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SENATE BILL DRS15024-MH-14 (12/07)

Short Title: Streamline Dam Removal.

(Public)

Sponsors: Senators Wells, Gunn, and B. Jackson (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REMOVE SAFETY HAZARDS AND RESTORE NORTH CAROLINA'S  
NATURAL RIVERINE RESOURCES BY FACILITATING THE REMOVAL OF  
OBSOLETE AND UNWANTED DAMS.

The General Assembly of North Carolina enacts:

**EXEMPT CERTAIN DAM REMOVALS FROM PERMITTING REQUIREMENTS**

**SECTION 1.(a)** G.S. 143-215.25 reads as rewritten:

**"§ 143-215.25. Definitions.**

- (1) ~~"Dam" means a~~Dam. – A structure and appurtenant works erected to impound or divert water.
- (2) ~~"Minimum stream flow" or "minimum flow" means a~~Minimum stream flow or minimum flow. – A stream flow of a quantity and quality sufficient in the judgment of the Department to meet and maintain stream classifications and water quality standards established by the Department under G.S. 143-214.1 and applicable to the waters affected by the project under consideration, and to maintain aquatic habitat in the length of the stream that is affected.
- (3) Professionally supervised dam removal. – The removal of a dam that (i) is not operated primarily for flood control or hydroelectric power generation purposes and (ii) is designed and supervised by a qualified engineer.
- (4) Qualified engineer. – An engineer licensed as a professional engineer under Chapter 89C of the General Statutes."

**SECTION 1.(b)** G.S. 143-215.27 reads as rewritten:

**"§ 143-215.27. Repair, alteration, or removal of dam.**

(a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it may be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of original construction. This subsection shall not apply to a professionally supervised dam removal.

...



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1       (c) A professionally supervised dam removal is not subject to the procedures set forth in  
2 this section, provided that the person proposing to remove the dam complies with all of the  
3 following:

4       (1) A qualified engineer determines based on good engineering practices that the  
5 removal of the dam can be accomplished safely and the removal plan reflects (i)  
6 the geomorphology of the streambed upriver and downriver from the dam site  
7 and (ii) the most desirable longitudinal profile for the post-removal stream  
8 channel that will minimize physical impacts on riparian landowners.

9       (2) The person notifies the director of the Division of Energy, Mineral, and Land  
10 Resources of the Department of the proposed removal no less than 30 days  
11 prior to removal. The notice shall include information identifying the dam,  
12 including the stream and county where the dam is located, the dam's height and  
13 impoundment capacity, a map showing the dam location and vicinity, and a  
14 certification from the owner of the dam that the dam is currently not operated  
15 for the purposes of flood control or hydroelectric power generation. The  
16 notification and certification required by this subdivision may be provided  
17 electronically.

18       (3) The person notifies the North Carolina Floodplain Mapping Program of the  
19 Department of Public Safety and all impacted local governments of the dam  
20 removal. The notice shall include a qualified engineer's determination of (i) the  
21 removal plan for the dam based on the criteria set forth in subdivision (1) of this  
22 subsection and (ii) that the removal will lower or maintain water levels above  
23 the location of the dam and will not cause an increase in the risk of flood  
24 damage. For purposes of the notice required by this subdivision, an "impacted  
25 local government" shall mean any unit of local government that could  
26 experience changes to its base floodplain (as defined in G.S. 143-215.54) as a  
27 result of the dam removal."

28       **SECTION 1.(c)** G.S. 143-215.28A reads as rewritten:

29       **"§ 143-215.28A. Application fees.**

30       (a) In accordance with G.S. 143-215.3(a)(1a), the Commission may establish a fee  
31 schedule for processing (i) applications for approvals of construction or removal of dams issued  
32 under this ~~Part~~Part and (ii) notifications of professionally supervised dam removals under  
33 G.S. 143-215.27(c). In establishing the fee schedule, the Commission shall consider the  
34 administrative and personnel costs incurred by the Department for processing the applications and  
35 notifications and for related compliance activities. The total amount of fees collected in any fiscal  
36 year may not exceed one-third of the total personnel and administrative costs incurred by the  
37 Department for processing the applications and for related compliance activities in the prior fiscal  
38 year. An approval fee may not exceed the larger of two hundred dollars (\$200.00) or two percent  
39 (2%) of the actual cost of construction or removal of the applicable dam. A fee for notification of  
40 professionally supervised dam removals under G.S. 143-215.27(c) may not exceed the lesser of  
41 one half percent (0.5%) of the actual cost of removal or five hundred dollars (\$500.00). The  
42 provisions of G.S. 143-215.3(a)(1b) do not apply to these fees.

43       ...."

44       **SECTION 1.(d)** G.S. 143-215.30 reads as rewritten:

45       **"§ 143-215.30. Notice of completion; certification of final approval; notice of transfer.**

46       (a) ~~Immediately~~Except as set forth in subsection (d1) of this section, immediately upon  
47 completion, enlargement, repair, alteration or removal of a dam, notice of completion shall be  
48 given the Commission. As soon as possible thereafter supplementary drawings or descriptive  
49 matter showing or describing the dam as actually constructed shall be filed with the Department in  
50 such detail as the Commission may require.

51       ...

1        (d1) The requirements of this section shall not apply to a professionally supervised dam  
2 removal under G.S. 143-215.27(c) if the person removing the dam provides confirmation of  
3 completion of dam removal to the Department within 10 days of completion of the removal.

4        (e) The owner of a dam shall provide written notice of transfer to the Department within  
5 30 days after title to the dam has been legally transferred. The notice of transfer shall include the  
6 name and address of the new dam owner."

7        **SECTION 1.(e)** G.S. 143-215.56 is amended by adding a new subsection to read:

8        "**§ 143-215.56. Delineation of flood hazard areas and 100-year floodplains; powers of**  
9 **Department; powers of local governments and of the Department.**

10        ...

11        (d) The Department may prepare a floodplain map that identifies the 100-year floodplain  
12 and base flood elevations for an area for the purposes of this Part if all of the following conditions  
13 apply:

14            (1) The 100-year floodplain and base flood elevations for the area are not identified  
15 on a floodplain map prepared pursuant to the National Flood Insurance Program  
16 within the previous five years.

17            (2) The Department determines that the 100-year floodplain and the base flood  
18 elevations for the area need to be identified and the use of the area regulated in  
19 accordance with the requirements of this Part in order to prevent damage from  
20 flooding.

21            (3) The Department prepares the floodplain map in accordance with the federal  
22 standards required for maps to be accepted for use in administering the National  
23 Flood Insurance Program.

24        (e) Prior to preparing a floodplain map pursuant to subsection (d) of this section, the  
25 Department shall advise each local government whose jurisdiction includes a portion of the area to  
26 be mapped.

27        (f) Upon completing a floodplain map pursuant to subsection (d) of this section, the  
28 Department shall both:

29            (1) Provide copies of the floodplain map to every local government whose  
30 jurisdiction includes a portion of the 100-year floodplain identified on the  
31 floodplain map.

32            (2) Submit the floodplain map to the Federal Emergency Management Agency for  
33 approval for use in administering the National Flood Insurance Program.

34        (g) Upon approval of a floodplain map prepared pursuant to subsection (d) of this section  
35 by the Federal Emergency Management Agency for use in administering the National Flood  
36 Insurance Program, it shall be the responsibility of each local government whose jurisdiction  
37 includes a portion of the 100-year floodplain identified in the floodplain map to incorporate the  
38 revised map into its floodplain ordinance.

39        (h) To the extent permitted by National Flood Insurance Program requirements, a  
40 professionally supervised dam removal, as defined in G.S. 143-215.25, that complies with the  
41 requirements of G.S. 143-215.27(c) shall not be required to submit a Letter of Map Revision to the  
42 Department."

#### 43 44 **PRIVATE DUTY TO INSPECT**

45        **SECTION 2.(a)** G.S. 143-215.32(a) and G.S. 143-215.32(a1) are recodified as  
46 G.S. 143-215.32(a1) and G.S. 143-215.32(a2).

47        **SECTION 2.(b)** G.S. 143-215.32, as recodified by subsection (a) of this section, reads  
48 as rewritten:

49        "**§ 143-215.32. Inspection of dams.**

50        (a) The owner of any dam regulated under this Part, and the owner's heirs, successors, or  
51 assigns shall be responsible for regularly inspecting the dam to insure its safety and proper

1 operation and maintenance. The inspection shall be performed by an engineer licensed as a  
 2 professional engineer under Chapter 89C of the General Statutes, and a report shall be submitted  
 3 to the Department within 30 days of the inspection. The Department shall specify by rule the  
 4 inspection frequency, protocol, and reporting format.

5 (a1) ~~The Nothing in this section is intended to limit the power of the Department may~~ at any  
 6 time to inspect any dam, including a dam that is otherwise exempt from this Part, upon receipt of a  
 7 written request of any affected person or agency, or upon a motion of the Environmental  
 8 Management Commission. ~~Within the limits of available funds the Department shall endeavor to~~  
 9 ~~provide for inspection of all dams at intervals of approximately five years.~~

10 ...

11 (b) If the Department upon inspection or upon receipt of a report required by this section  
 12 finds that any dam is not sufficiently strong, is not maintained in good repair or operating  
 13 condition, is dangerous to life or property, or does not satisfy minimum streamflow requirements,  
 14 the Department shall present its findings to the Commission and the Commission may issue an  
 15 order directing the owner or owners of the dam to make at his or her expense maintenance,  
 16 alterations, repairs, reconstruction, change in construction or location, or removal as may be  
 17 deemed necessary by the Commission within a time limited by the order, not less than 90 days  
 18 from the date of issuance of each order, except in the case of extreme danger to the safety of life or  
 19 property, as provided by subsection (c) of this section.

20 ...."

## 21 STREAMLINE ENVIRONMENTAL PERMITTING OF DAM REMOVAL

22 SECTION 3.(a) G.S. 143-214.7C reads as rewritten:

23 "§ 143-214.7C. ~~Prohibit the requirement of mitigation for impacts to intermittent~~  
 24 ~~streams.~~ Prohibit the requirement of mitigation for impacts to intermittent  
 25 streams. certain impacts.

26 Except as required by federal law, the Department of Environmental Quality shall not require  
 27 mitigation for ~~impacts~~ any of the following:

28 (1) Impacts to an intermittent stream. For purposes of this section, "intermittent  
 29 stream" means a well-defined channel that has all of the following  
 30 characteristics:

31 (1)a. It contains water for only part of the year, typically during winter and  
 32 spring when the aquatic bed is below the water table.

33 (2)b. The flow of water in the intermittent stream may be heavily  
 34 supplemented by stormwater runoff.

35 (3)c. It often lacks the biological and hydrological characteristics commonly  
 36 associated with the conveyance of water.

37 (2) Impacts associated with the removal of a dam, when the removal complies with  
 38 the requirements of Part 3 of this Article."

39 SECTION 3.(b) The Division of Water Resources of the Department of  
 40 Environmental Quality shall develop a water quality general certification under section 401 of the  
 41 Clean Water Act for short term sediment releases associated with the construction phase of a dam  
 42 removal when all of the following occur:

43 (1) The removal meets the definition and requirements of a professionally  
 44 supervised dam removal under G.S. 143-215.27, as amended by Section 1 of  
 45 this act.

46 (2) The applicant for the water quality general certification demonstrates that the  
 47 sediment to be released has similar or lower level of contamination than  
 48 sediment sampled from downstream of the dam.

1 **DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO AMEND THE**  
2 **DAM HEIGHT RULE TO MEASURE HEIGHT FROM THE LOWEST POINT ON THE**  
3 **CREST OF THE DAM**

4 **SECTION 4.(a)** Definitions. – "Dam Height Rule" means 15A NCAC 2K .0223 (Dam  
5 Height and Storage Determination) for purposes of this section and its implementation.

6 **SECTION 4.(b)** Dam Height Rule. – Until the effective date of the revised permanent  
7 rule that the Environmental Management Commission is required to adopt pursuant to subsection  
8 (d) of this section, the Commission and the Department of Environmental Quality shall implement  
9 the Sediment Criteria Rule, as provided in subsection (c) of this section.

10 **SECTION 4.(c)** Implementation. – The Commission shall measure the height of a  
11 dam for purposes of dam size classification from the lowest point on the crest of the dam to the  
12 lowest point on the downstream toe.

13 **SECTION 4.(d)** Additional Rule-Making Authority. – The Commission shall adopt a  
14 rule to amend the Dam Height Rule consistent with subsection (c) of this section. Notwithstanding  
15 G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be  
16 substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to  
17 this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules  
18 adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as  
19 though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

20 **SECTION 4.(e)** Sunset. – This section expires when permanent rules adopted as  
21 required by subsection (d) of this section become effective.

22  
23 **CLEAN WATER MANAGEMENT TRUST FUND ELIGIBILITY FOR CERTAIN DAM**  
24 **REMOVALS**

25 **SECTION 5.** G.S. 143B-135.234(c) reads as rewritten:

26 "(c) Fund Purposes. – Moneys from the Fund are appropriated annually to finance projects  
27 to clean up or prevent surface water pollution and for land preservation in accordance with this  
28 Part. Revenue in the Fund may be used for any of the following purposes:

- 29 (1) To acquire land for riparian buffers for the purposes of providing environmental  
30 protection for surface waters and urban drinking water supplies and establishing  
31 a network of riparian greenways for environmental, educational, and  
32 recreational uses.
- 33 (2) To acquire conservation easements or other interests in real property for the  
34 purpose of protecting and conserving surface waters and enhancing drinking  
35 water supplies, including the development of water supply reservoirs.
- 36 (3) To coordinate with other public programs involved with lands adjoining water  
37 bodies to gain the most public benefit while protecting and improving water  
38 quality.
- 39 (4) To restore previously degraded lands to reestablish their ability to protect water  
40 quality.
- 41 (4a) To remove obsolete and unwanted dams, where the removal will enhance or  
42 restore ecological functions or improve water quality.

43 ...."

44  
45 **STUDY FURTHER STREAMLINING OF DAM REMOVAL**

46 **SECTION 6.** The Department of Environmental Quality shall study the dam removal  
47 process in North Carolina and recommend further changes in statutes or rules to reduce regulatory  
48 barriers to the removal of obsolete and unwanted dams and consolidate duplicative permit  
49 processes. As part of its study, the Department shall review the dam removal permitting process in  
50 New Hampshire, Massachusetts, and Pennsylvania and other states as the Department finds

1 relevant. The Department shall submit its report to the Environmental Review Commission no  
2 later than March 1, 2018.

3

4 **EFFECTIVE DATE**

5 **SECTION 7.** Section 6 of this act is effective when it becomes law. The remainder of  
6 this act becomes effective July 1, 2017.