

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

S

D

SENATE BILL 107

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/20/17  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S107-PCS45464-SB-30

Short Title: Streamline Dam Removal.

(Public)

Sponsors:

Referred to:

February 20, 2017

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.
- (1a) Mill dam. – A dam built across a stream to raise the level of water for the purpose of providing water to a mill for the operation of the mill.
- (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 voluntary removal of a low or intermediate hazard mill dam or run-of-river dam that (i) is not operated primarily for flood control or hydroelectric power generation purposes and (ii) the removal of which 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.
- (5) Run-of-river dam. – A riverine or stream dam that is designed or operated to release water at approximately the same rate as the natural flow of the river or stream."

**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



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

1 requirements. The application shall give such other information concerning the dam and  
2 reservoir required by the Department, such information concerning the safety of any change as  
3 it may require, and shall state the proposed time of commencement and completion of the  
4 work. When an application has been completed it may be referred by the Department for  
5 agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of  
6 original construction. This subsection shall not apply to a professionally supervised dam  
7 removal.

8 ...  
9 (c) A professionally supervised dam removal is not subject to the procedures set forth  
10 in subsection (a) of this section, provided that the dam removal complies with all of the  
11 following:

- 12 (1) A qualified engineer determines, based on good engineering practices, that  
13 the removal of the dam can be accomplished safely, certifies that the dam is  
14 a low or intermediate hazard dam, and the removal plan reflects (i) the  
15 geomorphology of the streambed upriver and downriver from the dam site  
16 and (ii) the most desirable longitudinal profile for the post-removal stream  
17 channel that will minimize physical impacts on riparian landowners.
- 18 (2) The person who proposes to remove the dam notifies the director of the  
19 Division of Energy, Mineral, and Land Resources of the Department of the  
20 proposed removal no less than 60 days prior to removal. The notice shall  
21 include information identifying the dam, including the stream and county  
22 where the dam is located, the dam's height and impoundment capacity, a  
23 map showing the dam location and vicinity, the qualified engineer's name  
24 and North Carolina license number, and a notarized certification from the  
25 owner of the dam that the dam is a low or intermediate hazard dam not  
26 currently operated for the purposes of flood control or hydroelectric power  
27 generation. The notification and certification required by this subdivision  
28 may be provided electronically.
- 29 (3) The person who proposes to remove the dam notifies the North Carolina  
30 Floodplain Mapping Program of the Department of Public Safety, the North  
31 Carolina Department of Transportation, adjacent property owners of the dam  
32 and reservoir, and all impacted local governments of the proposed removal  
33 no less than 60 days prior to removal. The notice shall include a qualified  
34 engineer's determination that (i) the removal plan for the dam is based on the  
35 criteria set forth in subdivision (1) of this subsection and (ii) the removal  
36 will lower or maintain water levels above the location of the dam and will  
37 not cause an increase in the risk of flood damage or impacts to downstream  
38 bridges or road crossings. For purposes of the notice required by this  
39 subdivision, an "impacted local government" shall mean any unit of local  
40 government that could experience changes to its base floodplain, as defined  
41 in G.S. 143-215.52, as a result of the dam removal."

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

43 **"§ 143-215.28A. Application fees.**

44 (a) In accordance with G.S. 143-215.3(a)(1a), the Commission may establish a fee  
45 schedule for processing applications for approvals of construction or removal of dams issued  
46 under this Part. In establishing the fee schedule, the Commission shall consider the  
47 administrative and personnel costs incurred by the Department for processing the applications  
48 and for related compliance activities. The total amount of fees collected in any fiscal year may  
49 not exceed one-third of the total personnel and administrative costs incurred by the Department  
50 for processing the applications and for related compliance activities in the prior fiscal year. An  
51 approval fee may not exceed the larger of two hundred dollars (\$200.00) or two percent (2%)

1 of the actual cost of construction or removal of the applicable dam. The fee for notification of a  
2 professionally supervised dam removal under G.S. 143-215.27(c)(1) shall be five hundred  
3 dollars (\$500.00) and shall be paid to the Department. The provisions of G.S. 143-215.3(a)(1b)  
4 do not apply to these fees.

5 ...."

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

7 "**§ 143-215.30. Notice of completion; certification of final approval; notice of transfer.**

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

13 ...

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

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

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

21 "**§ 143-215.56. Delineation of flood hazard areas and 100-year floodplains; powers of**  
22 **Department; powers of local governments and of the Department.**

23 ...

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

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

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

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

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

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

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

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

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

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

## 6 **STREAMLINE ENVIRONMENTAL PERMITTING OF DAM REMOVAL**

7        **SECTION 2.(a)** G.S. 143-214.7C reads as rewritten:

8        "**§ 143-214.7C. Prohibit the requirement of mitigation for ~~impacts to intermittent~~**  
9 **~~streams; certain impacts; establish threshold for mitigation of impacts to~~**  
10 **~~streams.~~**

11        (a) Except as required by federal law, the Department of Environmental Quality shall  
12 not require mitigation for ~~impacts~~ any of the following:

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

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

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

20        ~~(3)~~c. It often lacks the biological and hydrological characteristics  
21 commonly associated with the conveyance of water.

22        (2) Impacts associated with the removal of a dam when the removal complies  
23 with the requirements of Part 3 of this Article.

24        (b) Except as required by federal law, the Department of Environmental Quality shall  
25 not require mitigation for losses of 300 linear feet or less of stream bed."

26        **SECTION 2.(b)** The Division of Water Resources of the Department of  
27 Environmental Quality shall develop a water quality general certification under section 401 of  
28 the Clean Water Act for short-term sediment releases associated with the construction phase of  
29 a dam removal when all of the following occur:

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

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

## 37 **STUDY FURTHER STREAMLINING OF DAM REMOVAL**

38        **SECTION 3.** The Department of Environmental Quality and the Department of  
39 Public Safety shall jointly study the dam removal process in North Carolina and recommend  
40 further changes in statutes or rules to reduce regulatory barriers to the removal of obsolete and  
41 unwanted dams and consolidate duplicative permit processes. As part of its study, the  
42 Departments shall review the dam removal permitting processes in New Hampshire,  
43 Massachusetts, and Pennsylvania and other states as the Department finds relevant. The  
44 Departments shall jointly submit its report to the Environmental Review Commission no later  
45 than March 1, 2020.

## 47 **EFFECTIVE DATE**

48        **SECTION 4.** Section 3 of this act is effective when it becomes law. The remainder  
49 of this act becomes effective July 1, 2017.