

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**HOUSE BILL 1029  
Committee Substitute Favorable 6/1/05  
Senate Agriculture/Environment/Natural Resources Committee Substitute  
Adopted 8/10/05  
Fourth Edition Engrossed 8/12/05**

Short Title: Local Govt Stream Clearing/Clarify Liability.

(Public)

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Sponsors:

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Referred to:

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March 31, 2005

A BILL TO BE ENTITLED

1 AN ACT FACILITATING THE ESTABLISHMENT OF LOCAL GOVERNMENT  
2 PROGRAMS TO CLEAR STREAMS BY CLARIFYING LOCAL  
3 GOVERNMENT LIABILITY FOR SUCH ACTIONS AND TO ALLOW THE  
4 VILLAGE OF CLEMMONS AND THE TOWN OF KERNERSVILLE TO  
5 COLLECT DELINQUENT STORMWATER UTILITY FEES IN THE SAME  
6 MANNER AS IT MAY COLLECT DELINQUENT PERSONAL AND REAL  
7 PROPERTY TAXES.  
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9       Whereas, the clearing of obstructions in streams, such as dead trees, fallen  
10 tree limbs, root balls, underbrush, and trash and debris furthers the health, safety, and  
11 welfare of the State's citizens by allowing such streams to function more efficiently to  
12 remove stormwater, thus reducing flooding; and

13       Whereas, local governments are deterred from engaging in stream-clearing  
14 activities by the possibility that they will become legally responsible for regular stream  
15 clearing, or the possibility that they will become legally responsible for the impact on  
16 private properties of natural events such as flooding, which have never been the legal  
17 responsibility of local governments; and

18       Whereas, many private landowners do not have the resources to clear  
19 obstructions from the streams that are located on their property, and it is in the public  
20 interest to facilitate the establishment of stream-clearing programs by local  
21 governments; Now, therefore,  
22 The General Assembly of North Carolina enacts:

23       **SECTION 1.** Article 6 of Chapter 153A of the General Statutes is amended  
24 by adding a new section to read:  
25 **"§ 153A-140.1. Stream-clearing programs.**

1       (a) A county shall have the authority to remove natural and man-made  
2 obstructions in stream channels and in the floodway of streams that may impede the  
3 passage of water during rain events.

4       (b) The actions of a county to clear obstructions from a stream shall not create or  
5 increase the responsibility of the county for the clearing or maintenance of the stream,  
6 or for flooding of the stream. In addition, actions by a county to clear obstructions from  
7 a stream shall not create in the county any ownership in the stream, obligation to control  
8 the stream, or affect any otherwise existing private property right, responsibility, or  
9 entitlement regarding the stream. These provisions shall not relieve a county for  
10 negligence that might be found under otherwise applicable law.

11       (c) Nothing in this section shall be construed to affect existing rights of the State  
12 to control or regulate streams or activities within streams. In implementing a  
13 stream-clearing program, the county shall comply with all requirements in State or  
14 federal statutes and rules."

15               **SECTION 2.** Article 8 of Chapter 160A of the General Statutes is amended  
16 by adding a new section to read:

17 **"§ 160A-193.1. Stream-clearing programs.**

18       (a) A city shall have the authority to remove natural and man-made obstructions  
19 in stream channels and in the floodway of streams that may impede the passage of water  
20 during rain events.

21       (b) The actions of a city to clear obstructions from a stream shall not create or  
22 increase the responsibility of the city for the clearing or maintenance of the stream, or  
23 for flooding of the stream. In addition, actions by a city to clear obstructions from a  
24 stream shall not create in the city any ownership in the stream, obligation to control the  
25 stream, or affect any otherwise existing private property right, responsibility, or  
26 entitlement regarding the stream. These provisions shall not relieve a city for negligence  
27 that might be found under otherwise applicable law.

28       (c) Nothing in this section shall be construed to affect otherwise existing rights of  
29 the State to control or regulate streams or activities within streams. In implementing a  
30 stream-clearing program, the city shall comply with all requirements in State or federal  
31 statutes and rules."

32               **SECTION 3.(a)** G.S. 160A-314(a1) reads as rewritten:

33       "(a1) (1) Before it establishes or revises a schedule of rates, fees, charges, or  
34 penalties for stormwater management programs and structural and  
35 natural stormwater and drainage systems under this section, the city  
36 council shall hold a public hearing on the matter. A notice of the  
37 hearing shall be given at least once in a newspaper having general  
38 circulation in the area, not less than seven days before the public  
39 hearing. The hearing may be held concurrently with the public hearing  
40 on the proposed budget ordinance.

41       (2) The fees established under this subsection must be made applicable  
42 throughout the area of the city. Schedules of rates, fees, charges, and  
43 penalties for providing stormwater management programs and  
44 structural and natural stormwater and drainage system service may

1 vary according to whether the property served is residential,  
2 commercial, or industrial property, the property's use, the size of the  
3 property, the area of impervious surfaces on the property, the quantity  
4 and quality of the runoff from the property, the characteristics of the  
5 watershed into which stormwater from the property drains, and other  
6 factors that affect the stormwater drainage system. Rates, fees, and  
7 charges imposed under this subsection may not exceed the city's cost  
8 of providing a stormwater management program and a structural and  
9 natural stormwater and drainage system. The city's cost of providing a  
10 stormwater management program and a structural and natural  
11 stormwater and drainage system includes any costs necessary to assure  
12 that all aspects of stormwater quality and quantity are managed in  
13 accordance with federal and State laws, regulations, and rules.

14 (3) No stormwater utility fee may be levied under this subsection  
15 whenever two or more units of local government operate separate  
16 stormwater management programs or separate structural and natural  
17 stormwater and drainage system services in the same area within a  
18 county. However, two or more units of local government may allocate  
19 among themselves the functions, duties, powers, and responsibilities  
20 for jointly operating a stormwater management program and structural  
21 and natural stormwater and drainage system service in the same area  
22 within a county, provided that only one unit may levy a fee for the  
23 service within the joint service area. For purposes of this subsection, a  
24 unit of local government shall include a regional authority providing  
25 stormwater management programs and structural and natural  
26 stormwater and drainage system services.

27 (4) A city may adopt an ordinance providing that any fee imposed under  
28 this subsection may be billed with property taxes, may be payable in  
29 the same manner as property taxes, and, in the case of nonpayment,  
30 may be collected in any manner by which delinquent personal or real  
31 property taxes can be collected. If an ordinance states that delinquent  
32 fees can be collected in the same manner as delinquent real property  
33 taxes, the fees are a lien on the real property described on the bill that  
34 includes the fee."

35 **SECTION 3.(b)** G.S. 160A-314(c) reads as rewritten:

36 "(c) Except as provided in subsections (a1) and (d) of this section and G.S.  
37 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be  
38 legal obligations of the person contracting for them, and shall in no case be a lien upon  
39 the property or premises served, provided that no contract shall be necessary in the case  
40 of structural and natural stormwater and drainage systems."

41 **SECTION 4.** This act is effective when it becomes law and applies to  
42 stream-clearing activities commenced on or after that date. Section 3 of this act applies  
43 only to the Town of Kernersville and the Village of Clemmons.