

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 326
SENATE BILL 407

AN ACT TO TRANSFER WATERSHED APPROVAL AUTHORITY FOR WATERSHED WORKPLANS AND THE USE OF CHANNELIZATION TO THE SOIL AND WATER CONSERVATION COMMISSION AND TO CLARIFY CHAPTER 139 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 139-4(d), as the same appears in the 1978 Replacement Volume 3C of the General Statutes, is amended by the addition of a new subparagraph (8), which reads as follows:

"(8) To supervise and review small watershed work plans pursuant to G.S. 139-41.1 and G.S. 139-47."

Sec. 2. G.S. 139-26(d), as the same appears in the 1978 Replacement Volume 3C of the General Statutes, is hereby amended by substituting the words "Soil and Water Conservation Commission" for the words "Environmental Management Commission" at each place they occur; and by substituting the reference "G.S. 139-41.1(e)" for the statutory reference "G.S. 139-35(e)" in line 23 of the section.

Sec. 3. G.S. 139-35, as the same appears in the 1978 Replacement Volume 3C of the General Statutes, is hereby amended to read as follows:

"§ 139-35. Supervision by Soil and Water Conservation Commission. — Watershed improvement districts as provided for under this Article shall be subject to the supervision by the Soil and Water Conservation Commission pursuant to G.S. 139-41.1 to the same extent as are counties operating watershed improvement programs authorized under Article 3 of this Chapter."

Sec. 4. G.S. 139-38 is renumbered as G.S. 139-44; is amended by rewriting the title to read "Power of eminent domain conferred on counties.;" is further amended by changing all references to a "watershed improvement district" or "district" in G.S. 139-38(a) and 139-38(c) and (d) to read "county"; and is further amended by changing all references to "trustees of the district" and "trustees" in G.S. 139-38(e) to read "board of county commissioners" and "board", respectively.

Sec. 5. G.S. 139-41(e), as the same appears in the 1978 Replacement Volume 3C of the General Statutes, is hereby repealed.

Sec. 6. A new section is added to Chapter 139 of the General Statutes to read as follows:

"§ 139-41.1. Review of watershed work plans. — (a) Watershed work plans developed under Public Law 566 (83rd Congress) as amended, and all other work plans developed pursuant to this Chapter, shall be submitted to the Soil and Water Conservation Commission for review and approval or disapproval. No work of improvement may be constructed or established without the approval of work plans by the Soil and Water Conservation Commission pursuant to this section.

(b) The Soil and Water Conservation Commission shall approve a watershed work plan if, in its judgment, it:

- (1) provides for proper and safe construction of proposed works of improvement;
- (2) shows that the construction and operation of the proposed works of improvement (in conjunction with other such works and related structures of the district and the watershed) will not appreciably diminish the flow of useful water that would otherwise be available to existing downstream water users during critical periods;
- (3) determines whether a program of flood plain management in connection with such proposed works is in the public interest, and the Soil and Water Conservation Commission may withhold approval until satisfactory flood plain management measures are incorporated; and
- (4) is otherwise in compliance with law.

(c) Amendments to the work plan involving major changes shall be approved by the Soil and Water Conservation Commission. Determinations by the Soil and Water Conservation Commission that an amendment involves major changes shall be conclusive for purposes of this section. No work of improvement may be constructed or established without the approval of work plans by the Soil and Water Conservation Commission pursuant to this subsection. The construction or establishment of any such work of improvement without such approval, or without conforming to a work plan approved by the Soil and Water Conservation Commission, may be enjoined. The Soil and Water Conservation Commission may institute an action for such injunctive relief in the superior court of any county wherein such construction or establishment takes place.

(d) In conjunction with any work plans submitted to the Soil and Water Conservation Commission under subsection (c) of this section, a county shall submit in such form as the Soil and Water Conservation Commission may prescribe a plan of its proposed method of operations for works of improvement covered by the work plans and for related structures. With the approval of the Soil and Water Conservation Commission, the county may amend its initial plan of operations from time to time. Soil and Water Conservation Commission approval of the initial plan of operations shall not be required.

(e) If the Soil and Water Conservation Commission has reason to believe that a county is not operating any work of improvement or properly related structure in accordance with its plan of operations as amended, the Soil and Water Conservation Commission on its own motion or upon complaint may order a hearing to be held thereon upon not less than 30 days' written notification to the county and complainant, if any, by personal service or registered mail. Notice of such hearing shall be published at least once a week for two successive weeks. In connection with any such hearing the Soil and Water Conservation Commission shall be empowered to administer oaths; to take testimony; and, in the same manner as the superior court, to order the taking of depositions, issue subpoenas, and to compel the attendance of witnesses and production of documents. If the Soil and Water Conservation Commission determines from evidence of record that the county is not operating any work of improvement or related structure in accordance with its plan of operations, as amended, the Soil and Water Conservation Commission may issue an order directing the county to comply therewith or to take other appropriate corrective action. Upon failure by a county to comply with any such order, the Soil and Water Conservation Commission may institute an action for injunctive relief in the superior court of any county wherein such noncompliance occurs."

Sec. 7. G.S. 139-44 is renumbered as G.S. 139-38 and is rewritten to read as follows:

"§ 139-38. The power of eminent domain conferred on watershed improvement districts.
— A watershed improvement district shall have the same powers as conferred on counties operating watershed improvement programs by G.S. 139-44 (as the same may be amended from time to time), subject to the limitations and procedures prescribed therein. For this

purpose, a watershed improvement district shall be considered as a county and the trustees of the applicant district shall be considered as the board of county commissioners."

Sec. 8. G.S. 139-47, as the same appears in the 1978 Replacement Volume 3C of the General Statutes, is hereby amended by substituting the words "Soil and Water Conservation Commission" for the words "Environmental Management Commission" at each place they occur; and subsection (c) is further amended to read as follows:

"(c) Following publication of the notice, the Soil and Water Conservation Commission or its designee shall hold a public hearing in the county or counties wherein any part of the project lies to allow interested parties to be heard concerning the proposed project. The following provisions together with others the Soil and Water Conservation Commission may prescribe shall be applicable to hearings pursuant to this section:

- (1) All hearings shall be before the Soil and Water Conservation Commission or its authorized agent, and the hearing shall be open to the public.
- (2) A full and complete record of all proceedings shall be taken by a reporter appointed by the Soil and Water Conservation Commission. Any party to a proceeding shall be entitled to a copy of such record upon payment of the reasonable cost as determined by the Soil and Water Conservation Commission.
- (3) Any hearing will provide to all parties an opportunity to make written or oral submissions concerning the proposed project.
- (4) Following any hearing, the Soil and Water Conservation Commission shall afford the parties a reasonable opportunity to submit within such time as prescribed by the Commission, proposed findings of fact and any brief in connection therewith."

Sec. 9. G.S. 139-53, as the same appears in the 1979 Supplement to Volume 3C of the General Statutes, is hereby amended to read as follows:

"§ 139-53. State Soil and Water Conservation Commission authorized to accept applications. — The State Soil and Water Conservation Commission is authorized to accept applications for grants for nonfederal costs relating to small watershed projects authorized under Public Law 566 (83rd Congress as amended) from local sponsors of such projects properly organized under the provisions of either Chapter 156 of the General Statutes of North Carolina or Chapter 139 of the General Statutes of North Carolina, or from county service districts authorized by G.S. 153A-301, or from municipal service districts authorized by G.S. 160A-536. Applications shall be made on forms prescribed by the Commission."

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 4th day of May, 1981.