

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 1203

Short Title: Erosion Control Plan/New Criteria.

(Public)

Sponsors: Representatives Colton; Payne, N. Crawford, Greenwood, Nesbitt, Hackney, B. Ethridge, Holt, Diamont, Jones, and Buchanan.

Referred to: Basic Resources.

April 12, 1989

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE NORTH CAROLINA SEDIMENTATION
2 COMMISSION AND LOCAL GOVERNMENTS TO CONSIDER THE
3 FINANCIAL CAPABILITY AND PERFORMANCE HISTORY OF AN
4 APPLICANT SUBMITTING AN EROSION CONTROL PLAN PRIOR TO
5 APPROVING SUCH A PLAN.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 113A-54(d) reads as rewritten:

9 "(d) In implementing the erosion and sedimentation control program, the
10 Commission is authorized and directed to:

- 11 (1) Assist and encourage local governments in developing erosion and
12 sediment control programs and as part of such assistance to develop a
13 model local erosion control ordinance, and approve, approve as
14 modified, or disapprove local plans submitted to it pursuant to G.S.
15 113A-60;
- 16 (2) Assist and encourage other State agencies in developing erosion and
17 sedimentation control programs to be administered in their
18 jurisdictions, and to approve, approve as modified, or disapprove such
19 programs submitted pursuant to G.S. 113A- 56 and from time to time
20 review such programs for compliance with regulations issued by the
21 Commission and for adequate enforcement;
- 22 (3) Develop recommended methods of control of sedimentation and
23 prepare and make available for distribution publications and other

- 1 materials dealing with sedimentation control techniques appropriate
2 for use by persons engaged in land-disturbing activities, general
3 educational materials on erosion and sedimentation control, and
4 instructional materials for persons involved in the enforcement of
5 erosion control regulations, ordinances, and plans;
- 6 (4) Require submission of erosion control plans by those responsible for
7 initiating land-disturbing activities for approval prior to
8 commencement of the activities. As to those activities requiring prior
9 plan approval, the Commission must either approve or disapprove the
10 plan within 30 days of receipt. The draft plan must contain the
11 applicant's address and, if the applicant is not a resident of North
12 Carolina, designate a North Carolina agent for the purpose of receiving
13 notice from the Commission or the Secretary of compliance or
14 noncompliance with the plan, this Article, or any rules adopted
15 pursuant to this Article. Failure to approve or disapprove a complete
16 erosion and sedimentation control plan within 30 days of receipt shall
17 be deemed approval. Denial of a plan must specifically state in writing
18 the reasons for denial. The Commission must approve or deny a
19 revised plan within 15 days of receipt, or it is deemed to be approved.

20 If, following commencement of a land-disturbing activity pursuant to an
21 approved plan, the Commission determines that the plan is inadequate
22 to meet the requirements of this Article, the Commission may require
23 such revisions as are necessary to comply with this act. The
24 Commission must approve or deny the revised plan within 15 days of
25 receipt, or it is deemed to be approved.

- 26 (5) Require that an applicant submitting an erosion control plan under this
27 Article or rules adopted under this Article satisfy the Commission that
28 the applicant, or any parent or subsidiary corporation if the applicant is
29 a corporation:

- 30 a. Is financially qualified to carry out the activity for which the
31 erosion and sedimentation control plan is submitted; and
32 b. Has substantially complied with the erosion and sedimentation
33 control practices applicable to any activity in which the
34 applicant has previously engaged, and has been in substantial
35 compliance with other federal and State laws, regulations, and
36 rules for the protection of the environment.”

37 Sec. 2. G.S. 113A-61 reads as rewritten:

38 "**§ 113A-61. Approval of ~~plans.~~ plans; review applicant's prior compliance with**
39 **environmental protection measures.**

40 (a) Each local government's erosion and sediment control program shall require
41 that for those land-disturbing activities requiring prior approval of an erosion control
42 plan, such plan shall be submitted to the appropriate soil and water conservation district
43 at the same time it is submitted to the local government for approval. The soil and water
44 conservation district or districts, within 20 days after receipt of the proposed plan, or

1 within such additional time as may be prescribed by the local government, shall review
2 the plan and submit its comments and recommendations to the local government.
3 Failure of the soil and water conservation district to submit its comments and
4 recommendations within 20 days or within the prescribed additional time shall not delay
5 final action on the proposed plan by the local government.

6 (a1) Each local government's erosion and sediment control program shall also
7 require that an applicant submitting an erosion control plan satisfy the Commission or
8 local government, as appropriate, that the applicant, or any parent or subsidiary
9 corporation if the applicant is a corporation:

- 10 (1) Is financially qualified to carry out the activity for which the erosion
11 and sedimentation control plan is submitted; and
12 (2) Has substantially complied with the erosion and sedimentation control
13 practices applicable to any activity in which the applicant has
14 previously engaged, and has been in substantial compliance with other
15 federal and State laws, regulations, and rules for the protection of the
16 environment.

17 (b) Local governments shall review each erosion control plan submitted to them
18 and within 30 days of receipt thereof shall notify the person submitting the plan that it
19 has been approved, approved with modifications, or disapproved. A local government
20 shall only approve a plan upon determining that it complies with all applicable State and
21 local regulations for erosion and sediment control.

22 (c) The disapproval or modification of any proposed erosion control plan by a
23 local government shall entitle the person submitting the plan to a public hearing if such
24 person submits written demand for a hearing within 15 days after receipt of written
25 notice of the disapproval or modification. The hearings shall be conducted pursuant to
26 procedures adopted by the local government. If the local government upholds the
27 disapproval or modification of a proposed erosion control plan following the public
28 hearing, the person submitting the erosion control plan shall be entitled to appeal the
29 local government's action disapproving or modifying the plan to the Commission. The
30 Commission, by regulation, shall direct the Secretary to appoint such employees of the
31 Department as may be necessary to hear appeals from the disapproval or modification
32 of erosion control plans by local governments. In addition to providing for the appeal of
33 local government decisions disapproving or modifying erosion control plans to
34 designated employees of the Department, the Commission shall designate an erosion
35 control plan review committee consisting of three members of the Commission. The
36 person submitting the erosion control plan may appeal the decision of an employee of
37 the Department who has heard an appeal of a local government action disapproving or
38 modifying an erosion control plan to the erosion plan review committee of the
39 Commission. Judicial review of the final action of the erosion plan review committee of
40 the Commission may be had in the superior court of the county in which the local
41 government is situated.

42 (d) With respect to approved plans for erosion control in connection with land-
43 disturbing activities, the approving authority, either the Commission or a local
44 government, shall provide for periodic inspections of the land-disturbing activity to

1 insure compliance with the approved plan, and to determine whether the measures
2 required in the plan are effective in controlling erosion and sediment resulting from the
3 land-disturbing activities. Notice of such right of inspection shall be included in the
4 certificate of approval for the plan. If the approving authority determines that the person
5 engaged in the land-disturbing activities has failed to comply with the plan, the
6 authority shall immediately serve upon that person by registered mail a notice to
7 comply. The notice shall set forth the measures needed to come into compliance with
8 the plan and shall state the time within which such measures must be completed. If the
9 person engaged in the land-disturbing activities fails to comply within the time
10 specified, he shall be deemed in violation of this Article.”

11 Sec. 3. This act is effective upon ratification and shall apply to any erosion
12 control plan submitted after the date of ratification.