with land-
38 disturbing activities, the approving authority, either the Commission or a local
39 government, shall provide for periodic inspection of the land-disturbing activity to
40 ensure compliance with the approved plan, and to determine whether the measures
41 required in the plan are effective in controlling erosion and sediment resulting from the
42 land-disturbing activities. Notice of such right of inspection shall be included in the
43 certificate of approval for the plan. If the approving authority determines that the
44 person engaged in the land-disturbing activities has failed to comply with the plan, the

1 authority shall immediately serve upon that person by registered mail a notice to
2 comply. The notice shall set forth the measures needed to come into compliance with
3 the plan and shall state the time within which such measures must be completed. If the
4 person engaged in the land-disturbing activities fails to comply within the time
5 specified, he shall be deemed in violation of this Article."

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

7 "(1) Any person who violates any of the provisions of this Article or any
8 ordinance, rule, or order adopted or issued pursuant to this Article by
9 the Commission or by a local government, or who initiates or
10 continues a land-disturbing activity for which an erosion control plan
11 is required except in accordance with the terms, conditions, and
12 provisions of an approved plan, shall be subject to a civil penalty of
13 not more than ~~one hundred dollars (\$100.00)~~, five hundred dollars
14 (\$500.00), except that the penalty for failure to submit an erosion
15 control plan shall be as provided in subdivision ~~(3)~~ (4) of this
16 subsection. No penalty shall be assessed until the person alleged to be
17 in violation has been notified of the violation. Each day of a
18 continuing violation shall constitute a separate violation."

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

21 **"§ 113A-120. Grant or denial of permits.**

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

- 24 (1) In the case of coastal wetlands, that the development would contravene
25 an order that has been or could be issued pursuant to G.S. 113-230.
- 26 (2) In the case of estuarine waters, that a permit for the development
27 would be denied pursuant to G.S. 113-229(e).
- 28 (3) In the case of a renewable resource area, that the development will
29 result in loss or significant reduction of continued long-range
30 productivity that would jeopardize one or more of the water, food or
31 fiber requirements of more than local concern identified in ~~paragraphs a~~
32 ~~to e of subsection (b)(3) of G.S. 113A-113.~~ subdivisions a. through c. of
33 G.S. 113A-113(b)(3).
- 34 (4) In the case of a fragile or historic area, or other area containing
35 environmental or natural resources of more than local significance,
36 that the development will result in major or irreversible damage to one
37 or more of the historic, cultural, scientific, environmental or scenic
38 values or natural systems identified in ~~paragraphs a to h of subsection~~
39 ~~(b)(4) of G.S. 113A-113.~~ subdivisions a. through h. of G.S. 113A-
40 113(b)(4).
- 41 (5) In the case of areas covered by G.S. 113A-113(b)(5), that the
42 development will jeopardize the public rights or interests specified in
43 said subdivision.

- 1 (6) In the case of natural hazard areas, that the development would occur
2 in one or more of the areas identified in ~~paragraphs a to e of subsection~~
3 ~~(b)(6) [of G.S. 113A-113]~~ subdivisions a. through e. of G.S. 113A-
4 113(b)(6) in such a manner as to unreasonably endanger life or
5 property.
- 6 (7) In the case of areas which are or may be impacted by key facilities,
7 that the development is inconsistent with the State guidelines or the
8 local land-use plans, or would contravene any of the provisions of
9 subdivisions (1) to (6) of this subsection.
- 10 (8) In any case, that the development is inconsistent with the State
11 guidelines or the local land-use plans.
- 12 (9) In any case, that considering engineering requirements and all
13 economic costs there is a practicable alternative that would accomplish
14 the overall project purposes with less adverse impact on the public
15 resources.
- 16 (10) In any case, that the proposed development would contribute to
17 cumulative effects that would be inconsistent with the guidelines set
18 forth in subdivisions (1) through ~~(9)~~ (9) of this subsection.
19 Cumulative effects are impacts attributable to the collective effects of
20 a number of projects and include the effects of additional projects
21 similar to the requested permit in areas available for development in
22 the vicinity.
- 23 (b) In the absence of such findings, a permit shall be granted. The permit may be
24 conditioned upon the applicant's amending his proposal to take whatever measures or
25 agreeing to carry out whatever terms of operation or use of the development that are
26 reasonably necessary to protect the public interest with respect to the factors enumerated
27 in subsection (a) of this section.
- 28 **(b1) In addition to those factors set out in subsection (a) of this section, and**
29 **notwithstanding the provisions of subsection (b) of this section, the responsible official**
30 **or body may deny an application for a permit upon finding that an applicant, or any**
31 **parent or subsidiary corporation if the applicant is a corporation:**
- 32 (1) Is conducting or has conducted any activity for which a permit is
33 required under this Article without having previously obtained such
34 permit or has received a notice of violation with respect to any activity
35 governed by this Article and has not complied with the notice within
36 the time specified in the notice;
- 37 (2) Has failed to pay a civil penalty assessed pursuant to this Article, a
38 local ordinance adopted pursuant to this Article, or Article 17 of
39 Chapter 113 of the General Statutes which is due and for which no
40 appeal is pending;
- 41 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126,
42 G.S. 113-229(k), or any criminal provision of a local ordinance
43 adopted pursuant to this Article; or

1 (4) Has failed to substantially comply with State rules or local ordinances
2 and regulations adopted pursuant to this Article or with other federal
3 and State laws, regulations, and rules for the protection of the
4 environment.

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

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

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

25 "**§ 113A-120.1. Variances.**

26 Any person may petition the Commission for a variance granting permission to use
27 his land in a manner otherwise prohibited by rules, standards, or limitations prescribed
28 by the Commission, or orders issued by the Commission, pursuant to this Article.
29 When it finds that (i) practical difficulties or unnecessary hardships would result
30 from strict application of the guidelines, rules, standards, or other restrictions applicable
31 to the property, (ii) such difficulties or hardships result from conditions which are
32 peculiar to the property involved, (iii) such conditions could not reasonably have been
33 anticipated when the applicable guidelines, rules, standards, or restrictions were adopted
34 or amended, the Commission may vary or modify the application of the restrictions to
35 the property so that the spirit, purpose, and intent of the restrictions are preserved,
36 public safety and welfare secured, and substantial justice preserved. In granting a
37 variance, the Commission may impose reasonable and appropriate conditions and
38 safeguards upon any permit it issues. The Commission may conduct a hearing within
39 45 days from the receipt of the petition and shall notify such persons and agencies that
40 may have an interest in the subject matter of the time and place of the hearing."

41 Sec. 9. This act shall apply to any erosion control plan and to any application
42 for a permit under the Coastal Area Management Act submitted on or after 1 October
43 1989. Section 6 of this act shall apply to offenses occurring on or after 1 October 1989.

44 Sec. 10. This act is effective upon ratification.