

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 25
Committee Substitute Favorable 4/11/91
Committee Substitute #2 Favorable 5/8/91

Short Title: Comm. Serv. for Remitted Fines.

(Public)

Sponsors:

Referred to:

February 6, 1991

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ESTABLISH A COMMUNITY SERVICE PROGRAM; AND TO REQUIRE THAT COMMUNITY SERVICE SHALL BE PERFORMED IN EXCHANGE FOR REMITTED FINES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-282.1 reads as rewritten:

"§ 143B-282.1. Environmental Management Commission – quasi-judicial powers; procedures.

(a) With respect to those matters within its jurisdiction, the Environmental Management Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Environmental Management Commission shall govern such proceedings:

- (1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the chairman of the Commission.
- (2) Oral arguments by the parties may be allowed by the chairman of the Commission upon request of the parties.
- (3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its

1 counsel should be held in an executive session pursuant to G.S. 143-
2 318.11.

3 (b) The final agency decision in contested cases that arise from civil penalty
4 assessments shall be made by the Commission. In the evaluation of each violation, the
5 Commission shall recognize that harm to the natural resources of the State arising from
6 the violation of standards or limitations established to protect those resources may be
7 immediately observed through damaged resources or may be incremental or cumulative
8 with no damage that can be immediately observed or documented. Penalties up to the
9 maximum authorized may be based on any one or combination of the following factors:

- 10 (1) The degree and extent of harm to the natural resources of the State, to
11 the public health, or to private property resulting from the violation;
- 12 (2) The duration and gravity of the violation;
- 13 (3) The effect on ground or surface water quantity or quality or on air
14 quality;
- 15 (4) The cost of rectifying the damage;
- 16 (5) The amount of money saved by noncompliance;
- 17 (6) Whether the violation was committed willfully or intentionally;
- 18 (7) The prior record of the violator in complying or failing to comply with
19 programs over which the Environmental Management Commission has
20 regulatory authority; and
- 21 (8) The cost to the State of the enforcement procedures.

22 (c) The chairman shall appoint a Committee on Civil Penalty Remissions from
23 the members of the Commission. No member of the Committee on Civil Penalty
24 Remissions may hear or vote on any matter in which he has an economic interest. The
25 Committee on Civil Penalty Remissions shall make the final agency decision on
26 remission requests. In determining whether a remission request will be approved, the
27 Committee shall consider the recommendation of the Secretary and the following
28 factors:

- 29 (1) Whether one or more of the civil penalty assessment factors in
30 subsection (b) of this section were wrongly applied to the detriment of
31 the petitioner;
- 32 (2) Whether the violator promptly abated continuing environmental
33 damage resulting from the violation;
- 34 (3) Whether the violation was inadvertent or a result of an accident;
- 35 (4) Whether the violator had been assessed civil penalties for any previous
36 violations;
- 37 (5) Whether payment of the civil penalty will prevent payment for the
38 remaining necessary remedial actions.

39 Notwithstanding the above, no portion of a fine shall be remitted unless payment of the
40 fine would result in economic hardship on the violator and the violator has agreed to
41 substitute a proportionate amount of community service as prescribed by the
42 Environmental Management Commission in exchange for the remittance.

43 (d) The Committee on Civil Penalty Remissions may remit the entire amount of
44 the penalty only when the violator has not been assessed civil penalties for previous

1 ~~violations, and violations;~~ when payment of the civil penalty will prevent payment for the
2 remaining necessary remedial ~~actions.~~ actions; and when the petitioner has agreed to
3 substitute a proportionate amount of community service. The Commission may waive
4 the community service requirement for a person, who otherwise meets the criteria in this
5 subsection for remittance of a fine, but who is physically unable to perform any
6 community service. The Commission shall establish, and the Division of
7 Environmental Management of the Department shall monitor, a community service
8 program with a primary focus on environmental projects, when possible. The
9 Commission shall use existing community service restitution program resources and the
10 violator shall pay any required fee. Community service programs shall emphasize
11 governmental or nonprofit organizations, but may include environmental cleanup on
12 private property of creeks, rivers, beaches, roads, or highways. The program shall
13 include, but not be limited to, reporting requirements, a formula for commuting dollars
14 to hours of service, a system for validating community service programs, and a
15 verification procedure upon completion of service. The community service required of
16 the violator shall be performed by the owner or owners of a noncorporate business; by
17 the highest executive officer of a corporate entity; by the elected local officials of a unit
18 of local government; or by the head of a State agency. Under this program, a violator
19 shall not be subject to perform community service for any portion of a fine which has
20 been reduced due to departmental error when the initial fine was assessed.

21 (e) If any civil penalty has not been paid within 30 days after the final agency
22 decision or court order has been served on the violator, the Secretary of ~~Environment,~~
23 ~~Health, and Natural Resources~~ shall request the Attorney General to institute a civil action
24 in the Superior Court of any county in which the violator resides or has his or its
25 principal place of business to recover the amount of the assessment.

26 (e1) The civil penalty shall be suspended during the time allotted for completing
27 the community service program described in subsection (d). If the community service
28 has not been completed and verified during the specified time, the full penalty shall be
29 payable upon demand by the State.

30 (f) As used in this section, 'Secretary' means the Secretary of Environment,
31 Health, and Natural Resources. The Secretary may delegate his powers and duties
32 under this section to the Director of the Division of Environmental Management of the
33 Department of Environment, Health, and Natural Resources."

34 Sec. 2. G.S. 143B-475.1 is amended by adding a new subsection (d) to read:

35 "(d) Immunity for Injury to Violator Performing Community Service. A person is
36 not liable for damages for any injury or loss sustained by a violator performing
37 community or reparation service unless the injury is caused by the person's gross
38 negligence or intentional wrongdoing. As used in this subsection, 'person' includes any
39 governmental unit or agency, nonprofit corporation, or other nonprofit agency that is
40 supervising the violator or for whom the violator is performing community service
41 work, as well as any person employed by the agency or corporation while acting in the
42 scope and course of his employment. This subsection does not affect the immunity from
43 civil liability in tort available to local governmental units or agencies. Notice of the
44 provisions of this subsection shall be furnished to the violator."

1 Sec. 3. This act becomes effective October 1, 1991.