

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 330

Short Title: Stream Obstruction Enforcement.

(Public)

Sponsors: Senators Speed; Basnight, Conder, Hunt, Lee, Martin of Guilford, Murphy, Parnell, Perdue, and Warren.

Referred to: Environment and Natural Resources.

March 28, 1991

A BILL TO BE ENTITLED

AN ACT TO MAKE THE OBSTRUCTION OF STREAMS AND DITCHES A STRICT LIABILITY OFFENSE, TO INCREASE THE PENALTIES FOR THE OBSTRUCTION OF STREAMS AND DITCHES, AND TO REDEFINE THE AUTHORITY OF FOREST LAW ENFORCEMENT OFFICERS TO ENFORCE THE PROHIBITION AGAINST OBSTRUCTION OF STREAMS AND DITCHES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 77-13 reads as rewritten:

"§ 77-13. Obstructing streams a misdemeanor.

If any ~~person~~ person, firm, or corporation shall ~~willfully~~ fell any tree, or ~~willfully~~ put any obstruction, except for the purposes of utilizing water as a motive power, in any branch, ~~creek, creek, stream,~~ or other natural passage for water, whereby the natural flow of water through such passage is lessened or retarded, ~~and~~ or whereby the navigation of such stream ~~by any raft or flat~~ may be impeded, delayed, or prevented, the ~~person~~ person, firm, or corporation so offending shall be guilty of a misdemeanor, and fined not to exceed ~~fifty dollars (\$50.00),~~ five hundred dollars (\$500.00), or imprisoned not to exceed ~~30 days~~ six months, or both, in the discretion of the court. In addition to any fine or imprisonment imposed, the court may, in its discretion, order the person, firm, or corporation so offending to remove the obstruction and restore the affected waterway to an undisturbed condition, or allow authorized employees of the enforcing agency to enter upon the property and accomplish the removal of the obstruction and the restoration of the waterway to an undisturbed condition, in which case the costs of the removal and restoration shall be paid to the enforcing agency by the offending party.

1 Nothing in this section shall prevent the erection of fish dams or hedges across any
2 stream which do not extend across more than two thirds of ~~the its~~ width ~~of any stream~~
3 ~~where erected, but if extending over at the point of obstruction.~~ If the fish dams or
4 hedges extend more than two thirds of the width of any stream, the said penalties shall
5 attach. This section may be enforced by marine fisheries ~~inspectors,~~ inspectors and
6 wildlife protectors, ~~protectors.~~ Within the bounds of any county or municipality, this
7 section may also be enforced by any law enforcement officer having territorial
8 jurisdiction, or by the county engineer. This section may also be enforced by ~~or~~
9 specially commissioned forest law-enforcement officers of the Department of
10 Environment, Health, and Natural Resources. ~~Resources for offenses occurring in~~
11 woodlands. For purposes of this section, the term 'woodlands' means all forested areas,
12 including swamp and timber lands, cutover lands, and second-growth stands in
13 previously cultivated sites. ~~In any county with a population in excess of 325,000, this~~
14 ~~section may also be enforced by the county engineer."~~

15 Sec. 2. G.S. 77-14 reads as rewritten:

16 "**§ 77-14. Obstructions in streams and drainage ditches.**

17 If any person, firm or corporation shall fell any tree or put any slabs, stumpage,
18 sawdust, shavings, lime, refuse or any other substances in any creek, stream, river or
19 natural or artificial drainage ravine or ditch, or in any other outlet which serves to
20 remove water from any land whatsoever whereby the ~~natural and normal~~ drainage of
21 said land is impeded, delayed or prevented, the person, firm or corporation so offending
22 shall be guilty of a misdemeanor and upon conviction thereof shall be fined up to five
23 hundred dollars (\$500.00) or imprisoned for up to six months, or both, in the discretion
24 of the court: Provided, however, nothing herein shall prevent the construction of any
25 dam or weir not otherwise prohibited by any valid local or State statute or regulation. In
26 addition to any fine or imprisonment imposed, the court may, in its discretion, order the
27 person, firm, or corporation so offending to remove the obstruction and restore the
28 affected waterway to an undisturbed condition, or allow authorized employees of the
29 enforcing agency to enter upon the property and accomplish the removal of the
30 obstruction and the restoration of the waterway to an undisturbed condition, in which
31 case the costs of the removal and restoration shall be paid to the enforcing agency by the
32 offending party. This section may be enforced by marine fisheries ~~inspectors,~~
33 inspectors and wildlife protectors, ~~protectors.~~ Within the boundaries of any county or
34 municipality this section may also be enforced by any law enforcement officer having
35 territorial jurisdiction, or by the county engineer. This section may also be enforced by
36 ~~or~~ specially commissioned forest law-enforcement officers of the Department of
37 Environment, Health, and Natural Resources. ~~Resources for offenses occurring in~~
38 woodlands. For purposes of this section, the term 'woodlands' means all forested areas,
39 including swamp and timber lands, cutover lands and second-growth stands on
40 previously cultivated sites. ~~In any county with a population in excess of 325,000, this~~
41 ~~section may also be enforced by the county engineer."~~

42 Sec. 3. This act is effective upon ratification, and applies to acts committed
43 on or after that date.