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SENATE BILL DRS15260-TQ-17

Short Title: Upland Basin Permitting Reform. (Public)

Sponsors: Senators Hanig and Sanderson (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO REFORM PERMITTING RELATED TO UPLAND BASINS.
The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 113A of the General Statutes is amended by adding a new Part to read:

"Part 5A. Upland Basins.

"§ 113A-129.10. Legislative findings; broad construction.

(a) The General Assembly finds that development of properly sited and planned upland basins to accommodate vessels is preferable to open-water marinas for a number of reasons, including all of the following:

- (1) Increasing riparian property owner access to the State's public trust waters.
- (2) Expanding the total area of the State's public trust waters.
- (3) Reducing and confining potential storm debris.
- (4) Reducing the need for additional onshore impervious surfaces associated with parking.
- (5) Promoting the use of innovative technologies.
- (6) Promoting the collection of site-specific data designed to assure compliance with applicable water quality standards.
- (7) Maintaining or improving overall water quality when sited, designed, constructed, and operated in conformance with the provisions of this Part.

(b) Accordingly, it is the intent of the General Assembly that this Part be broadly construed to further the general purposes stated in this Part.

"§ 113A-129.11. Definitions.

As used in this Part, the following definitions apply:

- (1) AEC or Area of Environmental Concern. – An area designated by the Coastal Resources Commission pursuant to G.S. 113A-113.
- (2) Boat slip. – Any structure adjoining, attached to, or part of a pier which has the capacity to store one boat.
- (3) Upland basin. – A marina constructed by excavating or dredging lands of elevations above the current mean or ordinary high-water mark and designed to accommodate more than ten vessels or boat slips. Upland basins shall be considered a water dependent use for purposes of general use standards adopted by the Coastal Resources Commission.

"§ 113A-129.12. Upland basin permitting and development.

(a) Unless the Director of the Division of Water Resources makes a finding, based on site-specific technical information, that the applicant cannot substantially comply with one or



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more of the criteria listed in subsection (b) of this section, the Division of Water Resources and the Division of Coastal Management shall approve an application for the development of an upland basin project, within 60 days after the applicant submits a completed application or supplemental information requested by the Department to demonstrate substantial compliance with all of the criteria set forth in subsection (b) of this section. The Department may make one written request for any supplemental information necessary to make its finding within 30 days after the applicant submits a complete application, and the permit may be conditioned upon measures that are materially necessary to ensure that the applicant complies with all the criteria set forth in subsection (b) of this section. When the Department requests supplemental information, the 60-day review period restarts upon receipt of the supplemental information requested by the Department. If the Department fails to act on an application for the development of an upland basin project within the 60-day review period, the application shall be deemed approved.

(b) The criteria with which an upland basin shall comply to qualify for permitting pursuant to subsection (a) of this section are all of the following:

- (1) The upland basin is designed to accommodate ten or more vessels, including individual homeowner boat slips, boat lifts, or dry stack storage.
- (2) The waters contained in the upland basin have a dissolved oxygen content equal to or greater than the dissolved oxygen content of the water located 50 feet plus or minus 5 feet from the entrance to the upland basin before development. As part of the application, an applicant shall provide to the Division of Water Resources and the Division of Coastal Management site-specific sampling data documenting pre-project dissolved oxygen levels of the water located 50 feet plus or minus 5 feet from each proposed entrance to the proposed upland basin. Waters located within the upland basin shall be classified the same as the waters in the immediate vicinity of any entrance to the upland basin.
- (3) The project has a bond or set-aside funds for the long-term operation and maintenance of any technology required to meet or exceed then-applicable water quality standards. The applicant shall provide an estimate of annual operation and maintenance costs and the bond or set aside funds shall be equal to five years of the estimated annual operation and maintenance costs.
- (4) Construction of the upland basin impacts or removes a total area of coastal wetlands that is no more than five percent (5%) of the total area of the proposed upland basin waters.
- (5) Construction of the upland basin impacts or removes a total linear footage of coastal wetlands fringe that is no more than ten percent (10%) of the total linear footage of existing coastal wetlands along the shoreline of the property or properties of the permit applicant.
- (6) The proposed upland basin project complies with specific use standards adopted by the Coastal Resources Commission for navigation channels, canals and boat basins. An upland basin project shall not be considered a "finger canal" or "finger canal system" if the project does not contain right angle corners.
- (7) The upland basin has a 30-foot vegetated buffer or buffers along the post-project shoreline, excluding any newly created inside shorelines, if required by the Department.
- (8) The proposed upland basin project complies with specific use standards adopted by the Coastal Resources Commission for marinas, with the following exceptions:

- 1 a. An upland basin may be sited within an area where shellfish harvesting
2 for human consumption is a significant existing use or adjacent to such
3 areas.
- 4 b. Upland basin design is not required to comply with applicable
5 Environmental Management Commission requirements for
6 management of stormwater runoff. Stormwater management systems
7 may be located within the 30-foot buffer area.
- 8 (9) The project includes mitigation or has mitigation credits for wetland impacts
9 caused by excavation or construction of entrances, exits, and upland vessel
10 accommodation areas, where such entrances, exits, and upland vessel
11 accommodation areas exceed 125 linear feet of shoreline in total.
- 12 (10) The upland basin is sited and designed to avoid significant adverse impacts to
13 the productivity and biologic integrity of coastal wetlands, shellfish beds,
14 submerged aquatic vegetation, water quality, and spawning and primary
15 nursery areas. Substantial compliance with subdivisions (1) through (10) of
16 this subsection shall create a presumption that the project has avoided
17 significant adverse impacts to the productivity and biologic integrity of coastal
18 wetlands, non-coastal wetlands, shellfish beds, submerged aquatic vegetation,
19 water quality, spawning areas, and primary nursery areas and to have
20 complied with State water quality antidegradation requirements. Substantial
21 compliance constitutes appropriate avoidance of significant adverse
22 environmental impacts, including those identified in this Part.
- 23 (c) Once an upland basin developed and approved in accordance with this Part becomes
24 operational and continues to operate for at least 24 months, if the Director of the Division of
25 Water Resources determines that additional information is needed to assure long term
26 compliance with applicable water quality standards, the Division of Water Resources shall notify
27 the then-owner of that basin project to provide information materially necessary to address the
28 concerns raised by the Director.
- 29 (d) The submission of a Major Development Coastal Area Management Act (CAMA)
30 permit application for an upland basin project shall constitute a complete application for purposes
31 of water quality certification review by the Division of Water Resources. Unless the Director of
32 the Division of Water Resources objects in writing as provided in subsection (a) of this section,
33 no further information shall be required by the Department for purposes of evaluating whether
34 the upland basin project will substantially comply with water quality standards or CAMA use
35 standards referenced in this Part. Substantial compliance with the Major Development CAMA
36 permitting process shall also constitute compliance with all relevant provisions of Article 1 of
37 Chapter 113A of the General Statutes.
- 38 (e) The permit and any related authorizations or approvals issued for an upland basin
39 project pursuant to this Part shall be transferable.
- 40 (f) The Department shall allow an applicant for an upland basin project to use innovative
41 technology to maintain dissolved oxygen levels or improve dissolved oxygen above pre-project
42 ambient dissolved oxygen levels in the immediate vicinity of the entrance to the upland basin. If
43 the applicant proposes the use of innovative technology, the Department shall require the permit
44 holder to provide financial assurance, in the form of a bond or set-aside funds, for long-term
45 operation and maintenance of the innovative technology, in accordance with subdivision (b)(3)
46 of this section. If the applicant provides a certification from a North Carolina licensed
47 professional engineer that the proposed innovative technology is capable of attaining required
48 dissolved oxygen levels within the proposed upland basin, the Department shall not require any
49 additional information.
- 50 (g) In the absence of site-specific technical concerns provided to the applicant by the
51 Director of the Division of Water Resources based on information provided during the permit

review process, an upland basin project that satisfies the criteria provided in subsection (b) of this section shall be deemed to satisfy all of the following:

- (1) The requirements for a State water quality certification pursuant to Section 401 of the Clean Water Act (33 U.S.C. § 1341) and shall not require a written concurrence from the Division of Water Resources, additional evaluation for compliance with State water quality standards, or additional mitigation requirements.
- (2) CAMA management objectives and relevant use standards of the estuarine and ocean system AECs.
- (3) CAMA management objectives and use standards of the coastal wetlands AEC.
- (4) Water quality antidegradation standards as adopted by the Environmental Management Commission.
- (5) Wetland water quality standards, unless the United States Army Corps of Engineers (Corps) or the United States Environmental Protection Agency (EPA) provides site-specific information and comments to the contrary. In the event of such comments from the Corps or EPA, the Department shall support efforts by the applicant to satisfy any objections from the Corps or EPA relative to the goals and benefits set forth in this Part.
- (6) The policy goals stated in G.S. 113-102(b).
- (g) Nothing in this section shall be construed to abrogate the Department's authority to ensure long term compliance with applicable water quality standards in light of the goals and requirements set forth in this Part. If data collected as part of the requirements of this Part, or otherwise, indicate material noncompliance with applicable water quality standards in the waters within the upland basin or adjacent waters within the vicinity of each entrance to the upland basin, the Department may require the owner of the upland basin development at the time of the noncompliance to bring the waters within the upland basin and adjacent waters into compliance with applicable water quality standards, in light of the overall goals and policies set forth in this Part to promote the construction and use of upland basins.
- (h) Nothing in this section shall obviate the need for an applicant to obtain all relevant federal permits required for the upland basin project."

SECTION 2. This act is effective when it becomes law.