

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 795
Committee Substitute Favorable 4/23/15
Third Edition Engrossed 4/29/15
PROPOSED SENATE COMMITTEE SUBSTITUTE H795-PCS40460-SB-13

Short Title: SEPA Reform.

(Public)

Sponsors:

Referred to:

April 15, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO REFORM AND AMEND THE STATE ENVIRONMENTAL POLICY ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 113A-4 reads as rewritten:

5 "§ 113A-4. Cooperation of agencies; reports; availability of information.

6 The General Assembly authorizes and directs that, to the fullest extent possible:

- 7 ...
- 8 (2) Every State agency shall include in every recommendation or report on any
9 action involving significant expenditure of public moneys or use of public
10 land for projects and programs significantly affecting the quality of the
11 environment of this State, a detailed statement by the responsible official
12 setting forth the following:
- 13 a. The direct environmental impact of the proposed action;
 - 14 b. Any significant adverse environmental effects which cannot be
15 avoided should the proposal be implemented;
 - 16 c. Mitigation measures proposed to minimize the impact;
 - 17 d. Alternatives to the proposed action;
 - 18 e. The relationship between the short-term uses of the environment
19 involved in the proposed action and the maintenance and
20 enhancement of long-term productivity; and
 - 21 f. Any irreversible and irretrievable environmental changes which
22 would be involved in the proposed action should it be implemented.

23 For purposes of this subdivision, a direct environmental impact does not
24 include impacts that are speculative, secondary, or cumulative with other
25 previous actions or that occur outside of the State.

- 26 (2a) Prior to making any detailed statement, the responsible official shall consult
27 with and obtain the comments of any agency which has either jurisdiction by
28 law or special expertise with respect to any environmental impact involved.
29 The failure of an agency to provide comments within the comment period
30 established under this subdivision or to request an extension for a specific
31 period of time set forth in the request shall be treated by the responsible
32 official as a conclusion by that agency that there is no significant
33 environmental impact. Any unit of local government or other interested
34 party that may be adversely affected by the proposed action may submit



* H 7 9 5 - P C S 4 0 4 6 0 - S B - 1 3 *

1 written comment. The responsible official shall consider written comment
 2 from units of local government and interested parties that is received within
 3 the established comment period. Copies of such detailed statement and such
 4 comments shall be made available to the Governor, to such agency or
 5 agencies as he may designate, and to the appropriate multi-county regional
 6 agency as certified by the Secretary of Administration, shall be placed in the
 7 public file of the agency and shall accompany the proposal through the
 8 existing agency review processes. A copy of such detailed statement shall be
 9 made available to the public and to counties, municipalities, institutions and
 10 individuals, upon request.

11"

12 **SECTION 2.** G.S. 113A-9 reads as rewritten:

13 **"§ 113A-9. Definitions.**

14 As used in this Article, unless the context indicates otherwise, the term:

15 ...

16 (7) "Public land" means all land and interests therein, title of which is vested in
 17 the State of North Carolina, in any State agency, or in the State for the use of
 18 any State agency or political subdivision of the State, and includes all vacant
 19 and unappropriated land, swampland, submerged land, land acquired by the
 20 State by virtue of being sold for ~~taxes, escheated land, and acquired~~
 21 ~~land-taxes~~ or by any other manner of acquisition, or escheated land.

22 (7a) "Significant expenditure of public moneys" means expenditures of public
 23 funds greater than twenty million dollars (\$20,000,000) for a single project
 24 or action or related group of projects or actions. For purposes of this
 25 subdivision, contributions of funds or in-kind contributions by
 26 municipalities, counties, regional or special-purpose government agencies,
 27 and other similar entities created by an act of the General Assembly and
 28 in-kind contributions by a non-State entity shall not be considered an
 29 expenditure of public funds for purposes of calculating whether such an
 30 expenditure is significant.

31 ...

32 (11) "Use of public land" means land-disturbing activity of greater than 20 acres
 33 that results in substantial, permanent changes in the natural cover or
 34 topography of those lands that includes:

35 a. The grant of a lease, easement, or permit authorizing private use of
 36 public land; or

37 b. The use of privately owned land for any project or program if (i) the
 38 State or any agency of the State has agreed to purchase the property
 39 or to exchange the property for public ~~land-land~~ and (ii) the use
 40 meets the other requirements of this subdivision."

41 **SECTION 3.** G.S. 113A-10 reads as rewritten:

42 **"§ 113A-10. Provisions supplemental.**

43 The policies, obligations and provisions of this Article are supplementary to those set forth
 44 in existing authorizations of and statutory provisions applicable to State agencies and local
 45 governments. In those instances where a State agency is required to prepare an environmental
 46 document or to comment on an environmental document under provisions of federal law, no
 47 separate environmental document shall be required to be prepared or published under this
 48 Article so long as the environmental document or comment ~~shall meet-meets~~ the provisions of
 49 this Article."

50 **SECTION 4.** G.S. 113A-11 reads as rewritten:

51 **"§ 113A-11. Adoption of rules.**

1 (a) The Department of Administration shall adopt rules to implement this Article.

2 (b) Each State agency ~~may~~ shall adopt rules that establish minimum criteria. An agency
3 may include a particular action or class of actions in its minimum criteria only if the agency
4 makes a specific finding that the action or class of actions has no significant long-term impact
5 on the environment. Rules establishing minimum criteria shall be consistent with rules adopted
6 by the Department of Administration. ~~In addition to all other rule-making requirements, rules~~
7 ~~establishing minimum criteria are subject to approval by the Secretary of Administration."~~

8 **SECTION 5.** G.S. 113A-12 reads as rewritten:

9 **"§ 113A-12. Environmental document not required in certain cases.**

10 ~~No~~ Notwithstanding any other provision in this Article, no environmental document shall
11 be required in connection with:

12 (1) The construction, maintenance, or removal of an electric power line, water
13 line, sewage line, stormwater drainage line, telephone line, telegraph line,
14 cable television line, data transmission line, ~~or~~ natural gas line, ~~line~~, or
15 similar infrastructure project within or across the right-of-way of any street
16 or highway.

17 (2) An action approved ~~under a~~ under:

18 a. A general permit issued under G.S. 113A-118.1, 143-215.1(b)(3), or
19 143-215.108(c)(8).

20 b. A Coastal Habitat Protection Plan under G.S. 143B-279.8.

21 c. A special order pursuant to G.S. 143-215.2 or G.S. 143-215.110.

22 d. An action taken to address an emergency under G.S. 143-215.3 or
23 other similar emergency conditions.

24 e. A remedial or similar action to address contamination under Chapter
25 130A or 143 of the General Statutes, including a brownfield
26 agreement entered into under G.S. 130A-310.32.

27 f. A certificate of convenience and necessity under G.S. 62-110.

28 g. An industrial or pollution control project approval by the Secretary of
29 Commerce under Chapter 159C of the General Statutes.

30 h. A project approved as a water infrastructure project under Chapter
31 159G of the General Statutes.

32 i. A certification issued by the Division of Water Resources of the
33 Department of Environment and Natural Resources under the
34 authority granted to the Environmental Management Commission by
35 G.S. 143B-282(a)(1)u.

36 (3) A lease or easement granted by a State agency for:

37 a. The use of an existing building or facility.

38 b. Placement of a wastewater line or other structures or uses on or under
39 submerged lands pursuant to a permit granted under G.S. 143-215.1.

40 c. A shellfish cultivation lease granted under G.S. 113-202.

41 d. A facility for the use or benefit of The University of North Carolina
42 System, the North Carolina community college system, the North
43 Carolina public school systems, or one or more constituent
44 institutions of any of those systems.

45 e. A health care facility financed pursuant to Chapter 131A of the
46 General Statutes or receiving a certificate of need under Article 9 of
47 Chapter 131E of the General Statutes.

48 (4) The construction of a driveway connection to a public roadway.

49 (5) ~~A~~ Any State action in connection with a project for which public lands are
50 used and/or public monies are expended if the land or expenditure is solely
51 for the payment of incentives provided as an incentive for the project

1 pursuant to an agreement that makes the ~~incentive payments~~ incentives
 2 contingent on prior completion of the project or activity, or completion on a
 3 specified timetable, and a specified level of job creation or new capital
 4 investment.

5 (6) A major development as defined in G.S. 113A-118 that receives a permit
 6 issued under Article 7 of Chapter 113A of the General Statutes.

7 ...

8 (9) Facilities created in the course of facilitating closure activities under Part 21
 9 of Article 9 of Chapter 130A of the General Statutes.

10 (10) Any project or facility specifically required or authorized by an act of the
 11 General Assembly.

12 (11) Any project undertaken as mitigation for the impacts of an approved project
 13 or to mitigate or avoid harm from natural environmental change, including
 14 wetlands and buffer mitigation projects and banks, coastal protections and
 15 mitigation projects, and noise mitigation projects."

16 **SECTION 6.** G.S. 159G-38 reads as rewritten:

17 "**§ 159G-38. Environmental assessment and public hearing.**

18 (a) Establish Environmental Assessment Process; Required Information. – An
 19 application submitted under this Article for a loan or grant for a project must state whether the
 20 project requires an environmental assessment. If the application indicates that an environmental
 21 assessment is not required, it must identify the exclusion in the North Carolina Environmental
 22 Policy Act, Article 1 of Chapter 113A of the General Statutes, that applies to the project. If the
 23 application does not identify an exclusion in the North Carolina Environmental Policy Act, it
 24 must include an environmental assessment of the project's probable impacts on the
 25 environment.The Division shall establish an environmental assessment process for projects
 26 funded from the CWSRF and DWSRF programs that is sufficient to meet federal
 27 environmental assessment requirements for such projects. Projects funded by the CWSRF or
 28 DWSRF shall meet the requirements of the environmental assessment process established
 29 pursuant to this subsection.

30 (b) Division Review. – If, after reviewing an application, the Division of Water
 31 Infrastructure determines that a project requires an environmental assessment, the assessment
 32 must be submitted before the Division continues its review of the application. If, after
 33 reviewing an environmental assessment, the Division concludes that an environmental impact
 34 statement is required, the Division may not continue its review of the application until a final
 35 environmental impact statement has been completed and approved as provided in the North
 36 Carolina Environmental Policy Act.

37 (c) Hearing. – The Division of Water Infrastructure may hold a public hearing on an
 38 application for a loan or grant under this Article if it determines that holding a hearing will
 39 serve the public interest. An individual who is a resident of any county in which a proposed
 40 project is located may submit a written request for a public hearing. The request must set forth
 41 each objection to the proposed project or other reason for requesting a hearing and must include
 42 the name and address of the individual making the request. The Division may consider all
 43 written objections to the proposed project, any statement submitted with the hearing request,
 44 and any significant adverse effects the proposed project may have on the environment. The
 45 Division's decision on whether to hold a hearing is conclusive. The Division must keep all
 46 written requests for a hearing on an application as part of the records pertaining to the
 47 application."

48 **SECTION 7.** G.S. 143-215.22L(d) reads as rewritten:

49 "(d) Environmental Documents. – The Except as provided in this subsection, the
 50 definitions set out in G.S. 113A-9 apply to this section. The Notwithstanding the thresholds for
 51 significant expenditure of public monies or use of public land set forth in G.S. 113A-9, the

1 Department shall conduct a study of the environmental impacts of any proposed transfer of
2 water for which a certificate is required under this section. The study shall meet all of the
3 requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4.
4 Notwithstanding G.S. 113A-4(2), the study shall include secondary and cumulative impacts.

5 An environmental assessment shall be prepared for any petition for a certificate under this
6 section. The determination of whether an environmental impact statement shall also be required
7 shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General
8 Statutes; except that an environmental impact statement shall be prepared for every proposed
9 transfer of water from one major river basin to another for which a certificate is required under
10 this section. The applicant who petitions the Commission for a certificate under this section
11 shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the
12 General Statutes. An environmental impact statement prepared pursuant to this subsection shall
13 include all of the following:

- 14 (1) A comprehensive analysis of the impacts that would occur in the source river
15 basin and the receiving river basin if the petition for a certificate is granted.
- 16 (2) An evaluation of alternatives to the proposed interbasin transfer, including
17 water supply sources that do not require an interbasin transfer and use of
18 water conservation measures.
- 19 (3) A description of measures to mitigate any adverse impacts that may arise
20 from the proposed interbasin transfer."

21 **SECTION 8.** This act is effective when it becomes law and applies to State agency
22 action occurring on or after that date.