

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1399
Committee Substitute Reported Without Prejudice 4/29/09
Committee Substitute Favorable 5/12/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1399-PCS70447-SB-45

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



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- 17 (7) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 15.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

21 **SECTION 2.** This act is effective when it becomes law and applies to violations
22 that occur on or after that date.