

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1399  
Committee Substitute Reported Without Prejudice 4/29/09  
PROPOSED COMMITTEE SUBSTITUTE H1399-PCS70429-SB-35

Short Title: Capacity Use Areas Enforcement.

(Public)

Sponsors:

Referred to:

April 13, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT CIVIL PENALTIES OF UP TO ONE THOUSAND  
3 DOLLARS MAY BE ASSESSED FOR VIOLATION OF CAPACITY USE AREA  
4 LAWS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 143-215.17(b) reads as rewritten:

7 "(b) Civil Penalties. –

- 8 (1) The Secretary may assess a civil penalty of not less than one hundred dollars  
9 (\$100.00) nor more than ~~two hundred fifty dollars (\$250.00)~~ one thousand  
10 dollars (\$1,000) against any person who violates any provisions of, or any  
11 order issued pursuant to this Part, or who violates a rule of the Commission  
12 implementing this Part.
- 13 (2) If any action or failure to act for which a penalty may be assessed under this  
14 Part is willful, the Secretary may assess a penalty not to exceed ~~two hundred~~  
15 ~~fifty dollars (\$250.00)~~ one thousand dollars (\$1,000) per day for each day of  
16 violation.
- 17 (3) In determining the amount of the penalty the Secretary shall consider the  
18 factors set out in G.S. 143B-282.1(b). The procedures set out in  
19 G.S. 143B-282.1 shall apply to civil penalty assessments that are presented  
20 to the Commission for final agency decision.
- 21 (4) The Secretary shall notify any person assessed a civil penalty of the  
22 assessment and the specific reasons therefor by registered or certified mail,  
23 or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions  
24 shall be filed within 30 days of receipt of the notice of assessment.
- 25 (5) Requests for remission of civil penalties shall be filed with the Secretary.  
26 Remission requests shall not be considered unless made within 30 days of  
27 receipt of the notice of assessment. Remission requests must be  
28 accompanied by a waiver of the right to a contested case hearing pursuant to  
29 Chapter 150B and a stipulation of the facts on which the assessment was  
30 based. Consistent with the limitations in G.S. 143B-282.1(c) and (d),  
31 remission requests may be resolved by the Secretary and the violator. If the  
32 Secretary and the violator are unable to resolve the request, the Secretary  
33 shall deliver remission requests and his recommended action to the



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- 1 Committee on Civil Penalty Remissions of the Environmental Management  
2 Commission appointed pursuant to G.S. 143B-282.1(c).  
3 (6) If any civil penalty has not been paid within 30 days after notice of  
4 assessment has been served on the violator, the Secretary shall request the  
5 Attorney General to institute a civil action in the Superior Court of any  
6 county in which the violator resides or has his or its principal place of  
7 business to recover the amount of the assessment, unless the violator  
8 contests the assessment as provided in subdivision (4) of this subsection, or  
9 requests remission of the assessment in whole or in part as provided in  
10 subdivision (5) of this subsection. If any civil penalty has not been paid  
11 within 30 days after the final agency decision or court order has been served  
12 on the violator, the Secretary shall request the Attorney General to institute a  
13 civil action in the Superior Court of any county in which the violator resides  
14 or has his or its principal place of business to recover the amount of the  
15 assessment.  
16 (7) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 15.  
17 (8) The clear proceeds of civil penalties assessed pursuant to this subsection  
18 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with  
19 G.S. 115C-457.2."

20 **SECTION 2.** This act is effective when it becomes law.