

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1002

Short Title: Strengthen Mining Act.

(Public)

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Sponsors: Senators Kinnaird; and Odom.

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Referred to: Agriculture/Environment/Natural Resources.

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April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE MINING ACT OF 1971.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74-50 is amended by adding a new subsection to read:

"(b1) At the time of the application for a new mining permit or a permit modification that adds owners of record lands adjoining the permit boundaries, the operator shall request each local government having jurisdiction over any part of the land on which the proposed mining operation is to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the operation and whether the proposed mining operation would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the proposed mining operation is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Department. The Department shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the

1 applicant. Unless the local government makes a subsequent determination of consistency  
2 with all ordinances cited in the determination or the proposed mining operation is  
3 determined by a court of competent jurisdiction to be consistent with the cited  
4 ordinances, the Department shall attach as a condition of the permit a requirement that  
5 the applicant, prior to construction or operation of the proposed mining operation under  
6 the permit, comply with all lawfully adopted local ordinances, including those cited in the  
7 determination, that apply to the proposed mining operation at the time of construction or  
8 operation of the proposed mining operation. If a local government fails to submit a  
9 determination to the Department as provided by this subsection within 15 days after  
10 receipt of the request, the Department may proceed to consider the permit application  
11 without regard to local zoning and subdivision ordinances. This subsection shall not be  
12 construed to limit any opportunity a local government may have to comment on a permit  
13 application under any other law or rule."

14 Section 2. Article 7 of Chapter 74 of the General Statutes is amended by  
15 adding a new section to read:

16 "**§ 74-54.2. Siting requirements for mines.**

17 A mining operation shall be located at least 1,500 feet from any drinking water well,  
18 occupied residence, school, hospital, church, licensed day care center, licensed rest home,  
19 or national or State park or forest."

20 Section 3. G.S. 74-64(a) reads as rewritten:

21 "(a) Civil Penalties.

22 (1) a. A civil penalty of not more than five thousand dollars (\$5,000) may  
23 be assessed by the Department against any person who fails to secure a  
24 valid operating permit prior to engaging in mining, as required by G.S.  
25 74-50. No civil penalty shall be assessed until the operator has been  
26 given notice of the violation pursuant to G.S. 74-60. Each day of a  
27 continuing violation shall constitute a separate violation and a civil  
28 penalty of not more than five thousand dollars (\$5,000) per day may be  
29 assessed for each day the violation continues.

30 b. Any permitted operator who violates any of the provisions of this  
31 Article, any rules adopted under this Article, or any of the terms  
32 and conditions of the mining permit shall be subject to a civil  
33 penalty of not more than ~~five hundred dollars (\$500.00).~~ five  
34 thousand dollars (\$5,000) Each day of a continuing violation  
35 shall constitute a separate violation. Prior to the assessment of  
36 any civil penalty, written notice of the violation shall be given.  
37 The notice shall describe the violation with reasonable  
38 particularity, shall specify a time period reasonably calculated to  
39 permit the violator to complete actions to correct the violation,  
40 and shall state that failure to correct the violation within that  
41 period may result in the assessment of a civil penalty.

42 c. In determining the amount of the penalty, the Department shall  
43 consider the degree and extent of harm caused by the violation,

1 the cost of rectifying the damage, the amount of money the  
2 violator saved by the noncompliance, whether the violation was  
3 committed willfully, and the prior record of the violator in  
4 complying or failing to comply with this Article.

5 (2) The Department shall determine the amount of the civil penalty to be  
6 assessed pursuant to G.S. 74-64(a)(1) and shall give notice to the  
7 operator of the assessment of the civil penalty pursuant to G.S. 74-60, or  
8 by any means authorized by G.S. 1A-1, Rule 4. The notice shall set  
9 forth in detail the violation or violations for which the civil penalty has  
10 been assessed. The operator may appeal the assessment of any civil  
11 penalty assessed pursuant to this section in accordance with the  
12 procedures set forth in G.S. 74-61.

13 (3) The notice of assessment shall direct the violator to pay the assessment  
14 or contest the assessment as provided in G.S. 74-61. If the violator does  
15 not pay the assessment within 30 days after receipt of the notice of  
16 assessment or within 30 days after receipt of the final agency decision,  
17 where the assessment has been contested, the Department shall request  
18 the Attorney General to institute a civil action in superior court to  
19 recover the amount of the penalty. A civil action under this section shall  
20 be filed within three years of the date the final agency decision was  
21 served on the violator.

22 (4) All funds collected pursuant to this section shall be credited to the  
23 General Fund as nontax revenue.

24 (5) In addition to other remedies, the Department may request the Attorney  
25 General to institute any appropriate action or proceedings to prevent,  
26 restrain, correct or abate any violation of this Article or any rules  
27 adopted under this Article, or the obstruction, hampering, or  
28 interference with an authorized representative of the Department while  
29 the representative is carrying out official duties pursuant to this Article."

30 Section 4. G.S. 74-67 is repealed.

31 Section 5. Section 2 of this act becomes effective August 1, 1997, and applies  
32 to all permits submitted on or after that date for new mining operations or for  
33 modifications seeking to enlarge their land area. The remaining sections of this act are  
34 effective when they became law and apply to all new and existing mining operations.