

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

1

HOUSE BILL 1766

Short Title: Amend Environmental Laws 2010. (Public)

Sponsors: Representatives Gibson; Harrison, Hughes, and Tarleton.

Referred to: Environment and Natural Resources, if favorable, Finance.

May 18, 2010

A BILL TO BE ENTITLED

1 AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES
2 LAWS TO (1) PROVIDE THAT THE PRESIDENT PRO TEMPORE OF THE SENATE
3 AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES MAY DESIGNATE
4 MULTIPLE MEMBERS TO SERVE AS COCHAIRS OF THE ENVIRONMENTAL
5 REVIEW COMMISSION; (2) REPEAL THE REQUIREMENT THAT REMEDIAL
6 ACTION PLANS MUST BE RECORDED IN THE REGISTER OF DEEDS OFFICE
7 AND MODIFY THE REQUIREMENT THAT REMEDIAL ACTION PLANS MUST BE
8 PLACED IN EACH PUBLIC LIBRARY IN THE COUNTY; (3) REESTABLISH THE
9 SURFACE WATER IDENTIFICATION TRAINING AND CERTIFICATION
10 PROGRAM AS A COMPONENT OF THE RIPARIAN BUFFER PROTECTION
11 PROGRAM; (4) AMEND CIVIL PENALTIES FOR CERTAIN AIR QUALITY
12 VIOLATIONS TO CONFORM WITH CHANGES MADE IN S.L. 2007-296; (5) AMEND
13 REPORTING REQUIREMENTS FOR SMALL WASTEWATER SYSTEMS; (6)
14 AMEND THE ENFORCEMENT AUTHORITY OF THE DEPARTMENT OF
15 ENVIRONMENT AND NATURAL RESOURCES UNDER THE DROUGHT
16 MANAGEMENT PREPAREDNESS AND RESPONSE ACT; AND (7) PROVIDE THAT
17 THE PROHIBITION ON ANY NEW OR INCREASED NUTRIENT LOADING
18 ALLOCATION APPLIES TO IMPAIRED DRINKING WATER SUPPLY RESERVOIRS,
19 AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
20

21 The General Assembly of North Carolina enacts:

22 **SECTION 1.** G.S. 120-70.42(b) reads as rewritten:

23 "(b) The President Pro Tempore of the Senate shall designate one ~~Senator to serve as~~
24 ~~cochair or more Senators~~ and the Speaker of the House of Representatives shall designate one
25 ~~Representative to serve as cochair or more Representatives to serve as cochairs."~~

26 **SECTION 2.** G.S. 130A-310.4(b) reads as rewritten:

27 "(b) Before approving any remedial action plan, the Secretary shall make copies of the
28 proposed plan available for inspection as follows:

- 29 (1) A copy of the plan shall be provided to the local health director.
30 (2) ~~A copy of the proposed plan shall be filed with the register of deeds in the~~
31 ~~county or counties in which the site is located.~~
32 (3) A copy of the plan shall be provided to the each public library located in
33 closest proximity to the site in the county or counties in which the site is
34 located.
35 (4) The Secretary may place copies of the plan in other locations so as to assure
36 the availability thereof to the public.



1 In addition, copies of the plan shall be available for inspection and copying at cost by the
2 public during regular business hours in the offices of the agency within the Department with
3 responsibility for the administration of the remedial action program."

4 **SECTION 3.(a)** Part 1 of Article 21 of Chapter 143 of the General Statutes is
5 amended by adding a new section to read:

6 "**§ 143-214.25A. Riparian Buffer Protection Program: Surface Water Identification**
7 **Training and Certification Program.**

8 (a) The Division of Water Quality of the Department shall develop a program to train
9 and certify individuals to determine the presence of surface waters that would require the
10 application of rules adopted by the Commission for the protection of riparian buffers. The
11 Division may train and certify employees of the Division as determined by the Director of the
12 Division of Water Quality; employees of units of local government to whom responsibility for
13 the implementation and enforcement of the riparian buffer protection rules is delegated
14 pursuant to G.S. 143-214.23; and Registered Foresters under Chapter 89B of the General
15 Statutes who are employees of the Division of Forest Resources of the Department as
16 determined by the Director of the Division of Forest Resources. The Director of the Division of
17 Water Quality may review the determinations made by individuals who are certified pursuant
18 to this section, may override a determination made by an individual certified under this section,
19 and, if the Director of the Division of Water Quality determines that an individual is failing to
20 make correct determinations, revoke the certification of that individual.

21 (b) The Division of Water Quality shall develop standard forms for use in making and
22 reporting determinations. Each individual who is certified to make determinations under this
23 section shall prepare a written report of each determination and shall submit the report to the
24 agency that employs the individual. Each agency shall maintain reports of determinations made
25 by its employees, shall forward a copy of each report to the Director of the Division of Water
26 Quality, and shall maintain these reports and all other records related to determinations so that
27 they will be readily accessible to the public."

28 **SECTION 3.(b)** In implementing the Surface Water Identification Training and
29 Certification Program established by G.S. 143-214.25A, as enacted by Section 3(a) of this act,
30 the Division of Water Quality of the Department of Environment and Natural Resources shall
31 give priority to training and certifying the most highly qualified and experienced personnel in
32 each agency. The Division of Water Quality shall evaluate the effectiveness of the Surface
33 Water Identification Training and Certification Program and shall submit an annual report of its
34 findings and recommendations, if any, to the Environmental Review Commission on or before
35 October 1 of each year. The Division of Water Quality shall submit the first report required by
36 this section on or before October 1, 2011.

37 **SECTION 3.(c)** This section shall not be construed to obligate the General
38 Assembly to appropriate any funds to implement the provisions of this act. Every agency to
39 which this section applies shall implement the provisions of this act with funds otherwise
40 appropriated or available to the agency.

41 **SECTION 4.** G.S. 143-215.112(d)(1a) reads as rewritten:

42 "(1a) Each governing body, or its authorized agent, shall have the power to assess
43 civil penalties under G.S. 143-215.114A. Any person assessed shall be
44 notified of the assessment by registered or certified mail, and the notice shall
45 specify the reasons for the assessment. If the person assessed fails to pay the
46 amount of the assessment to the governing body or its authorized agent
47 within 30 days after receipt of notice, or such longer period not to exceed
48 180 days as the governing body or its authorized agent may specify, the
49 governing body may institute a civil action in the superior court of the
50 county in which the violation occurred, to recover the amount of the
51 assessment. If any action or failure to act for which a penalty may be

1 assessed under this section is continuous, the governing body or its
2 authorized agent may assess a penalty not to exceed ~~ten thousand dollars~~
3 ~~(\$10,000)~~ twenty-five thousand dollars (\$25,000) per day for so long as the
4 violation continues. In determining the amount of the penalty, the governing
5 body or its authorized agent shall consider the degree and extent of harm
6 caused by the violation, the cost of rectifying the damage, and the amount of
7 money the violator saved by not having made the necessary expenditures to
8 comply with the appropriate pollution control requirements."

9 **SECTION 5.** G.S. 143-215.1C(a) reads as rewritten:

10 "(a) Report to Wastewater System Customers. – The owner or operator of any
11 wastewater collection or treatment works, the operation of which is primarily to collect or treat
12 municipal or domestic wastewater and for which a permit is issued under this ~~Part~~, Part and
13 having an average annual flow greater than 200,000 gallons per day, shall provide to the users
14 or customers of the collection system or treatment works and to the Department an annual
15 report that summarizes the performance of the collection system or treatment works and the
16 extent to which the collection system or treatment works has violated the permit or federal or
17 State laws, regulations, or rules related to the protection of water quality. The report shall be
18 prepared on either a calendar or fiscal year basis and shall be provided no later than 60 days
19 after the end of the calendar or fiscal year."

20 **SECTION 6.** G.S. 143-355.6 reads as rewritten:

21 "**§ 143-355.6. Enforcement.**

22 (a) The Secretary may assess a civil penalty of not less than one hundred dollars
23 (\$100.00) nor more than five hundred dollars (\$500.00) against any person who:

- 24 (1) Fails to report water use or other information required under
25 G.S. 143-355(k).
- 26 (2) Fails to act in accordance with the terms, conditions, or requirements of an
27 order issued by the Secretary under G.S. 143-355.3.
- 28 (3) Violates any provision of this Article or any rule adopted by the
29 Commission, the Department, or the Secretary implementing this Article.

30 (b) For each willful action or failure to act for which a penalty may be assessed under
31 this section, the Secretary may consider each day the action or inaction continues after notice is
32 given of the violation as a separate violation. A separate penalty may be assessed for each
33 separate violation.

34 (c) The Secretary may assess a civil penalty of not more than ten thousand dollars
35 (\$10,000) per month against a unit of local government that provides public water service or a
36 large community water system that fails to implement the water conservation measures set out
37 in the water shortage response plan approved by the Department under G.S. 143-355.2,
38 measures required by the Department under subsections (b) and (d) of G.S. 143-355.2, or the
39 default measures required under rules adopted by the Commission under S.L. 2002-167. ~~The~~
40 ~~Secretary may remit a civil penalty based on the factors set out in G.S. 143B-282.1(c)(1).~~

41 (c1) The amount of the civil penalty shall be based on the factors set out in
42 G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty
43 assessments that are presented to the Commission for final agency decision.

44 (c2) Requests for remission of civil penalties shall be filed with the Secretary. Remission
45 requests shall not be considered unless made within 30 days of receipt of the notice of
46 assessment. Remission requests must be accompanied by a waiver of the right to a contested
47 case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on
48 which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d),
49 remission requests may be resolved by the Secretary and the violator. If the Secretary and the
50 violator are unable to resolve the request, the Secretary shall deliver remission requests and the

1 Secretary's recommended action to the Committee on Civil Penalty Remissions of the
2 Commission appointed pursuant to G.S. 143B-282.1(c).

3 (c3) If any civil penalty has not been paid within 30 days after the notice of assessment
4 has been served on the violator, the Secretary shall request the Attorney General to institute a
5 civil action in the superior court of any county in which the violator resides or in which the
6 violator's principal place of business is located to recover the amount of the assessment, unless
7 the violator contests the assessment as provided in subsection (e) of this section, or requests
8 remission of the assessment in whole or in part as provided in subsection (c2) of this section. If
9 any civil penalty has not been paid within 30 days after the final agency decision or court order
10 has been served on the violator, the Secretary shall request the Attorney General to institute a
11 civil action in the superior court of any county in which the violator resides or in which the
12 violator's principal place of business is located to recover the amount of the assessment.

13 (d) The violation of emergency water conservation rules adopted by the Secretary
14 pursuant to G.S. 143-355.3(b) is a Class 1 misdemeanor.

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

19 (f) The clear proceeds of civil penalties assessed pursuant to this section shall be
20 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

21 **SECTION 7.** Section 4 of S.L. 2005-190, as amended by Section 31 of S.L.
22 2006-259, reads as rewritten:

23 **"SECTION 4. Other drinking water supply reservoirs.** – The Environmental
24 Management Commission shall not make any new or increased nutrient loading allocation to
25 any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater
26 discharge directly or indirectly into any impaired drinking water supply reservoir for which the
27 Division of Water Quality of the Department of Environment and Natural Resources has
28 prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent
29 rules adopted by the Commission to implement the nutrient management strategy for that
30 reservoir become effective. The Commission shall report its progress in developing and
31 implementing nutrient management strategies for reservoirs to which this section applies to the
32 Environmental Review Commission by 1 April of each year beginning 1 April 2006."

33 **SECTION 8.** Section 4 of this act becomes effective October 1, 2010, and applies
34 to a violation that occurs on or after that date. All other sections of this act are effective when
35 the act becomes law.