

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE DRH30213-RIF-2 (01/07)

Short Title: Safe Artificial Slope Construction Act.

(Public)

Sponsors: Representatives Rapp and Fisher (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO (1) REQUIRE LOCAL GOVERNMENTS TO ADOPT ORDINANCES TO REGULATE SITE PLANNING, DESIGN, AND CONSTRUCTION OF ARTIFICIAL SLOPES IN MOUNTAINOUS AREAS TO PROMOTE SAFE AND STABLE SLOPES FOR DEVELOPMENT, TO REDUCE THE LIKELIHOOD OF SLOPE FAILURES ON DEVELOPED OR DISTURBED LAND, AND TO PROTECT HUMAN SAFETY AND PROPERTY; (2) DIRECT THE SEDIMENTATION CONTROL COMMISSION TO ASSIST LOCAL GOVERNMENTS IN DEVELOPMENT AND IMPLEMENTATION OF SAFE SLOPE CONSTRUCTION PROGRAMS AND TO DEVELOP A MODEL ORDINANCE; AND (3) PROVIDE FOR DISCLOSURE OF INFORMATION TO PURCHASERS OF PROPERTIES LOCATED IN CERTAIN AREAS DESIGNATED ON STABILITY INDEX MAPS PREPARED BY THE NORTH CAROLINA GEOLOGICAL SURVEY.

The General Assembly of North Carolina enacts:

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

"Article 19.

"Safe Artificial Slope Construction.

"§ 113A-261. Short title.

This act shall be known as the Safe Artificial Slope Construction Act of 2009.

"§ 113A-262. Definitions.

The definitions set forth in G.S. 113A-52 apply to this Article. In addition, the following definitions apply to this Article:

- (1) 'Affected area' means an area located on a mountain face or steep hillside that (i) has a slope of forty percent (40%) or greater, or (ii) is designated with a slide hazard ranking of 'moderate' or 'high' on a Stability Index Map prepared by the North Carolina Geological Survey.
- (2) 'Artificial slope construction' means any slope-disturbing activity that creates or changes any slope, or attempts to do so.
- (3) 'Construction' means any slope-disturbing activity, and includes reconstruction, repair, stabilization, alteration, or expansion.
- (4) 'Slope-disturbing activity' means any use of the land by any person in residential, industrial, educational, institutional, or commercial development,



1 and highway and road construction and maintenance that results in removal
2 of ground cover or a change in topography of the land.

3 (5) 'Slope' means an inclined ground or earth material surface, the inclination of
4 which is expressed as a ratio of horizontal distance to vertical distance.

5 **"§ 113A-263. Legislative findings.**

6 Improper development on steep slopes poses a threat to human safety and property.
7 Economic pressures, unknown site conditions, inadequate or inappropriate design, and
8 inexperienced persons conducting slope-disturbing activity can affect the quality, safety, and
9 stability of development on steep slopes. It is the intent of this Article to require
10 implementation of reasonable, effective control standards for artificial slope construction and to
11 improve construction and development practices that will result in higher levels of safety and
12 stability on developed land and to decrease the potential for damage to human health, property,
13 and natural resources.

14 **"§ 113A-264. Purpose.**

15 This Article provides for a cooperative program of safe artificial slope construction to be
16 administered by local governments consistent with minimum statewide management
17 requirements established by the Sedimentation Control Commission. If a local government
18 required to do so fails to adopt a safe artificial slope construction ordinance or does not
19 adequately carry out its responsibility to enforce its approved program, the Commission shall
20 administer and enforce the minimum statewide requirements.

21 **"§ 113A-265. Duties of the Sedimentation Control Commission.**

22 (a) Identification of Affected Areas. – The Commission shall identify the jurisdictions
23 that are required to adopt ordinances pursuant to this Article by showing them on a map or
24 drawing, describing them in a document, or any combination thereof. These maps, drawings, or
25 documents shall identify the affected areas within the jurisdiction. The Commission shall file
26 this information with the governing body of each identified jurisdiction. Determinations by the
27 Commission of affected areas under this section shall be conclusive in the absence of fraud.

28 (b) Development of Safe Artificial Slope Construction Requirements. – The
29 Commission shall adopt rules for the safe construction of artificial slopes in affected areas,
30 including, but not limited to, minimum requirements for:

31 (1) Adequate site assessment, planning, design, and technical standards for
32 construction of stable artificial slopes.

33 (2) Submission, review, approval and disapproval, and modification procedures
34 for safe artificial slope construction plans. These plans shall be prepared by a
35 licensed engineer and approved by the agency having jurisdiction prior to
36 initiation of any artificial slope construction activity in affected areas. Any
37 artificial slope construction in affected areas shall be conducted in
38 compliance with an approved plan.

39 (3) Demonstrations of financial responsibility.

40 (4) Submission of reports to document compliance.

41 (5) Inspection and enforcement procedures.

42 (6) Exemptions applicable to certain activities.

43 (c) Assistance to Local Governments. – The Commission shall provide assistance to
44 local governments in the development of safe artificial slope construction programs that
45 comply with this Article. Local government programs shall include a local ordinance and shall
46 provide for inspection and enforcement procedures. As part of its assistance to local
47 governments, the Commission shall approve and make available a model safe artificial slope
48 construction ordinance. The safe artificial slope construction ordinance shall, at a minimum,
49 address the requirements set forth in subsection (b) of this section.

50 (d) Review and Approval of Local Ordinances Required. – The Commission shall
51 review each ordinance that regulates the construction of artificial slopes in affected areas

1 submitted by a local government pursuant to G.S. 113A-266 and, within 90 calendar days of
2 receipt thereof, shall notify the local government submitting the ordinance that the ordinance
3 has been approved, approved with modifications, or disapproved. The Commission shall
4 approve an ordinance only if it determines that the requirements of the ordinance meet or
5 exceed the requirements of this Article and rules adopted thereunder.

6 (e) Assumption of Local Programs. – The Commission shall assume responsibility for
7 safe artificial slope construction programs in affected areas if a local government fails to adopt
8 an ordinance that meets the requirements of this Article or if a local government fails to
9 adequately administer and enforce the provisions of an adopted ordinance. The Commission
10 shall not assume responsibility for a program until it notifies the local government in writing by
11 certified mail, return receipt requested, of local program deficiencies, recommendations for
12 changes and improvements in the local program, and the deadline for compliance. The
13 Commission shall allow a local government a minimum of 120 calendar days to bring its
14 program into compliance. The Commission shall order assumption of a local program if it finds
15 that the local government has made no substantial progress toward compliance. The
16 Commission may make this finding at any time between 120 calendar days and 365 calendar
17 days after receipt of notice under this subsection by the local government, with no further
18 notice. Proceedings to review a Commission order to assume responsibility for a local program
19 shall be conducted by the superior court pursuant to Article 4 of Chapter 150B of the General
20 Statutes based on the agency record submitted by the Commission.

21 (f) Delegation to State Agencies. – The Commission may delegate authority to
22 implement a safe artificial slope construction program to a State agency. A State agency may
23 request that the Commission delegate the authority to implement a safe artificial slope
24 construction program to the agency and submit a proposed safe artificial slope construction
25 program to the Commission for approval. The Commission may delegate authority to
26 implement the program to the agency if it finds that the agency's proposed safe artificial slope
27 construction program is consistent with or provides greater protection than the requirements of
28 this Article and rules adopted pursuant to this Article. If the authority to implement a safe
29 artificial slope construction program is delegated to a State agency as provided in this
30 subsection, the delegated program of the State agency shall govern any slope construction
31 activities conducted by the State agency in an affected area, and the State agency shall not be
32 subject to a safe slope construction ordinance adopted by a local government having
33 jurisdiction over an affected area. If a State agency with a delegated program fails to adequately
34 administer and enforce the provisions of the delegated program, the Commission shall assume
35 responsibility for the safe artificial slope construction program of the State agency. The
36 Commission shall not assume responsibility for a program until it notifies the State agency in
37 writing by certified mail, return receipt requested, of the program deficiencies,
38 recommendations for changes and improvements in the program, and the deadline for
39 compliance. The Commission shall allow a State agency a minimum of 120 calendar days to
40 bring its program into compliance. The Commission shall order assumption of a program if it
41 finds that the State agency has made no substantial progress toward compliance. The
42 Commission may make this finding at any time between 120 calendar days and 365 calendar
43 days after receipt of notice under this subsection by the State agency, with no further notice.

44 (g) Fees. – If the Commission assumes responsibility for a safe artificial slope
45 construction program in an affected area pursuant to subsection (e) or (f) of this section, the
46 Commission shall collect a fee of one hundred dollars (\$100.00) per acre or partial acre of
47 disturbed land as shown on an artificial slope construction plan or of land actually disturbed
48 during the life of the slope construction project, whichever is greater, for review of the artificial
49 slope construction plan and related activities. This subsection may not limit the existing
50 authority of local programs approved pursuant to this Article to assess fees for the approval of
51 artificial slope construction plans.

1 (h) Safe Artificial Slope Construction Account. – The Safe Artificial Slope
2 Construction Account is established as a nonreverting account within the Department. Fees
3 collected under this section shall be credited to the Account and shall be applied to the costs of
4 administering this Article.

5 **"§ 113A-266. Mandatory local programs.**

6 (a) Adoption of Ordinance Required. – Each county that has within its jurisdiction an
7 affected area shall adopt an ordinance that regulates the construction of artificial slopes in
8 affected areas by any person. The ordinance shall apply in unincorporated areas within the
9 county and to incorporated areas within the county except that a city may adopt an ordinance in
10 which case the municipal ordinance shall apply within the city and the extraterritorial
11 jurisdiction of the city. The ordinance shall at least meet and may exceed the minimum
12 requirements of this Article and rules adopted pursuant to this Article.

13 (b) Review and Approval of Ordinance Required. – Prior to adoption of an ordinance
14 that regulates the construction of artificial slopes in affected areas, or modification of the
15 ordinance, a local government shall submit the ordinance to the Commission for review and
16 receive approval from the Commission for the ordinance.

17 (c) Public Hearing. – The governing body of a local government must hold a public
18 hearing on the question of adoption of an ordinance that regulates the construction of artificial
19 slopes in affected areas prior to adoption. The public hearing required by this section shall be
20 held upon at least 10 calendar days' notice in a newspaper of general circulation in the
21 jurisdiction adopting the ordinance. Testimony at the hearing shall be recorded, and any and all
22 exhibits shall be preserved within the custody of the governing body of the local government.
23 The testimony and evidence shall be made available for inspection and scrutiny by any person.

24 (d) Filing of Documents. – Each local government that adopts an ordinance pursuant to
25 the provisions of this Article shall file a copy of the ordinance with the Commission. The local
26 government shall file the information provided by the Commission pursuant to
27 G.S. 113A-265(a) with the register of deeds in the jurisdiction where the affected area is
28 located. Copies of the maps, drawings, or documents that are certified by the register of deeds
29 shall be admitted in evidence in all courts and shall have the same force and effect as would the
30 original.

31 (e) Application of Ordinance by Local Governments. – An ordinance adopted pursuant
32 to the provisions of this Article shall apply to all affected areas as defined in G.S. 113A-262
33 within the jurisdiction. A local government may apply the ordinance to other areas within its
34 jurisdiction if it finds that this application is reasonably necessary to protect against some or all
35 of the hazards or problems set forth in G.S. 113A-263. Determinations by a local government
36 of affected areas made pursuant to the provisions of this Article shall be conclusive in the
37 absence of fraud.

38 (f) Fees. – An ordinance adopted by a local government may establish a fee for the
39 review of an artificial slope construction plan and related activities.

40 (g) Implementation and Enforcement. – Each local government that is required to adopt
41 an ordinance pursuant to the provisions of this Article shall implement and enforce the
42 ordinance in accordance with the requirements of this Article and rules adopted thereunder.

43 (h) Creation or Designation of Agencies to Administer; Joint Programs. – Local
44 governments are authorized to create or designate agencies or subdivisions of local government
45 to administer and enforce the ordinance. Two or more units of local government are authorized
46 to establish a joint program and to enter into any agreements that are necessary for the proper
47 administration and enforcement of a safe artificial slope construction ordinance. The
48 resolutions establishing any joint program must be duly recorded in the minutes of the
49 governing body of each local government participating in the program, and a certified copy of
50 each resolution must be filed with the Commission.

51 **"§ 113A-267. Enforcement and penalties.**

1 (a) Civil Penalties. –

2 (1) The Commission may assess a civil penalty of not more than ten thousand
3 dollars (\$10,000) per month against any local government that fails to adopt
4 a safe artificial slope construction ordinance as required by this Article or
5 willfully fails to administer or enforce the provisions of its program in
6 substantial compliance with the minimum statewide safe slope construction
7 requirements of this Article. The Commission shall not impose a penalty
8 against a local government pursuant to this subsection until the Commission
9 has assumed the responsibility for administering and enforcing the safe slope
10 construction program. Civil penalties shall be imposed pursuant to a uniform
11 schedule adopted by the Commission. The schedule of civil penalties shall
12 be designed to recoup the costs of administration and enforcement.

13 (2) The Commission or a local government that administers a safe slope
14 construction program may assess a civil penalty against any person who
15 violates any of the provisions of this Article or any ordinance, rule, or order
16 adopted or issued pursuant to this Article by the Commission or by a local
17 government or who initiates or continues a slope construction activity for
18 which an artificial slope construction plan is required except in accordance
19 with the terms, conditions, and provisions of an approved plan. The
20 maximum civil penalty for a violation is five thousand dollars (\$5,000). A
21 civil penalty may be assessed from the date of the violation. Each day of a
22 continuing violation shall constitute a separate violation.

23 a. The Commission or a local government that administers a safe slope
24 construction program shall determine the amount of the civil penalty
25 and shall notify the person who is assessed the civil penalty of the
26 amount of the penalty and the reason for assessing the penalty. The
27 notice of assessment shall be served by any means authorized under
28 G.S. 1A-1, Rule 4, and shall direct the violator to either pay the
29 assessment or contest the assessment within 30 calendar days by
30 filing a petition for a contested case under Article 3 of Chapter 150B
31 of the General Statutes. If a violator does not pay a civil penalty
32 assessed by the Commission within 30 calendar days after it is due,
33 the Department shall request the Attorney General to institute a civil
34 action to recover the amount of the assessment. If a violator does not
35 pay a civil penalty assessed by a local government within 30 calendar
36 days after it is due, the local government may institute a civil action
37 to recover the amount of the assessment. The civil action may be
38 brought in the superior court of any county where the violation
39 occurred or the violator's residence or principal place of business is
40 located. A civil action must be filed within three years of the date the
41 assessment was due. An assessment that is not contested is due when
42 the violator is served with a notice of assessment. An assessment that
43 is contested is due at the conclusion of the administrative and judicial
44 review of the assessment.

45 b. In determining the amount of the penalty, the Commission or a local
46 government that administers a safe slope construction program shall
47 consider the degree and extent of harm caused by the violation, the
48 cost of rectifying the damage, the amount of money the violator
49 saved by noncompliance, whether the violation was committed
50 willfully, and the prior record of the violator in complying or failing
51 to comply with this Article.

1 (3) The clear proceeds of civil penalties collected by the Commission under this
2 subsection shall be remitted to the Civil Penalty and Forfeiture Fund in
3 accordance with G.S. 115C-457.2. Civil penalties collected by a local
4 government under this subsection shall be used as provided in Section 7 of
5 Article IX of the Constitution of North Carolina.

6 (b) Criminal Penalties. – Any person who knowingly or willfully violates any provision
7 of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the
8 Commission or a local government, or who knowingly or willfully initiates a slope construction
9 activity for which an artificial slope construction plan is required, except in accordance with the
10 terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor
11 that may include a fine not to exceed five thousand dollars (\$5,000).

12 (c) Injunctive Relief. –

13 (1) Whenever the governing body of a local government having jurisdiction has
14 reasonable cause to believe that any person is violating or is threatening to
15 violate any ordinance, rule, regulation, or order adopted or issued by the
16 local government pursuant to this Article, or any term, condition, or
17 provision of an artificial slope construction plan over which it has
18 jurisdiction, may, either before or after the institution of any other action or
19 proceeding authorized by this Article, institute a civil action in the name of
20 the local government for injunctive relief to restrain the violation or
21 threatened violation. The action shall be brought in the superior court of the
22 county in which the violation is occurring or is threatened.

23 (2) Whenever the Commission has reasonable cause to believe that any person
24 is violating or is threatening to violate the requirements of this Article, the
25 Commission may, either before or after the institution of any other action or
26 proceeding authorized by this Article, institute a civil action for injunctive
27 relief to restrain the violation or threatened violation. The action shall be
28 brought in the superior court of the county in which the violation or
29 threatened violation is occurring or about to occur and shall be in the name
30 of the State upon the relation of the Commission.

31 (3) Upon determination by a court that an alleged violation is occurring or is
32 threatened, the court shall enter any order or judgment that is necessary to
33 abate the violation, to ensure that restoration is performed, or to prevent the
34 threatened violation. The institution of an action for injunctive relief under
35 subdivision (1) or (2) of this subsection shall not relieve any party to the
36 proceeding from any civil or criminal penalty prescribed for violations of
37 this Article."

38 **SECTION 2.** G.S. 143B-298 reads as rewritten:

39 **"§ 143B-298. Sedimentation Control Commission – creation; powers and duties.**

40 (a) There is hereby created the Sedimentation Control Commission of the Department
41 of Environment and Natural Resources with the power and duty to develop and administer a
42 sedimentation control program as herein provided.

43 (b) The Sedimentation Control Commission has the following powers and duties:

44 (1) In cooperation with the Secretary of the Department of Transportation and
45 Highway Safety and other appropriate State and federal agencies, develop,
46 promulgate, publicize, and administer a comprehensive State erosion and
47 sedimentation control program.

48 (2) Develop and adopt on or before July 1, 1974, rules and regulations for the
49 control of erosion and sedimentation pursuant to G.S. 113A-54.

50 (3) Conduct public hearings pursuant to G.S. 113A-54.

- 1 (4) Assist local governments in developing erosion and sedimentation control
2 programs pursuant to G.S. 113A-60.
- 3 (5) Assist and encourage other State agencies in developing erosion and
4 sedimentation control programs pursuant to G.S. 113A-56.
- 5 (6) Develop recommended methods of control of sedimentation and prepare and
6 make available for distribution publications and other materials dealing with
7 sedimentation control techniques pursuant to G.S. 113A-54.
- 8 (7) Adopt rules for the safe construction of artificial slopes in affected areas as
9 provided in G.S. 113A-265(b) and develop a model safe artificial slope
10 construction ordinance as provided in G.S. 113A-265(c).
- 11 (8) Assist local governments in developing safe artificial slope construction
12 programs pursuant to G.S. 113A-265 and assume responsibility for a local
13 program as authorized by that section."

14 **SECTION 3.** G.S. 47E-4(b) reads as rewritten:

15 "(b) The North Carolina Real Estate Commission shall develop and require the use of a
16 standard disclosure statement to comply with the requirements of this section. The disclosure
17 statement shall specify that certain transfers of residential property are excluded from this
18 requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease
19 with an option to purchase where the lessee occupies or intends to occupy the dwelling, and
20 shall include at least the following characteristics and conditions of the property:

- 21 (1) The water supply and sanitary sewage disposal ~~system;~~system.
- 22 (2) The roof, chimneys, floors, foundation, basement, and other structural
23 components and any modifications of these structural
24 ~~components;~~components.
- 25 (3) The plumbing, electrical, heating, cooling, and other mechanical
26 ~~systems;~~systems.
- 27 (4) Present infestation of wood-destroying insects or organisms or past
28 infestation the damage for which has not been ~~repaired;~~repaired.
- 29 (5) The zoning laws, restrictive covenants, building codes, and other land-use
30 restrictions affecting the real property, any encroachment of the real property
31 from or to adjacent real property, and notice from any governmental agency
32 affecting this real ~~property;~~ and property.
- 33 (6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground
34 storage tank, hazardous material or toxic material (whether buried or
35 covered), and other environmental contamination.
- 36 (7) The location of the property within an area ranked as high or moderate
37 relative debris/earth flow/slide hazard area as designated on maps prepared
38 by the North Carolina Geological Survey.

39 (b1) The disclosure statement shall provide the owner with the option to indicate whether
40 the owner has actual knowledge of the specified characteristics or conditions, or the owner is
41 making no representations as to any characteristic or condition."

42 **SECTION 4.** There is appropriated from the General Fund to the Department of
43 Environment and Natural Resources the sum of forty thousand dollars (\$40,000) for the
44 2009-2010 fiscal year and the sum of forty thousand dollars (\$40,000) for the 2010-2011 fiscal
45 year to implement the provisions of this act.

46 **SECTION 5.** Section 1 of this act becomes effective October 1, 2010, except that
47 G.S. 113A-265, as enacted by Section 1 of this act, becomes effective when this act becomes
48 law. Sections 2 and 5 of this act become effective when it becomes law. Section 3 of this act
49 becomes effective December 1, 2009. Each local government that is required to adopt a safe
50 artificial slope construction ordinance pursuant to the provisions of G.S. 113A-266, as enacted

1 by Section 1 of this act, shall submit its ordinance to the Sedimentation Control Commission
2 for approval on or before July 1, 2009. Section 4 of this act becomes effective July 1, 2009.