

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 921

Short Title: Repeal Watershed Protection Act.

(Public)

Sponsors: Representatives Cansler, Sherrill, Linney; Baker, Brawley, J. Brown, Buchanan, Hayes, Kiser, Rayfield, and Thompson.

Referred to: Health & Environment.

April 12, 1995

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE WATERSHED PROTECTION ACT AND TO MAKE
CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-214.5 and G.S. 143-214.6 are repealed.

Sec. 2. G.S. 143-215.2(a) reads as rewritten:

"(a) Issuance. – The Commission is hereby empowered, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or ~~G.S. 143-215, or a water supply watershed management requirement adopted pursuant to G.S. 143-214.5,~~ G.S. 143-215 to issue (and from time to time to modify or revoke) a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. Such an order or instrument may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water, subject to the provisions of subsection (a1) of this section regarding proposed orders, and such consent order,

1 when entered into by the Commission after public review, shall have the same force and
2 effect as a special order of the Commission issued pursuant to hearing. Provided,
3 however, that the provisions of this section shall not apply to any agricultural operation,
4 such as the use or preparation of any land for the purposes of planting, growing, or
5 harvesting plants, crops, trees or other agricultural products, or raising livestock or
6 poultry."

7 Sec. 3. G.S. 143-215.6A reads as rewritten:

8 **"§ 143-215.6A. Enforcement procedures: civil penalties.**

9 (a) A civil penalty of not more than ten thousand dollars (\$10,000) may be
10 assessed by the Secretary against any person who:

11 (1) Violates any classification, standard, limitation, or management practice
12 established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.

13 (2) Is required but fails to apply for or to secure a permit required by G.S.
14 143-215.1, or who violates or fails to act in accordance with the terms,
15 conditions, or requirements of such permit or any other permit or
16 certification issued pursuant to authority conferred by this Part,
17 including pretreatment permits issued by local governments and
18 laboratory certifications.

19 (3) Violates or fails to act in accordance with the terms, conditions, or
20 requirements of any special order or other appropriate document issued
21 pursuant to G.S. 143-215.2.

22 (4) Fails to file, submit, or make available, as the case may be, any
23 documents, data, or reports required by this Article or G.S. 143-355(k)
24 relating to water use information.

25 (5) Refuses access to the Commission or its duly designated representative
26 to any premises for the purpose of conducting a lawful inspection
27 provided for in this Article.

28 (6) Violates a rule of the Commission implementing this Part, Part 2A of
29 this Article, or G.S. 143-355(k).

30 ~~(7) Violates or fails to act in accordance with the statewide minimum water~~
31 ~~supply watershed management requirements adopted pursuant to G.S.~~
32 ~~143-214.5, whether enforced by the Commission or a local government.~~

33 (8) Violates the offenses set out in G.S. 143-215.6B.

34 (9) Is required, but fails, to apply for or to secure a certificate required by
35 G.S. 143-215.22I, or who violates or fails to act in accordance with the
36 terms, conditions, or requirements of the certificate.

37 (b) If any action or failure to act for which a penalty may be assessed under this
38 section is continuous, the Secretary may assess a penalty not to exceed ten thousand
39 dollars (\$10,000) per day for so long as the violation continues, unless otherwise
40 stipulated.

41 (c) In determining the amount of the penalty the Secretary shall consider the
42 factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall

1 apply to civil penalty assessments that are presented to the Commission for final agency
2 decision.

3 (d) The Secretary shall notify any person assessed a civil penalty of the assessment
4 and the specific reasons therefor by registered or certified mail, or by any means
5 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of
6 receipt of the notice of assessment.

7 (e) ~~Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand~~
8 ~~dollars (\$10,000) per month may be assessed by the Commission against any local~~
9 ~~government that fails to adopt a local water supply watershed protection program as~~
10 ~~required by G.S. 143-214.5, or willfully fails to administer or enforce the provisions of its~~
11 ~~program in substantial compliance with the minimum statewide water supply watershed~~
12 ~~management requirements. No such penalty shall be imposed against a local government~~
13 ~~until the Commission has assumed the responsibility for administering and enforcing the~~
14 ~~local water supply watershed protection program. Civil penalties shall be imposed~~
15 ~~pursuant to a uniform schedule adopted by the Commission. The schedule of civil~~
16 ~~penalties shall be based on acreage and other relevant cost factors and shall be designed~~
17 ~~to recoup the costs of administration and enforcement.~~

18 (f) Requests for remission of civil penalties shall be filed with the Secretary.
19 Remission requests shall not be considered unless made within 30 days of receipt of the
20 notice of assessment. Remission requests must be accompanied by a waiver of the right
21 to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on
22 which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c)
23 and (d), remission requests may be resolved by the Secretary and the violator. If the
24 Secretary and the violator are unable to resolve the request, the Secretary shall deliver
25 remission requests and his recommended action to the Committee on Civil Penalty
26 Remissions of the Environmental Management Commission appointed pursuant to G.S.
27 143B-282.1(c).

28 (g) If any civil penalty has not been paid within 30 days after notice of assessment
29 has been served on the violator, the Secretary shall request the Attorney General to
30 institute a civil action in the Superior Court of any county in which the violator resides or
31 has his or its principal place of business to recover the amount of the assessment, unless
32 the violator contests the assessment as provided in subsection (d) of this section, or
33 requests remission of the assessment in whole or in part as provided in subsection (f) of
34 this section. If any civil penalty has not been paid within 30 days after the final agency
35 decision or court order has been served on the violator, the Secretary shall request the
36 Attorney General to institute a civil action in the Superior Court of any county in which
37 the violator resides or has his or its principal place of business to recover the amount of
38 the assessment. Such civil actions must be filed within three years of the date the final
39 agency decision or court order was served on the violator.

40 (h) The Secretary may delegate his powers and duties under this section to the
41 Director of the Division of Environmental Management of the Department.

42 (i) As used in this subsection, 'municipality' refers to any unit of local government
43 which operates a wastewater treatment plant. As used in this subsection, 'unit of local

1 government' has the same meaning as in G.S. 130A-290. The provisions of this
2 subsection shall apply whenever a municipality that operates a wastewater treatment
3 plant with an influent bypass diversion structure and with a permitted discharge of 10
4 million gallons per day or more into any of the surface waters of the State that have been
5 classified as nutrient sensitive waters (NSW) under rules adopted by the Commission is
6 subject to a court order which specifies (i) a schedule of activities with respect to the
7 treatment of wastewater by the municipality; (ii) deadlines for the completion of
8 scheduled activities; and (iii) stipulated penalties for failure to meet such deadlines. A
9 municipality as specified herein that violates any provision of such order for which a
10 penalty is stipulated shall pay the full amount of such penalty as provided in the order
11 unless such penalty is modified, remitted, or reduced by the court.

12 (j) Local governments certified and approved to administer and enforce
13 pretreatment programs by the Commission pursuant to G.S. 143-215.3(a)(14) may assess
14 civil penalties for violations of their respective programs in accordance with the powers
15 conferred upon the Commission and the Secretary in this section, except that actions for
16 collection of unpaid civil penalties shall be referred to the attorney representing the
17 assessing local government. The total of the civil penalty assessed by a local government
18 and the civil penalty assessed by the Secretary for any violation may not exceed the
19 maximum civil penalty for such violation under this section.

20 (k) A person who has been assessed a civil penalty by a local government as
21 provided by subsection (j) of this section may request a review of the assessment by
22 filing a request for review with the local government within 30 days of the date the notice
23 of assessment is received. If a local ordinance provides for a local administrative
24 hearing, the hearing shall afford minimum due process including an unbiased hearing
25 official. The local government shall make a final decision on the request for review
26 within 90 days of the date the request for review is filed. The final decision on a request
27 for review shall be subject to review by the superior court pursuant to Article 27 of
28 Chapter 1 of the General Statutes. If the local ordinance does not provide for a local
29 administrative hearing, a person who has been assessed a civil penalty by a local
30 government as provided by subsection (j) of this section may contest the assessment by
31 filing a civil action in superior court within 60 days of the date the notice of assessment is
32 received."

33 Sec. 4. G.S. 153A-343(b) reads as rewritten:

34 "(b) The first class mail notice required under subsection (a) of this section shall not
35 be required in the following situations:

- 36 (1) The total rezoning of all property within the boundaries of a county or a
37 zoning area as defined in G.S. 153A-342 unless rezoning involves
38 zoning of parcels of land to less intense or more restrictive uses. If
39 rezoning involves zoning of parcels of land to less intense or more
40 restrictive uses, notification to owners of these parcels shall be made by
41 mail in accordance with subsection (a) of this section;
- 42 (2) The zoning is an initial zoning of the entire zoning jurisdiction area;

- 1 (3) The zoning reclassification action directly affects more than 50
2 properties, owned by a total of at least 50 different property owners; or
3 (4) The reclassification is an amendment to the zoning ~~text; or text.~~
4 (5) ~~The county is adopting a water supply watershed protection program as~~
5 ~~required by G.S. 143-214.5.~~

6 In any case where this subsection eliminates the notice required by subsection (a) of this
7 section, a county shall publish once a week for four successive calendar weeks in a
8 newspaper having general circulation in the area maps showing the boundaries of the area
9 affected by the proposed ordinance or amendment. The map shall not be less than one-
10 half of a newspaper page in size. The notice shall only be effective for property owners
11 who reside in the area of general circulation of the newspaper which publishes the notice.
12 Property owners who reside outside of the county's jurisdiction or outside of the
13 newspaper circulation area, according to the address listed on the most recent property
14 tax listing for the affected property, shall be notified by mail pursuant to this section. The
15 person or persons mailing the notices shall certify to the board of commissioners that
16 fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition
17 to the published notice, a county shall post one or more prominent signs immediately
18 adjacent to the subject area reasonably calculated to give public notice of the proposed
19 rezoning."

20 Sec. 5. G.S. 160A-384(b) reads as rewritten:

21 "(b) The first class mail notice required under subsection (a) of this section shall not
22 be required in the following situations:

- 23 (1) The total rezoning of all property within the corporate boundaries of a
24 municipality unless rezoning involves zoning of parcels of land to less
25 intense or more restrictive uses. If rezoning involves zoning of parcels
26 of land to less intense or more restrictive uses, notification to owners of
27 these parcels shall be made by mail in accordance with subsection (a) of
28 this section;
- 29 (2) The zoning is an initial zoning of the entire zoning jurisdiction area;
- 30 (3) The zoning reclassification action directly affects more than 50
31 properties, owned by a total of at least 50 different property owners; or
32 (4) The reclassification is an amendment to the zoning ~~text; or text.~~
33 (5) ~~The city is adopting a water supply watershed protection program as~~
34 ~~required by G.S. 143-214.5.~~

35 In any case where this subsection eliminates the notice required by subsection (a) of this
36 section, a city shall publish once a week for four successive calendar weeks in a
37 newspaper having general circulation in the area maps showing the boundaries of the area
38 affected by the proposed ordinance or amendment. The map shall not be less than one-
39 half of a newspaper page in size. The notice shall only be effective for property owners
40 who reside in the area of general circulation of the newspaper which publishes the notice.
41 Property owners who reside outside of the city's jurisdiction or outside of the newspaper
42 circulation area, according to the address listed on the most recent property tax listing for
43 the affected property, shall be notified by mail pursuant to this section. The person or

1 persons mailing the notices shall certify to the city council that fact, and the certificates
2 shall be deemed conclusive in the absence of fraud. In addition to the published notice, a
3 city shall post one or more prominent signs immediately adjacent to the subject area
4 reasonably calculated to give public notice of the proposed rezoning."

5 Sec. 6. All rules adopted pursuant to G.S. 143-214.5 and G.S. 143-214.6 are
6 repealed.

7 Sec. 7. This act is effective upon ratification.