

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

5

HOUSE BILL 795
Committee Substitute Favorable 4/23/15
Third Edition Engrossed 4/29/15
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted
5/20/15
Fifth Edition Engrossed 5/26/15

Short Title: SEPA Reform.

(Public)

Sponsors:

Referred to:

April 15, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO REFORM AND AMEND THE STATE ENVIRONMENTAL POLICY ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 113A-4 reads as rewritten:
5 "§ 113A-4. Cooperation of agencies; reports; availability of information.

6 The General Assembly authorizes and directs that, to the fullest extent possible:

- 7 ...
- 8 (2) Every State agency shall include in every recommendation or report on any
9 action involving significant expenditure of public moneys or use of public
10 land for projects and programs significantly affecting the quality of the
11 environment of this State, a detailed statement by the responsible official
12 setting forth the following:
- 13 a. The direct environmental impact of the proposed action;
 - 14 b. Any significant adverse environmental effects which cannot be
15 avoided should the proposal be implemented;
 - 16 c. Mitigation measures proposed to minimize the impact;
 - 17 d. Alternatives to the proposed action;
 - 18 e. The relationship between the short-term uses of the environment
19 involved in the proposed action and the maintenance and
20 enhancement of long-term productivity; and
 - 21 f. Any irreversible and irretrievable environmental changes which
22 would be involved in the proposed action should it be implemented.

23 For purposes of this subdivision, a direct environmental impact may include
24 impacts that are secondary or cumulative with other previous actions only if
25 such impacts are reasonably predictable and not speculative, but shall not
26 include impacts that occur outside of the State.

- 27 (2a) Prior to making any detailed statement, the responsible official shall consult
28 with and obtain the comments of any agency which has either jurisdiction by
29 law or special expertise with respect to any environmental impact involved.
30 The failure of an agency to provide comments within the comment period
31 established under this subdivision or to request an extension for a specific
32 period of time set forth in the request shall be treated by the responsible



* H 7 9 5 - V - 5 *

official as a conclusion by that agency that there is no significant environmental impact. Any unit of local government or other interested party that may be adversely affected by the proposed action may submit written comment. The responsible official shall consider written comment from units of local government and interested parties that is received within the established comment period. Copies of such detailed statement and such comments shall be made available to the Governor, to such agency or agencies as he may designate, and to the appropriate multi-county regional agency as certified by the Secretary of Administration, shall be placed in the public file of the agency and shall accompany the proposal through the existing agency review processes. A copy of such detailed statement shall be made available to the public and to counties, municipalities, institutions and individuals, upon request.

...."

SECTION 2. G.S. 113A-9 reads as rewritten:

"§ 113A-9. Definitions.

As used in this Article, unless the context indicates otherwise, the term:

...

(5) "Major development project" shall include but is not limited to shopping centers, subdivisions and other housing developments, and industrial and commercial projects, but shall not include any projects of less than ~~two~~ten contiguous acres in extent.

...

(7) "Public land" means all land and interests therein, title of which is vested in the State of North Carolina, in any State agency, or in the State for the use of any State agency or political subdivision of the State, and includes all vacant and unappropriated land, swampland, submerged land, land acquired by the State by virtue of being sold for ~~taxes, escheated land, and acquired land-taxes~~ or by any other manner of acquisition, or escheated land.

(7a) "Significant expenditure of public moneys" means expenditures of public funds greater than ten million dollars (\$10,000,000) for a single project or action or related group of projects or actions. For purposes of this subdivision, contributions of funds or in-kind contributions by municipalities, counties, regional or special-purpose government agencies, and other similar entities created by an act of the General Assembly and in-kind contributions by a non-State entity shall not be considered an expenditure of public funds for purposes of calculating whether such an expenditure is significant.

...

(11) "Use of public land" means land-disturbing activity of greater than 10 acres that results in substantial, permanent changes in the natural cover or topography of those lands that includes:

- a. The grant of a lease, easement, or permit authorizing private use of public land; or
- b. The use of privately owned land for any project or program if (i) the State or any agency of the State has agreed to purchase the property or to exchange the property for public ~~land~~land and (ii) the use meets the other requirements of this subdivision."

SECTION 3. G.S. 113A-10 reads as rewritten:

"§ 113A-10. Provisions supplemental.

1 The policies, obligations and provisions of this Article are supplementary to those set forth
2 in existing authorizations of and statutory provisions applicable to State agencies and local
3 governments. In those instances where a State agency is required to prepare an environmental
4 document or to comment on an environmental document under provisions of federal law, no
5 separate environmental document shall be required to be prepared or published under this
6 Article so long as the environmental document or comment ~~shall meet~~ meets the provisions of
7 this Article."

8 **SECTION 4.** G.S. 113A-11 reads as rewritten:

9 **"§ 113A-11. Adoption of rules.**

10 (a) The Department of Administration shall adopt rules to implement this Article.

11 (b) Each State agency ~~may shall~~ adopt rules that establish minimum criteria. An agency
12 may include a particular action or class of actions in its minimum criteria only if the agency
13 makes a specific finding that the action or class of actions has no significant long-term impact
14 on the environment. Rules establishing minimum criteria shall be consistent with rules adopted
15 by the Department of Administration. ~~In addition to all other rule making requirements, rules~~
16 ~~establishing minimum criteria are subject to approval by the Secretary of Administration."~~

17 **SECTION 5.** G.S. 113A-12 reads as rewritten:

18 **"§ 113A-12. Environmental document not required in certain cases.**

19 ~~No~~ Notwithstanding any other provision in this Article, no environmental document shall
20 be required in connection with:

21 (1) The construction, maintenance, or removal of an electric power line, water
22 line, sewage line, stormwater drainage line, telephone line, telegraph line,
23 cable television line, data transmission line, ~~or~~ natural gas ~~line~~ line, or
24 similar infrastructure project within or across the right-of-way of any street
25 or highway.

26 (2) An action approved ~~under a~~ under:

27 a. A general permit issued under G.S. 113A-118.1, 143-215.1(b)(3), or
28 143-215.108(c)(8).

29 b. A Coastal Habitat Protection Plan under G.S. 143B-279.8.

30 c. A special order pursuant to G.S. 143-215.2 or G.S. 143-215.110.

31 d. An action taken to address an emergency under G.S. 143-215.3 or
32 other similar emergency conditions.

33 e. A remedial or similar action to address contamination under Chapter
34 130A or 143 of the General Statutes, including a brownfield
35 agreement entered into under G.S. 130A-310.32.

36 f. A certificate of convenience and necessity under G.S. 62-110.

37 g. An industrial or pollution control project approval by the Secretary of
38 Commerce under Chapter 159C of the General Statutes.

39 h. A project approved as a water infrastructure project under Chapter
40 159G of the General Statutes.

41 i. A certification issued by the Division of Water Resources of the
42 Department of Environment and Natural Resources under the
43 authority granted to the Environmental Management Commission by
44 G.S. 143B-282(a)(1)u.

45 (3) A lease or easement granted by a State agency for:

46 a. The use of an existing building or facility.

47 b. Placement of a wastewater line or other structures or uses on or under
48 submerged lands pursuant to a permit granted under G.S. 143-215.1.

49 c. A shellfish cultivation lease granted under G.S. 113-202.

50 d. A facility for the use or benefit of The University of North Carolina
51 System, the North Carolina community college system, the North

- 1 Carolina public school systems, or one or more constituent
 2 institutions of any of those systems.
 3 e. A health care facility financed pursuant to Chapter 131A of the
 4 General Statutes or receiving a certificate of need under Article 9 of
 5 Chapter 131E of the General Statutes.
 6 (4) The construction of a driveway connection to a public roadway.
 7 (5) ~~A Any State action in connection with a project for which public lands are~~
 8 ~~used and/or public monies are expended if the land or expenditure is solely~~
 9 ~~for the payment of incentives provided as an incentive for the project~~
 10 ~~pursuant to an agreement that makes the incentive payments incentives~~
 11 ~~contingent on prior completion of the project or activity, or completion on a~~
 12 ~~specified timetable, and a specified level of job creation or new capital~~
 13 ~~investment.~~
 14 (6) A major development as defined in G.S. 113A-118 that receives a permit
 15 issued under Article 7 of Chapter 113A of the General Statutes.
 16 ...
 17 (9) Facilities created in the course of facilitating closure activities under Part 2I
 18 of Article 9 of Chapter 130A of the General Statutes.
 19 (10) Any project or facility specifically required or authorized by an act of the
 20 General Assembly.
 21 (11) Any project undertaken as mitigation for the impacts of an approved project
 22 or to mitigate or avoid harm from natural environmental change, including
 23 wetlands and buffer mitigation projects and banks, coastal protections and
 24 mitigation projects, and noise mitigation projects."

25 **SECTION 6.** G.S. 159G-38 reads as rewritten:

26 **"§ 159G-38. Environmental assessment and public hearing.**

- 27 (a) Establish Environmental Assessment Process; Required Information. – ~~An~~
 28 ~~application submitted under this Article for a loan or grant for a project must state whether the~~
 29 ~~project requires an environmental assessment. If the application indicates that an environmental~~
 30 ~~assessment is not required, it must identify the exclusion in the North Carolina Environmental~~
 31 ~~Policy Act, Article 1 of Chapter 113A of the General Statutes, that applies to the project. If the~~
 32 ~~application does not identify an exclusion in the North Carolina Environmental Policy Act, it~~
 33 ~~must include an environmental assessment of the project's probable impacts on the~~
 34 ~~environment.~~The Division shall establish an environmental assessment process for projects
 35 funded from the CWSRF and DWSRF programs that is sufficient to meet federal
 36 environmental assessment requirements for such projects. Projects funded by the CWSRF or
 37 DWSRF shall meet the requirements of the environmental assessment process established
 38 pursuant to this subsection.
 39 (b) ~~Division Review.~~ — ~~If, after reviewing an application, the Division of Water~~
 40 ~~Infrastructure determines that a project requires an environmental assessment, the assessment~~
 41 ~~must be submitted before the Division continues its review of the application. If, after~~
 42 ~~reviewing an environmental assessment, the Division concludes that an environmental impact~~
 43 ~~statement is required, the Division may not continue its review of the application until a final~~
 44 ~~environmental impact statement has been completed and approved as provided in the North~~
 45 ~~Carolina Environmental Policy Act.~~
 46 (c) ~~Hearing.~~ – ~~The Division of Water Infrastructure may hold a public hearing on an~~
 47 ~~application for a loan or grant under this Article if it determines that holding a hearing will~~
 48 ~~serve the public interest. An individual who is a resident of any county in which a proposed~~
 49 ~~project is located may submit a written request for a public hearing. The request must set forth~~
 50 ~~each objection to the proposed project or other reason for requesting a hearing and must include~~
 51 ~~the name and address of the individual making the request. The Division may consider all~~

1 written objections to the proposed project, any statement submitted with the hearing request,
2 and any significant adverse effects the proposed project may have on the environment. The
3 Division's decision on whether to hold a hearing is conclusive. The Division must keep all
4 written requests for a hearing on an application as part of the records pertaining to the
5 application."

6 **SECTION 7.** G.S. 143-215.22L(d) reads as rewritten:

7 "(d) Environmental Documents. – ~~The~~ Except as provided in this subsection, the
8 definitions set out in G.S. 113A-9 apply to this section. ~~The~~ Notwithstanding the thresholds for
9 significant expenditure of public monies or use of public land set forth in G.S. 113A-9, the
10 Department shall conduct a study of the environmental impacts of any proposed transfer of
11 water for which a certificate is required under this section. The study shall meet all of the
12 requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4.
13 Notwithstanding G.S. 113A-4(2), the study shall include secondary and cumulative impacts.
14 An environmental assessment shall be prepared for any petition for a certificate under this
15 section. The determination of whether an environmental impact statement shall also be required
16 shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General
17 Statutes; except that an environmental impact statement shall be prepared for every proposed
18 transfer of water from one major river basin to another for which a certificate is required under
19 this section. The applicant who petitions the Commission for a certificate under this section
20 shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the
21 General Statutes. An environmental impact statement prepared pursuant to this subsection shall
22 include all of the following:

- 23 (1) A comprehensive analysis of the impacts that would occur in the source river
24 basin and the receiving river basin if the petition for a certificate is granted.
- 25 (2) An evaluation of alternatives to the proposed interbasin transfer, including
26 water supply sources that do not require an interbasin transfer and use of
27 water conservation measures.
- 28 (3) A description of measures to mitigate any adverse impacts that may arise
29 from the proposed interbasin transfer."

30 **SECTION 8.** This act is effective when it becomes law and applies to State agency
31 action occurring on or after that date.