

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

S

2

SENATE BILL 389
House Committee Substitute Favorable 9/1/21

Short Title: DEQ/DNCR Omnibus.-AB

(Public)

Sponsors:

Referred to:

March 30, 2021

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS CHANGES TO THE NATURAL, ENVIRONMENTAL, AND
CULTURAL RESOURCES LAWS OF THE STATE, AS RECOMMENDED BY THE
DEPARTMENTS OF ENVIRONMENTAL QUALITY AND NATURAL AND
CULTURAL RESOURCES.

The General Assembly of North Carolina enacts:

MODIFY CONDITIONS FOR STATE FUNDING OF BEACH ACCESS PROPERTY

SECTION 1. G.S. 113A-134.3(c) reads as rewritten:

"(c) Subject to any restrictions imposed by law, any funds appropriated or otherwise made available to the Public Beach and Coastal Waterfront Access Program (Program) may be used to meet matching requirements for federal or other funds. The Department shall make every effort to obtain funds from sources other than the General Fund to implement this program. Funds may be used to acquire or develop land for pedestrian access including parking and to make grants to local governments to accomplish the purposes of this Part. All acquisitions or dispositions of property made pursuant to this Part shall be in accordance with the provisions of Chapter 146 of the General Statutes. All grants to local governments pursuant to this Part for land acquisitions shall be made on the ~~condition that~~ following conditions:

(1) ~~the~~ The local government agrees to ~~transfer title to any real property acquired with the grant funds to the State if~~ dedicate acquired lands in perpetuity for public access and for the benefit of the general public. The dedication shall be recorded in the office of the register of deeds in the county where the dedicated lands are located.

(2) If Program grant funds are used to acquire a lease or easement, the lease or easement agreement shall have a minimum term of 25 years.

(3) If the local government uses the property for a purpose other than beach or coastal waters access, access or elects to sell or otherwise dispose of the property, the local government shall reimburse the State an amount that is the greater of (i) the amount of Program grant funds provided to purchase the property or (ii) an amount equal to the same proportion of the current market value of the property as the proportion of the original purchase price of the property funded with Program grant funds."

MODERNIZE COASTAL AREA MANAGEMENT ACT NOTIFICATION REQUIREMENTS

SECTION 2.(a) G.S. 113A-119(b) reads as rewritten:



* S 3 8 9 - V - 2 *

"(b) Upon receipt of any application, a significant modification to an application for a major permit, or an application to modify substantially a previously issued major permit, the Secretary shall issue public notice of the proposed development (i) ~~by mailing a copy of the application or modification, or a brief description thereof together with a statement indicating where a detailed copy of the proposed development may be inspected, to any citizen or group which has filed a request to be notified of the proposed development, and to any interested State agency;~~ (ii) with the exception of minor permit applications, by posting or causing to be posted a notice at the location of the proposed development stating that an application, a modification of an application for a major permit, or an application to modify a previously issued major permit for development has been made, where the application or modification may be inspected, and the time period for comments; and ~~(iii)~~ (ii) with the exception of minor permit applications, by publishing notice of the application or modification at least once in one newspaper of general circulation in the county or counties wherein the development would be located at least 20 days before final action on a major permit or before the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the development should be submitted to the Secretary by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after mailing of the mailed notice, whichever is later."

SECTION 2.(b) G.S. 113A-124(a) reads as rewritten:

"(a) The Secretary shall have the following additional powers and duties under this Article:

...

~~(3) To keep a list of interested persons who wish to be notified of proposed developments and proposed rules designating areas of environmental concern and to so notify these persons of such proposed developments by regular mail. A reasonable registration fee to defray the cost of handling and mailing notices may be charged to any person who so registers with the Commission.~~

...."

SECTION 2.(c) This section is effective July 1, 2021, and applies to permit applications received on or after that date.

COASTAL AREA MANAGEMENT ACT PERMIT THIRD-PARTY APPEAL REVIEW TIME LINE

SECTION 3.(a) G.S. 113A-121.1(b) reads as rewritten:

"(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. A request for a determination of the appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is made. A determination of the appropriateness of a contested case shall be made within ~~45~~ 30 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

- (1) Has alleged that the decision is contrary to a statute or rule;
- (2) Is directly affected by the decision; and
- (3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not

be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final decision on the permit pursuant to G.S. 113A-122. Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case."

SECTION 3.(b) This section becomes effective October 1, 2021, and applies to requests for determination of appropriateness received by the Coastal Resources Commission on or after that date.

STORMWATER PROGRAM AMENDMENTS

SECTION 4.(a) G.S. 143-214.7 reads as rewritten:

"§ 143-214.7. Stormwater runoff rules and programs.

...

(b4) New stormwater permits and stormwater permits that are reissued due to transfer, modification, or renewal shall require the permittee to submit an annual certification on the project's conformance with permit conditions. The annual certification shall be completed by the permit holder or their designee. The Department shall not require the annual certification to be completed by another party besides the permit holder or their designee. The Department shall provide an electronic means of submittal for the permit holder or their designee to satisfy the annual certification requirement. The addition of annual certification requirements to an existing permit or certification shall not be considered to be a new or increased stormwater control.

...

(c5) The Department may transfer a permit issued pursuant to this section without the consent of the permit holder ~~to or of~~ a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection:

(1) The Department may ~~transfer a permit if~~ require the submittal of an application for a permit transfer when all of the following conditions are met:

~~a. The successor owner of the property submits to the Department a written request for the transfer of the permit.~~

~~b. The Department finds all of the following:~~

~~I.a.~~ The permit holder is one of the following:

~~I.1.~~ A natural person who is deceased.

~~II.2.~~ A partnership, limited liability corporation, corporation, or any other business association that has been ~~dissolved, dissolved,~~ has completed the winding up of the business as required by law or equity, and does not have a successor-in-interest to the permit.

~~III.3.~~ A person or entity who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will ~~occur~~ occur through foreclosure, bankruptcy, or other legal proceeding.

~~IV.4.~~ A person or entity who has sold the property on which the permitted activity is occurring or will occur.

~~b.~~ The successor-owner is one of the following:

~~2.1.~~ The successor owner holds A person or entity holding title to the property on which the permitted activity is occurring or will occur.

~~3.2.~~ The successor owner is the sole The claimant of the right to engage in the permitted activity.

3. An association, as defined in G.S. 47C-1-103 or G.S. 47F-1-103.

updated built-upon area limit in the annual certification required by subsection (b4) of this section.

(2) If the built-upon area exceeds one hundred ten percent (110%) of the maximum allowable built-upon area for low density permits at the time of permit issuance, then the Department shall require the permittee to mitigate the impacts of the excess built-upon area to the greatest extent practicable by the addition of one or more stormwater control measures on the property before issuing an updated permit.

...."

SECTION 4.(b) Low density stormwater certifications and approvals issued prior to September 1, 1995, are revoked as of January 1, 2022, and the built-upon area shall be considered as existing development for purposes of G.S. 143-214.7(a1). Any future development on the project or site shall comply with the requirements of G.S. 143-214.7 and any recorded deed restrictions.

SECTION 4.(c) G.S. 143-215.6A(a) reads as written:

"(a) A civil penalty of not more than twenty-five thousand dollars (\$25,000) may be assessed by the Secretary against any person who:

...

(11) Violates or fails to act in accordance with ~~G.S. 143-214.7(d1)~~ G.S. 143-214.7."

CONFORM SEDIMENTATION AND EROSION CONTROL PROGRAM PENALTY REMISSION REQUEST TIME LINE

SECTION 5.(a) G.S. 113A-64.2(a) reads as rewritten:

"(a) A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Commission within ~~60-30~~ days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based."

SECTION 5.(b) This section becomes effective October 1, 2021, and applies to penalties assessed on or after that date.

UST TRUST FUND PAYMENT REQUEST TIME LINE EXTENSION

SECTION 6. G.S. 143-215.94E(k) reads as rewritten:

"(k) An owner, operator, or landowner shall request payment or reimbursement from the Commercial Fund for the cost of a task within one year after the completion of the task. The Department shall deny any request for payment or reimbursement of the cost of any task that would otherwise be eligible to be paid or reimbursed if the request is not received within 12 months after the later of the date on which the:

(1) Department determines that the cost is eligible to be paid or reimbursed.

(2) Task is completed.

If the Department determines after review of the request that additional information is required in order to determine payment eligibility, the Department may allow the applicant up to 30 days to respond to the request for additional information, and this additional response time shall not be included in determining whether a request met the 12-month deadline imposed by this section."

MODIFY AND SIMPLIFY HAZARDOUS WASTE SITE NOTICES

SECTION 7.(a) G.S. 130A-310.8 reads as rewritten:

"§ 130A-310.8. Recordation of ~~inactive hazardous substance or waste disposal sites~~ notices of environmental contamination and notices of restricted use.

(a) After determination by the Department of the ~~existence and location and general extent of contamination~~ of an inactive hazardous substance or waste disposal site, the owner of the real property on which the site is located, within ~~180 days~~ 90 days after official notice to the owner to do so, shall submit to the Department a survey plat of areas designated by the Department that has been prepared and certified by a professional land surveyor, and entitled "~~NOTICE OF INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE~~". "NOTICE OF ENVIRONMENTAL CONTAMINATION." If the Notice is submitted pursuant to a remedial action plan approved by the Department for the property, the Notice may be entitled "NOTICE OF RESTRICTED USE." Where an inactive hazardous substance or waste disposal site is located on more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded. The Notice shall include a legal description of the site that would be sufficient as a description in an instrument of conveyance, shall meet the requirements of G.S. 47-30 for maps and plats, and shall identify:

- (1) The location ~~and dimensions of the disposal areas and areas of potential environmental concern exceeding unrestricted use standards as defined in G.S. 130A-310.65~~ with respect to permanently surveyed benchmarks.
- (2) The type, location, and quantity of hazardous substances known ~~by the owner of the site~~ to exist on the site.
- (3) Any restrictions approved by the Department on the current or future use of the site.

...

(e) When property that contains, or is a portion of, an inactive hazardous substance or waste disposal site is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that hazardous substances are present in environmental media at the property has been used as a hazardous substance or waste disposal site and, if applicable, that the property has been remediated under this Part with the approval of the Department by use of land use controls and a shall reference by book and page to the recordation of the Notice.

(f) ~~A Notice of Inactive Hazardous Substance or Waste Disposal Site~~ A Notice of Environmental Contamination or Notice of Restricted Use filed pursuant to this section may, at the request of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the Notice is recorded a statement that the hazards have been eliminated and request that the Notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the Notice and reference the plat book and page where the Notice is recorded.

...

(i) If a site subject to the requirements of this section is remediated pursuant to the requirements of Part 8 of Article 9 of Chapter 130A of the General Statutes, a Notice of ~~Residual Contamination~~ Restricted Use may be prepared and filed in accordance with ~~G.S. 130A-310.71(a)(9), G.S. 130A-310.71(e)~~ in lieu of a Notice ~~prepared and filed pursuant to this section of Residual Contamination.~~

SECTION 7.(b) G.S. 143-215.85A(g) reads as rewritten:

"(g) If a site subject to the requirements of this section is remediated pursuant to the requirements of Part 8 of Article 9 of Chapter 130A of the General Statutes, a Notice of ~~Residual Contamination~~ Restricted Use may be prepared and ~~filed~~ filed, with the approval of the Department and in accordance with G.S. 130A-310.71(a)(9), G.S. 130A-310.71(e) in lieu of a Notice ~~prepared and filed pursuant to this section of Residual Contamination or a Notice of Oil or Hazardous Substance Discharge Site.~~"

SECTION 7.(c) G.S. 143B-279.10(i) reads as rewritten:

"(i) If a site subject to the requirements of this section is remediated pursuant to the requirements of Part 8 of Article 9 of Chapter 130A of the General Statutes, a Notice of ~~Residual Contamination~~ Restricted Use may be prepared and filed in accordance with ~~G.S. 130A-310.71(a)(9)~~, G.S. 130A-310.71(e) in lieu of a Notice ~~prepared and filed pursuant to this section of Residual Contamination or a Notice of Contaminated Site.~~"

REVISE AND CLARIFY BASINWIDE WATER RESOURCES MANAGEMENT PLANS

SECTION 8. G.S. 143-215.8B reads as rewritten:

"§ 143-215.8B. Basinwide water quality resources management plans.

(a) The Commission shall develop and implement a basinwide water ~~quality resources~~ management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all of the following:

(1) All activities across a river basin ~~and that impact surface or ground water quality, including all point sources and nonpoint sources of pollutants, including such as municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, waste disposal sites, atmospheric deposition, and animal operations.~~

(2) All water withdrawals and transfers into and from a river basin that are required to be registered under G.S. 143-215.22H.

(b) Each basinwide water ~~quality resources~~ management plan shall:

(1) Provide that all point sources and nonpoint sources of pollutants jointly share the responsibility of reducing the pollutants in the State's waters in a fair, reasonable, and proportionate manner, using computer modeling and the best science and technology reasonably available and considering future anticipated population growth and economic development.

(2) If any of the waters located within the river basin are designated as nutrient sensitive waters, then the basinwide water ~~quality resources~~ management plan shall ~~establish a goal to reduce the average annual mass load of nutrients that are delivered to surface waters within the river basin from point and nonpoint sources. The report on the status of those waters. In addition, the~~ Commission shall establish a nutrient reduction goal for the nutrient or nutrients of concern that will result in improvements to water quality such that the designated uses of the water, as provided in the classification of the water under G.S. 143-214.1(d), are not impaired. The plan shall ~~require report on the incremental progress toward achieving the goal. In developing the plan, the Commission shall determine and allow appropriate credit toward achieving the goal for reductions of water pollution by point and nonpoint sources through voluntary measures.~~

(3) Provide surface and ground water resources to the extent known by the Department, other withdrawals, permitted minimum instream flow requirements and evident needs, and pertinent information contained in local water supply plans and water shortage response plans.

(c) The Commission shall review and revise its 17 basinwide water ~~quality resources~~ management plans at least every 10 years to reflect changes in water quality, water quantity, improvements in modeling methods, improvements in wastewater treatment technology, advancements in water conservation and reuse, and advances in scientific knowledge and, as ~~need needed~~ to support designated uses of water, modifications to management strategies. The

Commission may also include critical basin issues as they arise in the report required in subsection (d) of this section.

(d) As a part of the report required pursuant to G.S. 143-355(p), the Commission and the Department shall ~~each~~ report on or before November 1 of ~~each year on an annual basis~~ even-numbered years to the Environmental Review Commission on the progress in developing and implementing basinwide water ~~quality-resources~~ management plans and on ~~increasing~~ public involvement and public education in connection with basinwide water ~~quality-resources~~ management planning. The report to the Environmental Review Commission by the Department shall include a written statement ~~as to all concentrations of heavy metals and other pollutants in the surface waters of the State on water quality and quantity conditions~~ that are identified in the course of preparing or revising the basinwide water ~~quality-resources~~ management plans.

(e) A basinwide water ~~quality-resources~~ management plan is not a rule and Article 2A of Chapter 150B of the General Statutes does not apply to the development of basinwide water ~~quality-resources~~ management plans. Any water quality standard or classification and any requirement or limitation of general applicability that implements a basinwide water ~~quality-resources~~ management plan is a rule and must be adopted as provided in Article 2A of Chapter 150B of the General Statutes.

(f) For the purposes of this section, the 17 major river basins will be defined as the North Carolina portion of the following United States Geological Survey cataloging units:

- (1) Pasquotank: 03010205.
- (2) Broad River: 03050105.
- (3) Cape Fear River: 03030002, 03030003, 03030004, 03030005, 03030006, and 03030007.
- (4) Catawba River: 03050101, 03050102, and 03050103.
- (5) Chowan River: 03010201, 03010202, 03010203, and 03010204.
- (6) French Broad River: 06010105, 06010106, and 06010108.
- (7) Hiwassee River: 06020002 and 06020003.
- (8) Little Tennessee River: 06010202, 06010203, and 06010204.
- (9) Lumber River: 03040203, 03040204, 03040206, and 03040208.
- (10) Neuse River: 03020201, 03020202, 03020203, and 03020204.
- (11) New River: 05050001.
- (12) White Oak: 03020301 and 03020302.
- (13) Roanoke River: 03010102, 03010103, 03010104, 03010106, and 03010107.
- (14) Savannah River: 03060101 and 03060102.
- (15) Tar-Pamlico River: 03020101, 03020102, 03020103, 03020104, and 03020105.
- (16) Watauga River: 06010103.
- (17) Yadkin-Pee Dee River: 03040101, 03040102, 03040103, 03040104, 03040105, 03040201, and 03040202."

CORRECT INACCURATE STATUTORY REFERENCE

SECTION 9. G.S. 148-10 reads as rewritten:

"§ 148-10. ~~Department of Environmental Quality~~ Department of Public Safety to supervise sanitary and health conditions of prisoners.

The Department of ~~Environmental Quality~~ Public Safety shall have general supervision over the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the Division of Adult Correction and Juvenile Justice of the ~~Department of Public Safety~~, and ~~shall make periodic examinations of the same and report to the Division of Adult Correction and Juvenile Justice of the Department of Public Safety the conditions found there with respect to the sanitary and hygienic care of such prisoners.~~ Department."

MODIFY NOTICE REQUIREMENT FOR SEDIMENTATION AND EROSION CONTROL PROGRAM VIOLATIONS

SECTION 10.(a) G.S. 113A-61.1(c) reads as rewritten:

"(c) If the Secretary, a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60, or other approving authority determines that the person engaged in the land-disturbing activity has failed to comply with this Article, the Secretary, local government, or other approving authority shall immediately serve a notice of violation upon that person. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. A notice of violation shall specify a date by which the person must comply with this Article and inform the person of the actions that need to be taken to comply with this Article. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64. If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the Department, local government, or other approving authority ~~shall deliver the notice of violation in person and~~ shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. ~~If the Department, local government, or other approving authority is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.~~"

SECTION 10.(b) This section becomes effective October 1, 2021.

REVISE SEDIMENTATION AND EROSION CONTROL STOP WORK ORDER PROCEDURES

SECTION 11.(a) Subsections (f) and (h) of G.S. 113A-65.1 are repealed.

SECTION 11.(b) This section becomes effective October 1, 2021.

BROADEN ACCESS TO DEPARTMENT OF NATURAL AND CULTURAL RESOURCES LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED

SECTION 12. G.S. 125-2(9) reads as rewritten:

"(9) To provide library services to ~~blind and physically handicapped~~ readers of North Carolina who are unable to use standard print materials by making available to them books and other reading materials in braille, or sound recordings or any other medium ~~used by the blind and physically handicapped;~~ accessible to those readers; to enter into contracts and agreements with appropriate libraries and other organizations for the purposes of serving ~~the blind and physically handicapped; these readers;~~ to enter into contracts with library agencies of other states for providing library service to ~~the blind and physically handicapped of these readers~~ in those states, provided adequate compensation is paid for such service and such contract is otherwise advantageous to this State."

EFFECTIVE DATE

SECTION 13. Except as otherwise provided, this act is effective when it becomes law.