

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 768

Short Title: Food Sanitation Funds.

(Public)

Sponsors: Senators Hoyle, Conder, Blackmon, Forrester, Martin of Pitt, Albertson, Perdue, Plyler, Kincaid, Simpson, Foxx, Davis, Warren, Plexico, Kerr, Rand, East, Ballance, Ballantine, Hobbs, Odom, Cooper, Clark, Sherron, and Cochrane.

Referred to: Appropriations

April 20, 1995

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO IMPROVE THE SANITATION PROGRAM FOR FOOD AND LODGING ESTABLISHMENTS, TO AMEND THE INSPECTION AND GRADING REQUIREMENTS, AND TO INCREASE THE MEMBERSHIP OF THE COMMISSION FOR HEALTH SERVICES.

The General Assembly of North Carolina enacts:

Section 1. There is appropriated from the General Fund to the Department of Environment, Health, and Natural Resources the sum of one million one hundred fifty thousand dollars (\$1,150,000) for the 1995-96 fiscal year and the sum of one million one hundred forty thousand dollars (\$1,140,000) for the 1996-97 fiscal year to improve the standards and consistency of the Department's Food, Lodging, and Institutional Sanitation Program. Funds appropriated under this section shall be allocated as follows:

- (1) \$520,000 for the 1995-96 fiscal year and \$540,000 for the 1996-97 fiscal year to fund the following positions and office support: two environmental engineer inspectors, one education and training specialist, five regional environmental health specialists, one information and communications specialist, and one office assistant.

- 1 (2) \$30,000 for the 1995-96 fiscal year for production of a manual that
2 includes the rules, guidelines, and interpretations that govern the
3 sanitation of restaurants and other food handling establishments.
- 4 (3) \$500,000 for each fiscal year for aid-to-counties to support the
5 continuing education and training of persons who conduct food and
6 lodging inspections for county departments of health.
- 7 (4) \$100,000 for the 1995-96 fiscal year and \$100,000 for the 1996-97
8 fiscal year to conduct regional conferences to provide continuing
9 education and training of environmental health specialists.

10 Sec. 2. Effective January 1, 1996, Part 6 of Article 8 of Chapter 130A of the
11 General Statutes is amended by adding the following new section to read:

12 **"§ 130A-246.1. Purpose.**

13 The purpose of this Part is to provide for sanitary conditions in food and lodging
14 establishments in the State, to promote uniformity of interpretation and application of
15 environmental health laws across the State, and to help ensure the protection of the public
16 from disease and food-borne illness."

17 Sec. 3. Effective January 1, 1996, G.S. 130A-248(a3) reads as rewritten:

18 "(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and
19 (a2) of this section shall address, but not be limited to, the following:

- 20 (1) Sanitation requirements for cleanliness of floors, walls, ceilings, storage
21 spaces, utensils, ventilation equipment, and other areas and items;
- 22 (2) The adequacy of:
- 23 a. Lighting and water supply;
- 24 b. Wastewater collection, treatment, and disposal facilities; and
- 25 c. Lavatories, food protection, and waste disposal;
- 26 (3) The cleaning and bactericidal treatment of eating and drinking utensils
27 and other food-contact surfaces;
- 28 (3a) The appropriate and reasonable use of gloves or utensils by employees
29 who handle unwrapped food;
- 30 (4) The methods of food preparation, transportation, catering, storage, and
31 serving;
- 32 (5) The health of employees;
- 33 (6) Animal and vermin control; and
- 34 (7) The prohibition against the offering of unwrapped food samples to the
35 general public unless the offering and acceptance of the samples are
36 continuously supervised by an agent of the entity preparing or offering
37 the samples or by an agent of the entity on whose premises the samples
38 are made available. As used in this subdivision, 'food samples' means
39 unwrapped food prepared and made available for sampling by and
40 without charge to the general public for the purpose of promoting the
41 food made available for sampling. This subdivision does not apply to
42 unwrapped food prepared and offered in buffet, cafeteria, or other style
43 in exchange for payment by the general public or by the person or entity

1 arranging for the preparation and offering of such unwrapped food.
2 This subdivision shall not apply to open air produce markets nor to
3 farmer market facilities operated on land owned or leased by the State
4 of North Carolina or any local government.

5 The rules shall contain a system for grading facilities, such as (i) Grade A, Grade B, and
6 ~~Grade C.~~ Grade C, or (ii) Superior, Approved, Provisional, or Disapproved. The rules
7 shall provide for consistency in both the interpretation and application of the grading
8 system."

9 Sec. 4. Effective January 1, 1996, G.S. 130A-249 reads as rewritten:

10 **"§ 130A-249. Inspections; report and grade card.**

11 The Secretary may enter any establishment that is subject to the provisions of G.S.
12 130A-248 for the purpose of making inspections. The Secretary shall inspect each
13 restaurant at a reasonable time at least quarterly, except that the quarterly inspection
14 requirement shall not apply to temporary food establishments. The person responsible
15 for the management or control of an establishment shall permit the Secretary to inspect
16 every part of the establishment and shall render all aid and assistance necessary for the
17 inspection. Upon completion of the inspection, the Secretary shall inform the responsible
18 person of the grade proposed based on conditions existing at the time of the inspection.
19 If the proposed grade is lower than the grade posted and if the conditions of the premises
20 do not pose an imminent hazard to the public health, then the responsible person may do
21 either of the following:

22 (1) Request that the posted grade remain posted for a period not to exceed
23 15 calendar days from the date of inspection, during which period the
24 responsible person shall improve the conditions upon which the lower
25 grade is proposed. Upon such request the posted grade shall not be
26 removed and the Secretary shall provide the responsible person with a
27 worksheet indicating specifically those conditions that need correcting
28 and the rule applicable for each condition. If upon reinspection within
29 15-day period conditions cited in the worksheet are not sufficiently
30 corrected to warrant a grade higher than the proposed grade, then the
31 proposed lower grade shall be posted immediately. If upon reinspection
32 the Secretary finds conditions other than those cited on the worksheet
33 that would warrant a grade reduction but do not pose an imminent
34 hazard to the public health, then the Secretary shall give the responsible
35 person notice of those conditions, including the rule applicable to each
36 condition, and the conditions shall be evaluated at the next quarterly
37 inspection. Requests made pursuant to this subdivision shall be limited
38 to two per year for each establishment inspected; or

39 (2) If the responsible person disagrees with the conditions noted or actions
40 required in order to maintain the posted grade, then the responsible
41 person may request an informal conference to review the conditions
42 noted upon inspection and the grade proposed based on those
43 conditions. The responsible person must make the request in writing

1 within five calendar days of the inspection, and the informal conference
2 shall be held within 10 calendar days of receipt of the request. During
3 this period the posted grade shall not be removed. A regional
4 environmental health specialist shall attend and participate in the
5 informal conference. At the conclusion of the informal hearing, the
6 grade posted thereafter shall be based on the Secretary's decision. The
7 Secretary's decision at the informal conference shall be the final
8 decision and may be appealed in accordance with Chapter 150B of the
9 General Statutes.

10 (b) If a request under subdivision (1) or (2) of subsection (a) of this section is not
11 authorized, or if the responsible person chooses not to make a request authorized
12 thereunder, The-then the Secretary shall leave a copy of the inspection form and a card or
13 cards showing the grade of the establishment with the responsible person. The Secretary
14 shall-responsible person shall immediately post the grade card in a conspicuous place as
15 determined by the Secretary where it may be readily observed by the public upon
16 entering the establishment or upon picking up food prepared inside but received and paid
17 for outside the establishment through delivery windows or other delivery devices. If a
18 single establishment has one or more outside delivery service stations and an internal
19 delivery system, that establishment shall have a grade card posted where it may be
20 readily visible upon entering the establishment and one posted where it may be readily
21 visible in each delivery window or delivery device upon picking up the food outside the
22 establishment. The grade card or cards shall not be removed by anyone, except by or
23 upon the instruction of the Secretary-the responsible person or by the Secretary when the
24 responsible person fails to post the proper grade."

25 Sec. 5. Effective January 1, 1996, G.S. 130A-39(b) reads as rewritten:

26 "(b) A local board of health may adopt a more stringent rule in an area regulated by
27 the Commission for Health Services or the Environmental Management Commission
28 where, in the opinion of the local board of health, a more stringent rule is required to
29 protect the public health; otherwise, the rules of the Commission for Health Services or
30 the rules of the Environmental Management Commission shall prevail over local board of
31 health rules. However, a local board of health may not adopt a rule concerning the ~~grading~~
32 ~~grading, operating, and permitting of food and lodging facilities-establishments as listed in~~
33 ~~Part 6 of Article 8 of this Chapter defined in G.S. 130A-247(1) and a local board of health~~
34 may adopt rules concerning wastewater collection, treatment and disposal systems which
35 are not designed to discharge effluent to the land surface or surface waters only in
36 accordance with G.S. 130A-335(c)."

37 Sec. 6. G.S. 130A-30 reads as rewritten:

38 "**§ 130A-30. Commission for Health Services – members; selection; quorum;**
39 **compensation.**

40 (a) The Commission for Health Services shall consist of ~~12~~16 members, four of
41 whom shall be elected by the North Carolina Medical Society and Society, eight of whom
42 shall be appointed by the Governor-Governor, and four of whom shall be appointed by
43 the General Assembly, two upon the recommendation of the Speaker of the House of

1 Representatives and two upon the recommendation of the President Pro Tempore of the
2 Senate.

3 (b) One of the members appointed by the Governor shall be a licensed pharmacist,
4 one a registered engineer experienced in sanitary engineering or a soil scientist, one a
5 licensed veterinarian, one a licensed optometrist, one a licensed dentist, and one a
6 registered nurse. Of the members appointed by the General Assembly upon the
7 recommendation of the Speaker of the House of Representatives, one shall be an operator
8 of a commercial food service establishment and one shall be a public member. Of the
9 members appointed by the General Assembly upon the recommendation of the President
10 Pro Tempore of the Senate, one shall be an operator of a commercial food service
11 establishment and one shall be a public member. The initial members of the Commission
12 shall be the members of the State Board of Health who shall serve for a period equal to
13 the remainder of their current terms on the State Board of Health, three of whose
14 appointments expire May 1, 1973, and two of whose appointments expire May 1, 1975.
15 At the end of the respective terms of office of initial members of the Commission, their
16 successors shall be appointed for terms of four years and until their successors are
17 appointed and qualify. Any appointment to fill a vacancy on the Commission created by
18 the resignation, dismissal, death, or disability of a member shall be for the balance of the
19 unexpired term.

20 (c) The North Carolina Medical Society shall have the right to remove any
21 member elected by it for misfeasance, malfeasance, or nonfeasance, and the Governor
22 shall have the right to remove any member appointed by him for misfeasance,
23 malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13.
24 Vacancies on said Commission among the membership elected by the North Carolina
25 Medical Society shall be filled by the executive committee of the Medical Society until
26 the next meeting of the Medical Society, when the Medical Society shall fill the vacancy
27 for the unexpired term. Vacancies on ~~said the~~ the Commission among the membership
28 appointed by the Governor and the General Assembly shall be filled by the ~~Governor~~
29 original appointing authority for the unexpired term.

30 (d) A majority of the members of the Commission shall constitute a quorum for
31 the transaction of business.

32 (e) The members of the Commission shall receive per diem and necessary
33 traveling and subsistence expenses in accordance with the provisions of G.S. 138-5."

34 Sec. 7. G.S. 130A-29 is amended by adding the following new subsection to
35 read:

36 "(d1) The chair of the Commission shall establish a food service sanitation
37 committee which shall have not less than three members selected by the chair from the
38 membership of the Commission. At least one of the committee members shall be an
39 operator of a commercial food service establishment. The committee shall review all
40 rules and forms that govern the sanitation of restaurants and other food handling
41 establishments for vagueness, inconsistency, and lack of specificity to provide for
42 uniformity of interpretation and application of environmental health rules across the
43 State. The committee shall report to the Commission not later than July 1, 1996, on its

1 review and recommendations for modification of rules reviewed. After its report the
2 committee shall monitor concerns raised regarding the interpretation and application of
3 the rules or other food service matters."

4 Sec. 8. Section 1 of this act becomes effective July 1, 1995. The remainder of
5 this act is effective upon ratification.