

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 2000-172
HOUSE BILL 1218

AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS: (1) TO PROMOTE WATER CONSERVATION BY PROVIDING FOR THE USE OF SUB-METERS IN CONSECUTIVE WATER SYSTEMS; (2) RELATED TO URBAN WATERFRONT REDEVELOPMENT; (3) TO PROVIDE FOR VARIANCES UNDER THE DREDGE AND FILL PERMIT PROGRAM; (4) TO CLARIFY THE AUTHORITY OF THE GOVERNOR TO MAKE APPOINTMENTS TO THE ENVIRONMENTAL MANAGEMENT COMMISSION; (5) TO REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO CONSULT WITH STAKEHOLDERS PRIOR TO DEVELOPING RIPARIAN BUFFER RULES; (6) TO PROHIBIT THE MARINE FISHERIES COMMISSION FROM ESTABLISHING FEES FOR CERTAIN PERMITS AND TO ABOLISH CERTAIN EXISTING PERMIT FEES; AND (7) TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL CHANGES.

PART I. USE OF SUB-METERS IN CONSECUTIVE WATER SYSTEMS

The General Assembly of North Carolina enacts:

Section 1.1. G.S. 130A-315 is amended by adding a new subsection to read:

"(d) When a person that receives water from a public water system is authorized by the Utilities Commission, pursuant to G.S. 62-110(g), to install sub-meters and resell water to persons who occupy the same contiguous premises, that person shall be regulated as a consecutive water system. The monitoring, analysis, and record-keeping requirements applicable to consecutive water systems under this section shall be satisfied by the monitoring, analysis, and record keeping performed by the supplying water system and submitted to the Department in compliance with this section. The supplying water system shall perform the same level of monitoring, analysis, and record keeping that the supplying system would perform if the person that receives the water had not been authorized to resell water under G.S. 62-110(g), but the supplying water system shall not be required to perform additional monitoring, analysis, and record keeping. A supplying water system is not responsible for operation, maintenance, or repair of the consecutive water system."

Section 1.2. In enacting Section 1.1 of this act, it is the intent of the General Assembly to promote water conservation while protecting public health, safety, welfare, and the environment and avoiding unduly burdensome requirements on consecutive water systems. Section 1.1 of this act shall not be construed to impose any requirement

on a supplying water system other than the requirements that apply to the supplying water system on the date this act becomes effective and that would apply to the supplying water system if a consecutive water system had not been authorized.

PART II. URBAN WATERFRONT REDEVELOPMENT

Section 2.1. Section 3 of S.L. 1997-337, as amended by Section 55.2B of S.L. 1997-456, reads as rewritten:

"Section 3. This act is effective when it becomes law, expires ~~1 July 2000~~, 1 April 2001, and applies to permits granted and applications submitted prior to ~~1 July 2000~~. 1 April 2001. Any permits granted or applications issued prior to ~~July 1, 2000~~ 1 April 2001 shall be transferable."

Section 2.2. The Coastal Resources Commission shall adopt a temporary rule providing for and governing urban waterfront redevelopment in historically urban areas. The temporary rule shall become effective 1 April 2001 and shall remain in effect until a permanent rule that replaces the temporary rule becomes effective.

PART III. DREDGE AND FILL VARIANCES

Section 3.1. G.S. 113-229(c1) reads as rewritten:

"(c1) The Coastal Resources Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall ~~consider~~; consider all of the following:

- (1) The size of the ~~development~~; development.
- (2) The impact of the development on areas of environmental ~~concern~~; concern.
- (3) How often the class of development is carried ~~out~~; out.
- (4) The need for on-site oversight of the ~~development~~; and development.
- (5) The need for public review and comment on individual development projects.

(c2) General permits may be issued by the Commission as rules under the provisions of ~~G.S. 113A-107~~. G.S. 113A-118.1. Individual development carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of this section. The Commission may impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues. The variance, appeals, and enforcement provisions of this Article shall apply to any individual development projects undertaken under a general permit."

Section 3.2. G.S. 113-229(e) reads as rewritten:

"(e) Applications for permits except special emergency permit applications shall be circulated by the Department among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the

proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. Permits may allow for projects granted a permit the right to maintain such project for a period of up to 10 years. The right to maintain such project shall be granted subject to such conditions as may be reasonably necessary to protect the public interest. The Coastal Resources Commission shall coordinate the issuance of permits under this section and G.S. 113A-118 and the granting of variances under this section and G.S. 113A-120.1 to avoid duplication and to create a single, expedited permitting process. The Coastal Resources Commission may adopt rules interpreting and applying the provisions of this section and rules specifying the procedures for obtaining a permit under this section. Maintenance work as defined in this subsection shall be limited to such activities as are required to maintain the project dimensions as found in the permit granted. The Department shall act on an application for permit within 75 days after the completed application is filed, provided the Department may extend such deadline by not more than an additional 75 days if necessary properly to consider the application, except for applications for a special emergency permit, in which case the Department shall act within two working days after an application is filed, and failure to so act shall automatically approve the application."

PART IV. CLARIFY ENVIRONMENTAL MANAGEMENT COMMISSION APPOINTMENTS

Section 4.1. G.S. 143B-283(b) reads as rewritten:

"(b) Members ~~so appointed by the Governor~~ shall serve terms of office of six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. ~~At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications. The Governor may reappoint a member of the Commission to an additional term if, at the time of the reappointment, the member qualifies for membership on the Commission under subsection (a) of this section. The initial members of the Environmental Management Commission shall be those members of the present Board of Water and Air Resources who shall meet the above standards for membership on the Environmental Management Commission and who shall serve on the Environmental Management Commission for a period equal to the remainder of their current terms on the Board of Water and Air Resources, four of whose appointments expire June 30, 1975, five of whose appointments expire June 30, 1977, and four of whose appointments expire June 30, 1979. Any initial appointment to~~

~~replace a member of the present Board of Water and Air Resources who does not meet the above standards for membership on the Environmental Management Commission shall be for a period equal to the replaced member's unexpired term.~~

(b1) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(b2) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(b3) A majority of the Commission shall constitute a quorum for the transaction of business.

(b4) All clerical and other services required by the Commission shall be supplied by the Secretary of Environment and Natural Resources."

Section 4.2. G.S. 143B-283(d) reads as rewritten:

"(d) In addition to the members designated by subsection ~~(a)~~, (a) of this section, the General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. ~~The terms of initial appointees by the General Assembly shall expire on June 30, 1983. Thereafter, these members shall serve two-year terms.~~ Members appointed by the General Assembly shall serve terms of two years."

PART V. CONSULTATION WITH RIPARIAN BUFFER STAKEHOLDERS

Section 5.1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

§ 143-214.24. Riparian Buffer Protection Program: Coordination with River Basin Associations.

(a) Prior to drafting temporary or permanent rules that require the preservation of riparian buffers in a river basin, the Department shall consult with major stakeholders who may have an interest in the proposed rules, including the board of directors or representatives designated by the board of directors of any river basin association in the affected river basin that meets all of the following criteria:

- (1) The association is a nonprofit corporation, as defined by G.S. 55A-1-40.
- (2) The association has as its primary purpose the conservation, preservation, and restoration of the environmental and natural resources of the river basin in which it is located.
- (3) Membership in the association is open on a nondiscriminatory basis to all citizens in the river basin.
- (4) The membership of the board of directors of the association includes at least one representative from each county with a significant portion of its territory in the river basin.

- (5) The membership of the association includes significant representation from each of the following categories of persons:
- a. Elected local officials.
 - b. Persons involved in agriculture.
 - c. Persons involved in residential and commercial land development.
 - d. Persons involved in forestry.
 - e. Representatives of community-based organizations.
 - f. Representatives of organizations that advocate for protection of the environment and conservation of natural resources.
 - g. Persons with special training and scientific expertise in protection of water who are affiliated with colleges and universities.
 - h. Private property owners.
 - i. Persons with a general interest in water quality protection.

(b) The purpose of the consultation required by subsection (a) of this section is to assure that major stakeholders who may have an interest in the proposed rules have an opportunity to inform the Department of their concerns before the Department drafts the rules."

PART VI. FISHERIES PERMIT FEES

Section 6.1. G.S. 113-169.1 reads as rewritten:

"§ 113-169.1. Permits for gear, equipment, and other specialized activities authorized.

The Commission may adopt rules to establish permits for gear, equipment, and specialized activities, including commercial fishing operations that do not involve the use of a vessel and transplanting oysters or clams. ~~The Commission shall establish a fee for each permit in an amount that compensates the Division for the actual administrative costs associated with the permit but that does not exceed fifty dollars (\$50.00) per permit."~~

Section 6.2. Any fee established by the Marine Fisheries Commission pursuant to G.S. 113-169.1, as amended by Section 6.1 of this act, shall expire 1 July 2000.

PART VII. TECHNICAL CORRECTIONS

Section 7.1. G.S. 143-215.94E(i) reads as rewritten:

"(i) An owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank as provided in G.S. 143-215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall complete the closure or upgrade prior to 1 January 1995. An owner who notifies the Department of an intention to close or upgrade a commercial underground storage tank and who fails to commence and complete the closure as specified in this subsection is

subject to a civil penalty as provided in ~~G.S. 143-215.94K.~~ G.S. 143-215.94W. The provisions of G.S. 143-215.94B(b)(2a) do not apply if an owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank fails to commence or complete the closure or upgrade within the dates specified in this subsection."

PART VIII. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 8.1. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 8.2. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 8.3. Sections 2.1, 6.1, and 6.2 of this act are effective retroactively to 1 July 2000. Section 4.1 of this act is effective upon ratification and applies retroactively to all appointments by the Governor to the Environmental Management Commission. All other sections of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2000.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:05 a.m. this 2nd day of August, 2000