

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2006-229
HOUSE BILL 1523**

AN ACT TO INCREASE THE AMOUNT OF THE PENALTIES THAT MAY BE ASSESSED FOR VIOLATION OF THE COASTAL AREA MANAGEMENT ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-126(d) reads as rewritten:

- "(d) (1) A civil penalty of not more than ~~two hundred fifty dollars (\$250.00)~~ one thousand dollars (\$1,000) for a minor development violation and ~~two thousand five hundred dollars (\$2,500)~~ ten thousand dollars (\$10,000) for a major development violation may be assessed by the Commission against any person who:
- a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
 - b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.
 - c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.
 - d. Violates a rule of the Commission implementing this Article.
- (2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.
- (3) ~~The Commission may assess the penalties provided for in this subsection.~~ The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay a penalty, any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final agency decision was served on the violator.
- (4) In determining the amount of the ~~penalty~~ civil penalty, the Commission shall consider ~~the degree and extent of harm caused by the violation and the cost of rectifying the damage~~ the following factors:

- a. The degree and extent of harm, including, but not limited to, harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
 - b. The duration and gravity of the violation;
 - c. The effect on water quality, coastal resources, or public trust uses;
 - d. The cost of rectifying the damage;
 - e. The amount of money saved by noncompliance;
 - f. Whether the violation was committed willfully or intentionally;
 - g. The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority; and
 - h. The cost to the State of the enforcement procedures.
- (4a) The Commission may also assess a person who is assessed a civil penalty under this subsection the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty. For a minor development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars (\$1,000), whichever is less. For a major development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars (\$2,500), whichever is less.
- (5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2. Section 1 of this act becomes effective December 1, 2006, and applies to violations and offenses committed on or after that date. Section 2 of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of July, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:43 p.m. this 10th day of August, 2006