

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1159  
House Committee Substitute Favorable 5/27/99

Short Title: Land-Use Restrictions/Contaminated Sites.

(Public)

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Sponsors:

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Referred to:

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April 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO EXPAND THE CIRCUMSTANCES UNDER WHICH THE  
2 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES MAY  
3 ALLOW THE USE OF LAND-USE RESTRICTIONS TO PROTECT PUBLIC  
4 HEALTH AT CONTAMINATED SITES.  
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6 The General Assembly of North Carolina enacts:

7 Section 1. Part 1 of Article 7 of Chapter 143B of the General Statutes is  
8 amended by adding two new sections to read:

9 **"§ 143B-279.9. Land-use restrictions may be imposed to reduce danger to public**  
10 **health at contaminated sites.**

11 In order to reduce or eliminate the danger to public health or the environment posed  
12 by the presence of contamination at a site, an owner, operator, or other responsible party  
13 may impose restrictions on the current or future use of the real property comprising any  
14 part of the site where the contamination is located if the restrictions meet the  
15 requirements of this section. The restrictions must be agreed to by the owner of the real  
16 property, included in a remedial action plan for the site that has been approved by the  
17 Secretary, and implemented as a part of the remedial action program for the site. The  
18 Secretary may approve restrictions included in a remedial action plan in accordance with  
19 standards that the Secretary determines to be applicable to the site. If the remedial action

1 is risk-based or will not require that the site meet current standards, as defined in G.S.  
2 130A-310.31, the remedial action plan must include an agreement by the owner, operator,  
3 or other responsible party to record approved land-use restrictions that meet the  
4 requirements of this section as provided in G.S. 143B-279.10. Restrictions may apply to  
5 activities on, over, or under the land, including, but not limited to, use of groundwater,  
6 building, filling, grading, excavating, and mining. Any approved restriction shall be  
7 enforced by any owner, operator, or other party responsible for the contaminated site.  
8 Any land-use restriction may also be enforced by the Department through the remedies  
9 provided by any provision of law that is implemented or enforced by the Department or  
10 by means of a civil action. The Department may enforce any land-use restriction without  
11 first having exhausted any available administrative remedies. A land-use restriction may  
12 also be enforced by any unit of local government having jurisdiction over any part of the  
13 site. A land-use restriction shall not be declared unenforceable due to lack of privity of  
14 estate or contract, due to lack of benefit to particular land, or due to lack of any property  
15 interest in particular land. Any person who owns or leases a property subject to a land-  
16 use restriction under this Part shall abide by the land-use restriction.

17 **"§ 143B-279.10. Recordation of contaminated sites.**

18 (a) The owner of the real property on which a site is located that is subject to  
19 current or future use restrictions approved as provided in G.S. 143B-279.9 shall submit to  
20 the Department a survey plat as required by this section within 180 days after the owner  
21 is notified to do so. The survey plat shall identify areas designated by the Department,  
22 shall be prepared and certified by a professional land surveyor, and shall be entitled  
23 'NOTICE OF CONTAMINATED SITE'. Where a contaminated site is located on more  
24 than one parcel or tract of land, a composite map or plat showing all parcels or tracts may  
25 be recorded. The Notice shall include a legal description of the site that would be  
26 sufficient as a description in an instrument of conveyance, shall meet the requirements of  
27 G.S. 47-30 for maps and plats, and shall identify:

- 28 (1) The location and dimensions of any disposal areas and areas of potential  
29 environmental concern with respect to permanently surveyed  
30 benchmarks.  
31 (2) The type, location, and quantity of contamination known to the owner of  
32 the site to exist on the site.  
33 (3) Any restriction approved by the Department on the current or future use  
34 of the site.

35 (b) After the Department approves and certifies the Notice, the owner of the site  
36 shall file the certified copy of the Notice in the register of deeds office in the county or  
37 counties in which the land is located within 15 days of the date on which the owner  
38 receives approval of the Notice from the Department.

39 (c) The register of deeds shall record the certified copy of the Notice and index it  
40 in the grantor index under the names of the owners of the land.

41 (d) In the event that the owner of the site fails to submit and file the Notice  
42 required by this section within the time specified, the Secretary may prepare and file the  
43 Notice. The costs thereof may be recovered by the Secretary from any responsible party.

1 In the event that an owner of a site who is not a responsible party submits and files the  
2 Notice required by this section, the owner may recover the reasonable costs thereof from  
3 any responsible party.

4 (e) When a contaminated site that is subject to current or future land-use  
5 restrictions is sold, leased, conveyed, or transferred, the deed or other instrument of  
6 transfer shall contain in the description section, in no smaller type than that used in the  
7 body of the deed or instrument, a statement that the property is a contaminated site and a  
8 reference by book and page to the recordation of the Notice.

9 (f) A Notice of Contaminated Site filed pursuant to this section may, at the request  
10 of the owner of the land, be cancelled by the Secretary after the contamination has been  
11 eliminated. If requested in writing by the owner of the land and if the Secretary concurs  
12 with the request, the Secretary shall send to the register of deeds of each county where  
13 the Notice is recorded a statement that the contamination has been eliminated and request  
14 that the Notice be cancelled of record. The Secretary's statement shall contain the names  
15 of the owners of the land as shown in the Notice and reference the plat book and page  
16 where the Notice is recorded. The register of deeds shall record the Secretary's statement  
17 in the deed books and index it on the grantor index in the names of the owners of the land  
18 as shown in the Notice and on the grantee index in the name 'Secretary of Environment  
19 and Natural Resources'. The register of deeds shall make a marginal entry on the Notice  
20 showing the date of cancellation and the book and page where the Secretary's statement is  
21 recorded, and the register of deeds shall sign the entry. If a marginal entry is  
22 impracticable because of the method used to record maps and plats, the register of deeds  
23 shall not be required to make a marginal entry."

24 Section 2. This act becomes effective 1 October 1999.