

May 19, 2010

H 1870. SAFE ARTIFICIAL SLOPE CONSTRUCTION ACT. Filed 5/19/10. (1) TO REQUIRE LOCAL GOVERNMENTS TO ADOPT ORDINANCES TO REGULATE SITE PLANNING, DESIGN, AND CONSTRUCTION OF ARTIFICIAL SLOPES IN MOUNTAINOUS AREAS TO PROMOTE SAFE AND STABLE SLOPES FOR DEVELOPMENT, TO REDUCE THE LIKELIHOOD OF SLOPE FAILURES ON DEVELOPED OR DISTURBED LAND, AND TO PROTECT HUMAN SAFETY AND PROPERTY; AND (2) DIRECT THE SEDIMENTATION CONTROL COMMISSION TO ASSIST LOCAL GOVERNMENTS IN DEVELOPMENT AND IMPLEMENTATION OF SAFE SLOPE CONSTRUCTION PROGRAMS AND TO DEVELOP A MODEL ORDINANCE.

Enacts new Article 19 (Safe Artificial Slope Construction Act of 2010) of GS Chapter 113A to provide a comprehensive management program for safe artificial slope construction on steep slopes (those with an average slope of 40% or greater) and those with a moderate or high slide hazard ranking (as designated on maps prepared by the North Carolina Geological Survey). Provides that the definitions set forth in GS 113A-52 apply to the proposed Article 19 and provides additional definitions for the following terms as used in proposed Article 19: *affected area*, *artificial slope construction*, *construction*, *slope-disturbing activity*, and *slope*.

Specifies that the proposed provisions apply to artificial slope construction in any affected area as defined in GS 113A-262 that is located within a county designated under subdivision (1) of Section 3 of SL 2005-1. Declares that the proposed provisions do not apply to artificial slope construction activities conducted in connection with certain specified locations and activities that include but are not limited to (1) graves for burial of human remains, (2) local government operation of a landfill, (3) excavations for wells or tunnels, and (4) activities set forth in GS 113A-52.01.

Directs the Sedimentation Control Commission (Commission) to identify jurisdictions required to adopt ordinances for safe artificial slope construction under the proposed Article 19 by showing the jurisdictions on a map or drawing, describing in the area document or any combination of these methods. Directs the Commission to adopt rules for the safe construction of artificial slopes in affected areas and specifies the minimum requirements for those rules. Requires the Commission to provide assistance to local governments with the development of safe artificial slope construction programs that comply with the proposed Article 19. Directs the Commission to review each ordinance regulating the construction of artificial slopes submitted by a local government and to notify the local government within 90 calendar days of submission if the ordinance has been approved, denied, or approved with modifications. Directs the Commission to only approve an ordinance that meets or exceeds the requirements of proposed Article 19 and the rules adopted under the Article. Effective when the act becomes law.

Mandates the adoption of local ordinances, no later than December 1, 2011, to regulate the construction of artificial slopes in each county that has an affected area within its jurisdiction. Designates that the ordinance is to apply to incorporated and unincorporated areas within the county but makes an exception to permit a city to adopt an ordinance that applies within the city and the extraterritorial jurisdiction of the city. Directs the local government to submit the ordinance to the Commission for review. Requires the governing body of the local government to hold a public hearing on the question of adopting an ordinance that regulates the construction of artificial slopes in affected areas before the adoption of the ordinance. Provides guidelines for notice of the hearing and the conducting of the meeting. Requires that a local government file a copy of the ordinance with the Commission. Directs the local government to file with the register of deeds information provided by the Commission to the local government under GS 113A-266(a).

Provides for the application of the ordinance by local governments, the setting of fees for the review of artificial slope construction plan and related activities; the implementation and enforcement of the ordinance; and the creation or designation of agencies to administer and enforce the ordinance.

Authorizes the Commission to assess a civil penalty of no more than \$5,000 per year against any local government that (1) does not adopt a safe artificial slope construction ordinance as required by proposed Article 19 or (2) willfully does not administer or enforce the provisions of its ordinance. Provides criteria for assessing a civil penalty and providing notice to a violator.

Provides that any civil penalties collected under this enforcement and penalties subsection of the

proposed Article 19 are to be used as provided in Section 7 of Article IX of the Constitution of North Carolina.

Also sets out provisions for criminal penalties for (1) knowing or willful violations of any provision of proposed Article 19 or any ordinance, rule, regulation, or order adopted or issued by the Commission or a local government and (2) for knowingly or willfully beginning a slope construction activity for which an artificial slope construction plan is required. Provides that persons engaging in these violations are guilty of a Class 2 misdemeanor and may be assessed a fine not to exceed \$5,000.

Permits the governing body of a local government having jurisdiction to seek injunctive relief against a person who is violating or threatening to violate any ordinance regulating artificial slope construction pursuant to proposed Article 19. Provides that an action for injunctive relief does not relieve any party to the proceeding from any civil or criminal penalty for violations of proposed Article 19.

Amends GS 143B-298 (establishing the Commission) authorizing the Commission to adopt the rules for the safe construction of artificial slopes in affected areas and to develop a model for safe artificial slope construction ordinance as provided in GS 113A-266(c) and to assist local governments in developing safe artificial slope construction programs. Effective when the act becomes law.

Appropriates \$10,000 for 2010-11 and \$10,000 for 2011-12 from the General Fund to the Department of Environment and Natural Resources to implement the act. Effective July 1, 2010.

Except as otherwise indicated, effective December 1, 2012.

Intro. by Goforth.

GS 113A, 143B, APPROP

June 23, 2010

H 1870. SAFE ARTIFICIAL SLOPE CONSTRUCTION ACT. Filed 5/19/10. House committee substitute makes the following changes to 1st edition.

Adds new subsection (c) to proposed GS 113A-265 to provide that the provisions and rules adopted under new Article 19 of Chapter 113A do not apply to a site on which regulated slope construction activity is to be conducted if that site is (1) accessed by a right-of-way and application of the rules and provisions of this Article would make the right-of-way unusable for its intended purpose, or (2) application of the rules or provisions would be cost prohibitive.

Amends GS 47E-4(b), effective July 1, 2012, to provide that the NC Real Estate Commission's required standard disclosure statement include among the characteristics and conditions of the property information as to the location of the property within an area ranked as high or moderate relative debris/earth flow/slide hazard area as designated on maps prepared by the North Carolina Geological Survey.

Makes additional clarifying and technical changes. Makes conforming changes to the title.