

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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BILL DRAFT 2013-RIz-7 [v.6] (12/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Sedimentation Ctrl./Financial Assurance.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO REQUIRE FINANCIAL ASSURANCE FOR LAND-DISTURBING ACTIVITY
INVOLVING MORE THAN TWENTY ACRES TO ENSURE THAT SUFFICIENT
FUNDS ARE AVAILABLE TO COMPLY WITH THE REQUIREMENTS OF THE
SEDIMENTATION POLLUTION CONTROL ACT OF 1973.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-54.3. Financial assurance for establishment of permanent ground cover

(a) No person shall initiate any land-disturbing activity that will disturb more than 20 acres on a tract unless the person establishes financial assurance that will ensure that sufficient funds are available to comply with the requirements of this Article, and any rule, ordinance, or order adopted or issued pursuant to this Article by the Commission or by an delegated local program with jurisdiction, until permanent ground cover sufficient to control erosion has been established and the site has been closed by the Department or delegated local program. State and local governmental agencies, including water or sewer authorities or districts, organized under the appropriate Articles of the General Statutes shall not be subject to the provisions of this section. For purposes of this section, "delegated local program" means a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60.

(b) The financial assurance required by this section shall be in one of the following forms:

- (1) A surety performance bond made by a surety bonding company licensed and authorized to do business in North Carolina.
- (2) A cash deposit in the form of an assignment to the permitting entity of a certificate of deposit with an institution licensed and authorized to do business in North Carolina as security for the bond.
- (3) A cash deposit in the form of an official bank check drawn in favor of the permitting entity and deposited with same.
- (4) An irrevocable letter of credit from an institution licensed and authorized to do business in North Carolina deposited with the permitting entity. A letter of credit must be accompanied by a performance guarantee in the amount of one hundred twenty-five percent (125%) of the required surety.



1 (5) Security in a form not listed above as established by rule by the
2 Commission.

3 (c) Assets used to meet the financial assurance requirements of this section shall be in a
4 form that will allow the Department or a delegated local program to readily access funds for the
5 purposes set out in this section. Assets used to meet financial assurance requirements of this
6 section shall not be accessible to the person conducting the land-disturbing activity except as
7 approved by the Department or the applicable delegated local program.

8 (d) The financial assurance shall be continuous in nature and shall remain in force until
9 cancelled or released by the Department or an applicable delegated local program. Cancellation
10 shall be effectuated only upon 60 days written notice to the Department or delegated local
11 program and the financially responsible party.

12 (e) The Department and each delegated local program shall establish a standard rate per
13 disturbed acre in order to determine the amount of financial assurance required. The standard
14 rate shall be sufficient to assure compliance with the requirements of this Article, and any rule,
15 ordinance, or order adopted or issued pursuant to this Article by the Commission or by a
16 delegated local program until permanent ground cover sufficient to control erosion has been
17 established and the site has been closed by the Department or delegated local program. If an
18 applicant disagrees with a determination by the Director or a delegated local program
19 concerning the amount of financial assurance required for a land-disturbing project, the
20 applicant may submit an estimate of costs for installing and maintaining the erosion and
21 sedimentation control measures as shown on the approved plan and costs for establishing
22 permanent ground cover from a third party contractor to be used as the amount of financial
23 assurance. The estimate shall be provided to the Director or delegated local program within 30
24 days following the receipt of the initial determination as to the amount of financial assurance
25 required from the Director or delegated local program. The Director or delegated local
26 program shall notify the applicant within 30 days of receiving the estimate from the third party
27 contractor of the final determination as to the amount of financial assurance required, and the
28 process and conditions used to set the amount of financial assurance.

29 (f) The amount of the financial assurance required may be reduced as permanent
30 ground cover is established on portions of the area of land disturbance. The financial assurance
31 shall be released when the Department or delegated local program determines that permanent
32 ground cover sufficient to control erosion has been established and the site has been closed by
33 the Department or delegated local program.

34 (g) The financial assurance shall be subject to forfeiture to the Department or delegated
35 local program if uncorrected violations of G.S. 113A-57 continue at a site for more than 60
36 days.

37 (h) If the Department or delegated local program determines that forfeiture of the
38 financial assurance is necessary, it shall request the Attorney General, or in the case of a
39 delegated local program, its local attorney, to initiate forfeiture proceedings against the
40 financial assurance filed by the applicant; provided, however, that no such request shall be
41 made for forfeiture until the applicant has been given written notice of the violation and a
42 reasonable opportunity to take corrective action. A proceeding shall be brought in the name of
43 the State of North Carolina or the local government, in the case of delegated local programs. In
44 such proceedings, the amount of the financial assurance, less any amount released by the
45 Department or delegated local program, shall be treated as liquidated damages and subject to
46 forfeiture. All funds collected as a result of such proceedings shall be placed in a special fund
47 and used by the Department or the delegated local program to bring the land-disturbing activity
48 into compliance with G.S. 113A-57. Any funds in excess of the costs of achieving compliance
49 shall be refunded to the applicant. Forfeiture of the financial assurance shall not release the
50 person conducting the land-disturbing activity from the responsibility to comply with the

[provisions of this Article, and any rule, ordinance, or order adopted or issued pursuant to this Article by the Commission or by a delegated local program."](#)

SECTION 2. This act becomes effective July 1, 2013, and applies to land-disturbing activity initiated on or after that date.