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FOR REVIEW ONLY

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2138
PROPOSED COMMITTEE SUBSTITUTE H2138-CSSB-66 [v.11]

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Short Title: Coastal Stormwater Management.

(Public)

Sponsors:

Referred to:

May 19, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR IMPROVEMENTS IN THE MANAGEMENT OF
3 STORMWATER IN THE COASTAL COUNTIES IN ORDER TO PROTECT
4 WATER QUALITY.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** Disapprove Rule. – Pursuant to G.S. 150B-21.3(b1), 15A
7 NCAC 02H .1005 (Stormwater Requirements: Coastal Counties), as adopted by the
8 Environmental Management Commission on 10 January 2008 and approved by the
9 Rules Review Commission on 20 March 2008, is disapproved.

10 **SECTION 1.(b)** Supersede Rule. – 15A NCAC 02H .1005 (Stormwater
11 Requirements: Coastal Counties), effective 1 September 1995, is superseded by this
12 Act.

13 **SECTION 2.(a)** Definitions. – The following definitions apply to this act
14 and its implementation:

- 15 (1) The definitions set out in 15A NCAC 02H .1002 (Definitions).
16 (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
17 (3) "Built upon area," as defined in Session Law 2006-246, means that
18 portion of a project that is covered by impervious or partially
19 impervious surface including, but not limited to, buildings; pavement
20 and gravel areas such as roads, parking lots, and paths; and recreation
21 facilities such as tennis courts. "Built upon area" does not include a
22 wooden slatted deck, the water area of a swimming pool, or pervious
23 or partially pervious paving material to the extent that the paving
24 material absorbs water or allows water to infiltrate through the paving
25 material.
26 (4) "Permeable pavement" means paving material that absorbs water or
27 allows water to infiltrate through the paving material. Permeable
28 pavement materials include porous concrete, permeable interlocking

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1 concrete pavers, concrete grid pavers, and porous asphalt. Compacted
2 gravel shall not be considered permeable pavement.

3 (5) "Residential development activities," has the same meaning as in 15A
4 NCAC 02B .0202(54).

5 (6) "Vegetative buffer" as defined in 15A NCAC 2H .1002(22) means an
6 area of natural or established vegetation directly adjacent to surface
7 waters through which stormwater runoff flows in a diffuse manner to
8 protect surface waters from degradation due to development activities.

9 (7) "Vegetative conveyance" means a permanent, designed waterway
10 lined with vegetation that is used to convey stormwater runoff at a
11 non-erosive velocity within or away from a developed area.

12 **SECTION 2.(b)** Requirements for Certain Non-residential and Residential
13 Development in the Coastal Counties. – All non-residential development activities that
14 occur within the coastal counties that will add more than 10,000 square feet of built
15 upon area or that require a Sedimentation and Erosion Control Plan, pursuant to
16 G.S. 113A-57 or a Coastal Area Management Act (CAMA) Major Development Permit,
17 pursuant to G.S. 113A-118 and all residential development activities within the coastal
18 counties that require a Sedimentation and Erosion Control Permit, pursuant to
19 G.S. 113A-57 or a Coastal Area Management Act (CAMA) Major Development Permit,
20 pursuant to G.S. 113A-118 shall manage stormwater runoff as provided in this
21 subsection.

22 (1) Development Near Outstanding Resource Waters (ORW). –
23 Development activities within the coastal counties and located within
24 575 feet of the mean high water line of areas designated by the
25 Commission as Outstanding Resource Waters (ORW) shall meet the
26 requirements of 15A NCAC 2H .1007 (Stormwater Requirements:
27 Outstanding Resource Waters) and shall be permitted as follows:

28 a. Low Density Option. – Development shall be permitted
29 pursuant to 15A NCAC 2H .1003(d)(1) if the development
30 meets all of the following requirements:

31 1. The development has a built-upon area of 12 percent or
32 less. A development project with an overall density at or
33 below the low density threshold, but containing areas
34 with a density greater than the overall project density,
35 shall be considered low density as long as the project
36 meets or exceeds the requirements for low density
37 development and locates the higher density in upland
38 areas and away from surface waters and drainageways to
39 the maximum extent practicable.

40 2. Stormwater runoff from the development is transported
41 primarily by vegetated conveyances. As used in this
42 sub-sub-subdivision, "conveyance system" shall not
43 include a stormwater collection system. Stormwater
44 runoff from built upon areas that is directed to flow

1 through any wetlands shall flow through these wetlands
2 at a non-erosive velocity.

- 3 3. The development contains a 50 foot wide vegetative
4 buffer for new development activities and a 30 foot wide
5 vegetative buffer for redevelopment activities. The width
6 of a buffer is measured horizontally from the normal
7 pool elevation of impounded structures, from the bank of
8 each side of streams or rivers, and from the mean high
9 water line of tidal waters, perpendicular to the shoreline.
10 This vegetative buffer, or setback, as mandated by the
11 provisions of this Act, may be cleared, graded, and
12 planted with maintained grass or any other vegetative, or
13 plant, material. The Environmental Management
14 Commission may, on a case by case basis, grant
15 variances from the vegetative buffer requirements of this
16 Act. Vegetative buffers and filters required by this Act
17 and any other buffers, filters, or setbacks required by
18 State water quality or coastal management rules or local
19 government requirements may be met concurrently and
20 may contain, in whole or in part, coastal, isolated, or 404
21 jurisdictional wetlands that are located landward of the
22 normal water line.

- 23 b. High Density Option – Development shall be permitted
24 pursuant to 15A NCAC 2H .1003(d)(2) if the development
25 meets all of the following requirements:

- 26 1. The development has a built upon area of greater than 12
27 percent.
28 2. The development has no direct outlet channels or pipes
29 to SA waters unless permitted in accordance with 15A
30 NCAC 02H .0126. Stormwater runoff from built upon
31 areas that is directed to flow through any wetlands shall
32 flow through these wetlands at a non-erosive velocity.
33 3. The development utilizes control systems that are any
34 combination of infiltration systems, bioretention
35 systems, constructed stormwater wetlands, sand filters,
36 rain barrels, cisterns, rain gardens or alternative low
37 impact development stormwater management systems
38 designed in accordance with 15A NCAC 2H .1008 to
39 control and treat the runoff from all surfaces generated
40 by one and one-half inches of rainfall, or the difference
41 in the stormwater runoff from all surfaces from the
42 predevelopment and post-development conditions for a
43 one-year, 24-hour storm, whichever is greater. Wet
44 detention ponds may be used as a stormwater control

1 system to meet the requirements of this provision
2 provided that the stormwater system fully complies with
3 the requirements of this sub-subdivision. If a wet
4 detention pond is used within one-half mile of SA
5 waters, installation of a second stormwater best
6 management practice in series with the wet detention
7 pond shall be required to treat the discharge from the wet
8 detention pond. Alternatives as described in 15A NCAC
9 2H .1008(h) may also be approved if they meet the
10 requirements of this sub-subdivision.

11 4. Stormwater runoff from the development that is in
12 excess of the design volume must flow overland through
13 a vegetative filter designed in accordance with 15A
14 NCAC 2H .1008 with a minimum length of 50 feet
15 measured from mean high water of SA waters.

16 5. The development contains a 50 foot wide vegetative
17 buffer for new development activities and a 30 foot wide
18 vegetative buffer for redevelopment activities. The width
19 of a buffer is measured horizontally from the normal
20 pool elevation of impounded structures, from the bank of
21 each side of streams or rivers, and from the mean high
22 water line of tidal waters, perpendicular to the shoreline.
23 The vegetative buffer may be cleared, graded, and
24 planted with maintained grass or any other vegetative, or
25 plant, material. Furthermore, stormwater control best
26 management practices (BMPs), or stormwater control
27 structures, with the exception of wet detention ponds,
28 may be located within this vegetative buffer. The
29 Environmental Management Commission may, on a case
30 by case basis, grant variances from the vegetative buffer
31 requirements of this Act. Vegetative buffers and filters
32 required by this Act and any other buffers, filters, or
33 setbacks required by State water quality or coastal
34 management rules or local government requirements
35 may be met concurrently and may contain, in whole or in
36 part, coastal, isolated, or 404 jurisdictional wetlands that
37 are located landward of the normal water line.

38 c. Stormwater Discharges Prohibited. – All development
39 activities, including both low and high density projects, shall
40 prohibit new points of stormwater discharge to SA waters or an
41 increase in the volume of stormwater flow through conveyances
42 or increase in capacity of conveyances of existing stormwater
43 conveyance systems that drain to SA waters. Any modification
44 or redesign of a stormwater conveyance system within the

contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to SA waters. The following shall not be considered a direct point of stormwater discharge:

1. Infiltration of the stormwater runoff from the design storm as described in sub-sub-subdivision 3. of sub-subdivision (b) of subdivision (1) of this subsection.
2. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area, that is capable of providing effective infiltration of the runoff from the design storm as described in sub-sub-subdivision 3. of sub-subdivision (b) of subdivision (1) of this subsection. Notwithstanding the other requirements of this Act, the infiltration mandated in this sub-sub-subdivision does not require a minimum separation from the seasonal high water table.

d. Limitation on the Density of Development. – Development shall be limited to a built upon area of 25 percent or less

(2) Development Near SA Waters. – Development activities within one-half mile of and draining to those waters classified by the Commission as SA waters or within one-half mile of waters classified by the Commission as SA waters and draining to unnamed freshwater tributaries to SA waters shall meet the requirements of sub-subdivisions a., b., and c. of subdivision (1) of this subsection.

(3) Other Coastal Development. – Development activities within the coastal counties except those areas described in subdivisions (1) and (2) of this subsection shall meet all of the following requirements:

a. Low Density Option: Development shall be permitted pursuant to 15A NCAC 2H .1003(d)(1) if the development meets all of the following requirements:

1. The development has a built-upon area of 24 percent or less. A development project with an overall density at or below the low density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low density development and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.
2. Stormwater runoff from the development is transported primarily by vegetated conveyances. As used in this sub-sub-subdivision, "conveyance system" shall not include a stormwater collection system. Stormwater runoff from built upon areas that is directed to flow

- 1 through any wetlands shall flow through these wetlands
2 at a non-erosive velocity.
- 3 3. The development contains a 50 foot wide vegetative
4 buffer for new development activities and a 30 foot wide
5 vegetative buffer for redevelopment activities. The width
6 of a buffer is measured horizontally from the normal
7 pool elevation of impounded structures, from the bank of
8 each side of streams or rivers, and from the mean high
9 water line of tidal waters, perpendicular to the shoreline.
10 The vegetative buffer may be cleared, graded, and
11 planted with maintained grass or any other vegetative, or
12 plant, material. The Environmental Management
13 Commission may, on a case by case basis, grant
14 variances from the vegetative buffer requirements of this
15 Act. Vegetative buffers and filters required by this Act
16 and any other buffers, filters, or setbacks required by
17 State water quality or coastal management rules or local
18 government requirements may be met concurrently and
19 may contain, in whole or in part, coastal, isolated, or 404
20 jurisdictional wetlands that are located landward of the
21 normal water line.
- 22 b. High Density Option: Higher density developments shall be
23 permitted pursuant to 15A NCAC 2H .1003(d)(2) if the
24 development meets all of the following requirements:
- 25 1. The development has a built upon area of greater than 24
26 percent.
- 27 2. The development uses control systems that are any
28 combination of infiltration systems, wet detention ponds,
29 bioretention systems, constructed stormwater wetlands,
30 sand filters, rain barrels, cisterns, rain gardens or
31 alternative stormwater management systems designed in
32 accordance with 15A NCAC 2H .1008.
- 33 3. Control systems must be designed to store, control and
34 treat the stormwater runoff from all surfaces generated
35 by one and one-half inch of rainfall.
- 36 4. Stormwater runoff from built upon areas that is directed
37 to flow through any wetlands shall flow through these
38 wetlands at a non-erosive velocity.
- 39 5. A 50 foot wide vegetative buffer for new development
40 activities and a 30 foot wide vegetative buffer for
41 redevelopment activities. The width of a buffer is
42 measured horizontally from the normal pool elevation of
43 impounded structures, from the bank of each side of
44 streams or rivers, and from the mean high water line of

1 tidal waters, perpendicular to the shoreline. The
2 vegetative buffer may be cleared, graded, and planted
3 with maintained grass or any other vegetative, or plant,
4 material. Furthermore, stormwater control best
5 management practices (BMPs), or stormwater control
6 structures, with the exception of wet detention ponds,
7 may be located within this vegetative buffer. The
8 Environmental Management Commission may, on a case
9 by case basis, grant variances from the vegetative buffer
10 requirements of this Act. Vegetative buffers and filters
11 required by this Act and any other buffers, filters, or
12 setbacks required by State water quality or coastal
13 management rules or local government requirements
14 may be met concurrently and may contain, in whole or in
15 part, coastal, isolated, or 404 jurisdictional wetlands that
16 are located landward of the normal water line.

17 (4) Requirements for Structural Stormwater Controls. – Structural
18 stormwater controls required under this Act shall meet all of the
19 following requirements:

- 20 a. Remove an 85 percent average annual amount of Total
21 Suspended Solids.
22 b. For detention ponds, draw down the treatment volume no faster
23 than 48 hours, but no slower than 120 hours.
24 c. Discharge the storage volume at a rate equal to or less than the
25 pre-development discharge rate for the one-year, 24-hour storm.
26 d. Meet the General Engineering Design Criteria set forth in 15A
27 NCAC 02H .1008(c).
28 e. For structural stormwater controls that are required under this
29 Act and that require separation from the seasonal high-water
30 table, a minimum separation of two feet is required.

31 (5) Certain Wetlands Excluded from Density Calculation. – For the
32 purposes of this Act, areas defined as Coastal Wetlands under 15A
33 NCAC 07H .0205, as measured landward from the normal high water
34 line, shall not be included in the overall project area to calculate
35 impervious surface density.

36 **SECTION 2.(c)** Requirements for Limited Residential Development in
37 Coastal Counties. – For residential development activities within the 20 Coastal
38 Counties that are located within one-half mile and draining to SA waters, that have a
39 built upon area greater than 12 percent, that do not require a stormwater management
40 permit under subsection (b) of this section, and that will add more than 10,000 square
41 feet of built upon area, a non-renewable stormwater management permit shall be
42 obtained. The permit shall require recorded deed restrictions and protective covenants to
43 ensure that the plans and specifications approved in the permit are maintained. Under

1 this permit, stormwater runoff shall be managed using any one or combination of the
2 following practices:

- 3 (1) Install rain cisterns or rain barrels designed to collect all rooftop runoff
4 from the first 1.5 inches of rain. Rain barrels and cisterns shall be
5 installed in such a manner as to facilitate the reuse of the collected rain
6 water on site and shall be installed in such a manner that any overflow
7 from these devices is directed to a vegetated area in a diffuse flow.
8 Construct all uncovered driveways, uncovered parking areas,
9 uncovered walkways, and uncovered patios out of permeable
10 pavement or other pervious materials.
- 11 (2) Direct rooftop runoff from the first 1.5 inches of rain to an
12 appropriately sized and designed rain garden. Construct all uncovered
13 driveways, uncovered parking areas, uncovered walkways, and
14 uncovered patios out of permeable pavement or other pervious
15 materials.
- 16 (3) Install any other stormwater best management practice that meets the
17 requirements of 15A NCAC 02H .1008 to control and treat the
18 stormwater runoff from all built upon areas of the site from the first
19 1.5 inches of rain.

20 **SECTION 2.(d) Exclusions.** – The requirements of this Act shall not apply
21 to any of the following:

- 22 (1) Activities of the North Carolina Department of Transportation, which
23 are regulated in accordance with the provisions of the Department's
24 National Pollutant Discharge Elimination System (NPDES)
25 Stormwater Permit.
- 26 (2) Development activities that are conducted pursuant to and consistent
27 with one of the following authorizations, shall be regulated by those
28 provisions and requirements of 15A NCAC 2H .1005 that were
29 effective at the time of the issuance of the following authorizations:
 - 30 a. State Stormwater Permit issued under the provisions of 15A
31 NCAC 2H .1005.
 - 32 b. Stormwater Certification issued pursuant to 15A NCAC 2H
33 .1000 prior to 1 December 1995.
 - 34 c. Those exclusions set out in Section 8 of Session Law 2006-246.
 - 35 d. A Coastal Area Management Act Major Permit.
 - 36 e. 401 Certification that contains an approved Stormwater
37 Management Plan.
- 38 (3) Redevelopment activities that result in no net increase in built upon
39 area and provide equal stormwater control than the previous
40 development.
- 41 (4) Development activities for which a complete Stormwater Permit
42 Application has been accepted by the Division of Water Quality prior
43 to the effective date of this Act, shall be regulated by the provisions
44 and requirements of 15A NCAC 2H .1005 that were effective at the

time that this application was accepted as complete by the Division of Water Quality.

(5) Development activities requesting a minor modification or revision of an existing State Stormwater Permit shall be regulated by the provisions and requirements of 15A NCAC 2H .1005 that were effective at the time of the original issuance of the State Stormwater Permit. For purposes of this subsection, a minor modification of a State Stormwater Permit is defined as a modification that does not increase the net area of built upon area within the project site or does not increase the overall size of the stormwater controls that have been previously approved for that development activity.

(6) Municipalities designated as a National Pollutant Discharge Elimination System (NPDES) Phase 2 municipality located within the 20 Coastal Counties until such time as the NPDES Phase 2 Stormwater Permit expires and is subject to renewal. Upon renewal of the NPDES Phase 2 Stormwater Permits for municipalities located within the 20 Coastal Counties, the Department shall review the permits to determine whether the permits should be amended to include the provisions of this Act.

SECTION 2.(e) Exemptions from vegetative buffer requirements. – The following activities are exempt from the vegetative buffer requirements of this Act:

- (1) Development in urban waterfronts that meets the requirements of 15A NCAC 07H .0209(g),
- (2) Development in a new urban waterfront area that meets the requirements of Session Law 2004-117,
- (3) Those activities listed in 15A NCAC 07H .0209(d)(10)(A) through 15A NCAC .07H .0209(d)(10)(H),
- (4) Development of upland marinas that have received a Coastal Area Management Act Major Permit.

SECTION 2.(f) Compliance with Other Rules. – In addition to the requirements specified in this Act, activities regulated under this Act must also comply with any requirements of any other applicable law or rule.

SECTION 3. Rescission of Phase 2 Designations. – All designations of local governments within the 20 Coastal Counties as Phase 2 municipalities by the Environmental Management Commission under Section 5 of Session Law 2006-246 that occurred after 16 August 2006 are rescinded. The provisions of this Section do not preclude any future designations of these areas as Phase 2 municipalities by the Environmental Management Commission under Section 5 of Session Law 2006-246.

SECTION 4. Additional Rule Making. – The Commission may adopt rules to replace the rules that are disapproved or superseded as provided in Section 1 of this act. If the Commission adopts rules pursuant to this section, notwithstanding G.S. 150B-19(4), the rules shall be substantively identical to the provisions of Section 2 of this act. The Commission may reorganize or renumber any of the rules to which this section applies at its discretion. Rules adopted pursuant to this section are not subject to

1 G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall
2 become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written
3 objections had been received as provided by G.S. 150B-21.3(b2).

4 **SECTION 5. Construction of Act. –**

5 (1) Except as specifically provided in Section 4 of this act, nothing in this
6 act shall be construed to limit, expand, or otherwise alter the authority
7 of the Environmental Management Commission or any unit of local
8 government.

9 (2) This act shall not be construed to affect any delegation of any power or
10 duty by the Commission to the Department or subunit of the
11 Department.

12 (3) The phrase 'common plan of development or sale' shall be interpreted
13 and implemented in a manner consistent with the memorandum
14 referenced as 'Guidance Interpreting Phase 2 Stormwater
15 Requirements' from the Director of the Division of Water Quality of
16 the Department of Environment and Natural Resources to Interested
17 Parties dated 24 July 2006 and for these purposes the memorandum
18 shall be considered a part of this act and as such shall be printed as a
19 part of the Session Laws.

20 **SECTION 6. Application of Memorandum to Prior Session Law –**
21 Subdivision (5) of Section 18 of S.L. 2006-246 reads as rewritten:

22 "(5) As used in Section 9 of this act, the phrase 'common plan of
23 development or sale' shall be interpreted and implemented in a manner
24 consistent with the memorandum referenced as 'Guidance Interpreting
25 Phase II Stormwater Requirements' from the Director of the Division
26 of Water Quality of the Department of Environment and Natural
27 Resources to Interested Parties dated 24 July 2006; and for these
28 purposes the memorandum shall be considered a part of this act and as
29 such shall be printed as a part of the Session Laws."

30 **SECTION 6. Provisions of Act Not Codified; Set Out As Note. –**
31 Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the
32 provisions of this act. The Revisor of Statutes shall set out the text of this act as a note
33 to G.S. 143-214.7 and may make notes concerning this act to other sections of the
34 General Statutes as the Revisor of Statutes deems appropriate.

35 **SECTION 7. Effective Date. –** This act becomes effective 1 July 2008.