

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 579
PROPOSED COMMITTEE SUBSTITUTE H579-PCS10476-RIF-17

Short Title: Sedimentation Act & Other Env'l. Changes. (Public)

Sponsors:

Referred to:

April 6, 2023

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A BILL TO BE ENTITLED
AN ACT TO AMEND SEDIMENTATION CONTROL PERMITTING REQUIREMENTS
AND TO ESTABLISH OTHER REQUIREMENTS FOR DEQ TO FACILITATE THE
EFFICIENT AND EFFECTIVE ADMINISTRATION OF ENVIRONMENTAL
PROGRAMS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

STREAMLINE PERMITTING FOR LAND-DISTURBING ACTIVITIES

SECTION 1.(a) G.S. 113A-57 reads as rewritten:

"§ 113A-57. Mandatory standards for land-disturbing activity.

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

- (1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
- (2) The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion.
- (3) Whenever land-disturbing activity that will disturb more than one acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are



1 sufficient to retain the sediment generated by the land-disturbing activity
2 within the boundaries of the tract during construction upon and development
3 of the tract, and shall plant or otherwise provide a permanent ground cover
4 sufficient to restrain erosion after completion of construction or development
5 within a time period to be specified by rule of the Commission. Requirements
6 for ground cover necessary to terminate coverage under an erosion and
7 sedimentation control plan, whether those requirements are established by
8 State law or a local government that administers a delegated erosion and
9 sedimentation control program, shall not exceed the requirements for final
10 vegetative or non-vegetative stabilization set forth in Part 2.2.14c. of the
11 National Pollutant Discharge Elimination System (NPDES) Construction
12 General Permit (CGP) for Stormwater Discharges from Construction
13 Activities issued by the United States Environmental Protection Agency as
14 noticed at 87 Federal Register 3522.

15 (4) No person shall initiate any land-disturbing activity that will disturb more than
16 one acre on a tract unless, 30 or more days prior to initiating the activity, an
17 erosion and sedimentation control plan for the activity is filed with the agency
18 having jurisdiction and approved by the agency. An erosion and sedimentation
19 control plan may be filed less than 30 days prior to initiation of a
20 land-disturbing activity if the plan is submitted under an approved express
21 permit program, and the land-disturbing activity may be initiated and
22 conducted in accordance with the plan once the plan has been approved. The
23 agency having jurisdiction shall forward to the Director of the Division of
24 Water Resources a copy of each erosion and sedimentation control plan for a
25 land-disturbing activity that involves the utilization of ditches for the purpose
26 of de-watering or lowering the water table of the tract.

27 (5) The land-disturbing activity shall be conducted in accordance with the
28 approved erosion and sedimentation control plan.

29 (6) For persons initiating land-disturbing activity that are required to obtain
30 coverage under NPDES General Permit No. NCG01000 (NCG01), the
31 requirements of subdivision (4) of this section shall be satisfied through
32 application for and receipt of the NCG01. To avoid duplication of effort on
33 the part of persons initiating such activity, unnecessary delays in project
34 development, and inefficient use of Department personnel as a result of
35 redundant review of such information, no additional or different requirements
36 shall be imposed for the submission or approval of an erosion and
37 sedimentation control plan beyond that required for the NCG01 permit,
38 whether such permit is issued by the Department or by a local government
39 pursuant to G.S. 113A-60(a3)."

40 **SECTION 1.(b)** G.S. 113A-60 reads as rewritten:

41 "**§ 113A-60. Local erosion and sedimentation control programs.**

42 (a) A local government may submit to the Commission for its approval an erosion and
43 sedimentation control program for its jurisdiction and may adopt ordinances and regulations
44 necessary to establish and enforce erosion and sedimentation control programs. An ordinance
45 adopted by a local government may establish a fee for the review of an erosion and sedimentation
46 control plan and related activities. The fee shall be calculated on the basis of either the number
47 of acres disturbed or in the case of a single-family lot in a residential development or common
48 plan of development that is less than one acre set at no more than one hundred dollars (\$100.00)
49 per lot developed. Local governments are authorized to create or designate agencies or
50 subdivisions of local government to administer and enforce the programs. Except as otherwise

1 provided in this Article, an ordinance adopted by a local government shall at least meet and may
2 exceed the minimum requirements of this Article and the rules adopted pursuant to this Article.

3 (a1) Two or more units of local government are authorized to establish a joint program
4 and to enter into any agreements that are necessary for the proper administration and enforcement
5 of the program. The resolutions establishing any joint program must be duly recorded in the
6 minutes of the governing body of each unit of local government participating in the program, and
7 a certified copy of each resolution must be filed with the Commission.

8 (a2) The requirements of an approved local sedimentation control program established
9 pursuant to subsection (a) or (a1) of this section shall meet, but not exceed, the requirements for
10 stormwater discharges from construction activities set forth under the 2022 Clean Water Act
11 National Pollution Discharge Elimination System (NPDES) general permit for stormwater
12 discharges from construction activities (Construction Permit), 87 Federal Register 3522.

13 (a3) An approved local program shall be required to issue an NPDES General Permit No.
14 NCG01000 (NCG01) to persons initiating land-disturbing activity in their jurisdictions that are
15 required to obtain coverage under the NCG01, in lieu of a land disturbance permit or other permit
16 or certification, issued for purposes of compliance with this Article and rules adopted thereunder.
17 A local program may charge a fee of no more than two hundred dollars (\$200.00) for issuance of
18 an NCG01, and no other fee may be charged under this section. Fifty percent (50%) of such fees
19 charged by a local program shall be retained by the local program and fifty percent (50%) shall
20 be remitted to the Department.

21 (b) The Commission shall review each program submitted and within 90 days of receipt
22 thereof shall notify the local government submitting the program that it has been approved,
23 approved with modifications, or disapproved. The Commission shall only approve a program
24 upon determining that its standards equal ~~or exceed~~ those of this Article and rules adopted
25 pursuant to this Article.

26"

27 **SECTION 1.(c)** G.S. 113A-54 reads as rewritten:

28 "**§ 113A-54. Powers and duties of the Commission.**

29 (a) The Commission shall, in cooperation with the Secretary of Transportation and other
30 appropriate State and federal agencies, develop, promulgate, publicize, and administer a
31 comprehensive State erosion and sedimentation control program.

32 (b) The Commission shall develop and adopt and shall revise as necessary from time to
33 time, rules and regulations for the control of erosion and sedimentation resulting from
34 land-disturbing activities. The Commission shall adopt or revise its rules and regulations in
35 accordance with Chapter 150B of the General Statutes.

36 (c) The rules and regulations adopted pursuant to G.S. 113A-54(b) for carrying out the
37 erosion and sedimentation control program ~~shall~~ shall include all of the following:

38 (1) Be based upon relevant physical and developmental information concerning
39 the watershed and drainage basins of the State, including, but not limited to,
40 data relating to land use, soils, hydrology, geology, grading, ground cover,
41 size of land area being disturbed, proximate water bodies and their
42 characteristics, transportation, and public facilities and ~~services;~~ services.

43 (2) Include such survey of lands and waters as may be deemed appropriate by the
44 Commission or required by any applicable laws to identify those areas,
45 including multijurisdictional and watershed areas, with critical erosion and
46 sedimentation ~~problems; and~~ problems.

47 (3) Contain conservation standards for various types of soils and land uses, which
48 standards shall include criteria and alternative techniques and methods for the
49 control of erosion and sedimentation resulting from land-disturbing activities.

50 (4) Standards, policies, and procedures for permitting of grading to be adopted by
51 any local government operating an approved erosion and sedimentation

1 control program within its jurisdiction. A separate permit shall not be required
2 for grading, however, where the grading is to be conducted as part of
3 land-disturbing activity that is required to obtain coverage under NPDES
4 General Permit No. NCG01000 (NCG01) or have an approved erosion and
5 sedimentation control plan pursuant to the requirements of this Article. Where
6 a grading permit is required as part of land-disturbing activity that is not
7 required to obtain coverage under the NCG01 or have an approved erosion
8 and sedimentation control plan pursuant to the requirements of this Article, no
9 fee shall be charged in association with the grading permit.

10 (d) In implementing the erosion and sedimentation control program, the Commission
11 shall:

- 12 (1) Assist and encourage local governments in developing erosion and
13 sedimentation control programs and, as a part of this assistance, the
14 Commission shall develop a model local erosion and sedimentation control
15 ordinance. The Commission shall approve, approve as modified, or
16 disapprove local programs submitted to it pursuant to G.S. 113A-60.
- 17 (2) Assist and encourage other State agencies in developing erosion and
18 sedimentation control programs to be administered in their jurisdictions. The
19 Commission shall approve, approve as modified, or disapprove programs
20 submitted pursuant to G.S. 113A-56 and from time to time shall review these
21 programs for compliance with rules adopted by the Commission and for
22 adequate enforcement.
- 23 (3) Develop recommended methods of control of sedimentation and prepare and
24 make available for distribution publications and other materials dealing with
25 sedimentation control techniques appropriate for use by persons engaged in
26 land-disturbing activities, general educational materials on erosion and
27 sedimentation control, and instructional materials for persons involved in the
28 enforcement of this Article and erosion and sedimentation control rules,
29 ordinances, regulations, and plans.
- 30 (4) Require submission of erosion and sedimentation control plans by those
31 responsible for initiating land-disturbing activities for approval prior to
32 commencement of the activities.

33 (e) To assist it in developing the erosion and sedimentation control program required by
34 this Article, the Commission is authorized to appoint an advisory committee consisting of
35 technical experts in the fields of water resources, soil science, engineering, and landscape
36 architecture.

37 (f) Repealed by Session Laws 1987, c. 827, s. 10, effective August 13, 1987.

38 (g) The Commission is authorized to make the final decision on a request for the
39 remission of a civil penalty under G.S. 113A-64.2."

40 **SECTION 1.(d)** No later than September 1, 2023, the Department of Environmental
41 Quality shall prepare and submit to the United States Environmental Protection Agency for
42 approval by that agency proposed changes to the State's Sedimentation Pollution Control Act of
43 1973 (Act), and its implementation of NPDES General Permit NCG010000 (NCG01 permit), to
44 (i) eliminate the requirement under the Act that a person submit a draft erosion and sedimentation
45 control plan for the Department's approval, for persons otherwise required to obtain an NCG01
46 permit, (ii) authorize local governments, which have delegated authority from the Commission
47 to administer an erosion and sedimentation control program within their jurisdiction, to issue
48 NCG01 permits, and (iii) limit local governments administering approved erosion and
49 sedimentation control programs within their jurisdiction to implementation and enforcement of
50 requirements for land-disturbing activities that meet, but do not exceed, requirements for
51 stormwater discharges from construction activities as established by 40 C.F.R. § 122.26 and

1 under the most recent Clean Water Act National Pollution Discharge Elimination System
2 (NPDES) general permit for stormwater discharges from construction activities (Construction
3 Permit) issued by the United States Environmental Protection Agency.

4 **SECTION 1.(e)** Subsections (a), (b), and (c) of this section become effective on the
5 later of the following dates and apply to permits to conduct land-disturbing activity submitted on
6 or after that date:

7 (1) July 1, 2024.

8 (2) The first day of a month that is 60 days after the Secretary of the Department
9 of Environmental Quality certifies to the Revisor of Statutes that the United
10 States Environmental Protection Agency has approved an amendment to the
11 Sedimentation Pollution Control Act as required by subsection (d) of this
12 section. The Secretary shall provide this notice along with the effective date
13 of this act on its website.

14 **SECTION 1.(f)** The Department of Environmental Quality shall report to the
15 Environmental Review Commission on the status of their activities pursuant to subsection (d) of
16 this section quarterly, beginning October 1, 2023, until such time as the General Assembly
17 repeals this reporting requirement.

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19 **DEQ TO REQUEST THAT USEPA CONSULT DEQ ON PROPOSED CHANGES TO**
20 **ALL APPLICABLE FEDERAL REGULATIONS PRIOR TO NOTICE OF SAME IN**
21 **THE FEDERAL REGISTER**

22 **SECTION 2.** No later than July 1, 2023, the Department of Environmental Quality
23 shall request that the United States Environmental Protection Agency (USEPA) consult with the
24 Department on any proposed changes to federal regulations that would impact the State's
25 administration of federal environmental programs in North Carolina, prior to the USEPA's notice
26 of such proposed changes in the Federal Register, so that the State may have opportunity for
27 meaningful collaborative input on development of regulations that it may be charged with
28 administering. The Department shall report to the Environmental Review Commission on the
29 status of their activities pursuant to this section quarterly, beginning August 1, 2023, until such
30 time as the General Assembly repeals this reporting requirement.

31
32 **DEQ TO PROVIDE COPIES OF AGREEMENTS WITH USEPA, AND ASSOCIATED**
33 **FUNDING INFORMATION**

34 **SECTION 3.** No later than July 1, 2023, the Department of Environmental Quality
35 shall submit copies of any agreements executed between the Department and the United States
36 Environmental Protection Agency that govern the State's administration of programs under the
37 Clean Water Act to the House Local Government – Land Use, Planning and Development
38 Committee. In addition, the Department shall provide information to the Committee on:

39 (1) Any federal funds received by the State in connection with the State's
40 administration of such programs, and all federal requirements for receipt of
41 such funds; and

42 (2) The adequacy of funding from all sources to fully implement the requirements
43 of such agreements.

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45 **SEVERABILITY CLAUSE**

46 **SECTION 4.** If any section or provision of this act is declared unconstitutional or
47 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
48 the part declared to be unconstitutional or invalid.

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50 **EFFECTIVE DATE**

1 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
2 law.