

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

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HOUSE BILL 426

Senate Agriculture, Energy, and Environment Committee Substitute Adopted 5/1/24

Short Title: Various Environmental Amendments.

(Public)

Sponsors:

Referred to:

March 22, 2023

A BILL TO BE ENTITLED

1 AN ACT TO DIRECT THE COASTAL RESOURCES COMMISSION TO IMPLEMENT A
2 RULE DESIGNATING JOCKEY'S RIDGE STATE PARK AS AN AREA OF
3 ENVIRONMENTAL CONCERN UNTIL PERMANENT RULES ARE ADOPTED; TO
4 REQUIRE THE DEPARTMENT OF ADMINISTRATION TO HOLD A PUBLIC
5 HEARING AND CONSULT WITH THE JOINT LEGISLATIVE COMMISSION ON
6 GOVERNMENTAL OPERATIONS PRIOR TO GRANTING CERTAIN EASEMENTS
7 ON STATE PROPERTY; AND TO CLARIFY THE APPLICABILITY OF STATUTORY
8 BUILT-UPON AREA REQUIREMENTS FOR STATE AND LOCAL GOVERNMENT
9 STORMWATER PROGRAMS AND SPECIFY THAT CERTAIN ARTIFICIAL TURF IS
10 NOT BUILT-UPON AREA.
11

12 The General Assembly of North Carolina enacts:

13
14 **DIRECT THE COASTAL RESOURCES COMMISSION TO IMPLEMENT A RULE**
15 **DESIGNATING JOCKEY'S RIDGE STATE PARK AS AN AREA OF**
16 **ENVIRONMENTAL CONCERN UNTIL PERMANENT RULES ARE ADOPTED**

17 **SECTION 1.(a)** The Coastal Resources Commission shall implement proposed rule
18 15A NCAC 07H .0508 (Jockey's Ridge Area of Environmental Concern), as approved for the
19 initiation of permanent rulemaking by the Coastal Resources Commission on April 25, 2024, as
20 if the proposed rule were effective, until the proposed rule becomes effective as a permanent rule.

21 **SECTION 1.(b)** No later than June 1, 2024, the Coastal Resources Commission shall
22 approve a map identifying the boundaries of the Jockey's Ridge area of environmental concern
23 for purposes of implementing subsection (a) of this section.

24 **SECTION 1.(c)** The Coastal Resources Commission shall adopt proposed rule 15A
25 NCAC 07H .0508 (Jockey's Ridge Area of Environmental Concern) as a permanent rule pursuant
26 to G.S. 150B-21.2, including consideration of public comments received in connection with the
27 rule and review by the Rules Review Commission, as soon as practicable but no later than
28 November 1, 2024. This section shall not be construed to direct the Coastal Resources
29 Commission to adopt the text of proposed rule 15A NCAC 07H .0508 (Jockey's Ridge Area of
30 Environmental Concern), as approved for the initiation of permanent rulemaking by the Coastal
31 Resources Commission on April 25, 2024, verbatim.

32 **SECTION 1.(d)** Subsection (a) of this section becomes effective on the date that the
33 Coastal Resources Commission approves the map required by subsection (b) of this section. The
34 remainder of this section is effective when it becomes law. This section expires when proposed
35 rule 15A NCAC 07H .0508 (Jockey's Ridge Area of Environmental Concern) becomes effective
36 as a permanent rule.



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2 **REQUIRE THE DEPARTMENT OF ADMINISTRATION TO HOLD A PUBLIC**
3 **HEARING AND CONSULT WITH THE JOINT LEGISLATIVE COMMISSION ON**
4 **GOVERNMENTAL OPERATIONS PRIOR TO GRANTING CERTAIN EASEMENTS**
5 **ON STATE PROPERTY**

6 **SECTION 2.(a)** Article 7 of Chapter 146 of the General Statutes is amended by
7 adding a new section to read:

8 **"§ 146-29.3. Disposition of easements for spoil disposal and dumping rights.**

9 Notwithstanding G.S. 146-11, if a proposed disposition is an easement for disposal of spoil
10 materials lawfully dug or dredged from navigable waters, or dumping rights for spoil materials
11 lawfully dug or dredged from navigable waters, the Department of Administration may not grant
12 the easement or dumping rights until it completes both of the following requirements:

- 13 (1) Hold a public hearing in the county where the proposed disposition is located.
14 (2) Following the public hearing, submit the proposed disposition for consultation
15 with the Joint Legislative Commission on Governmental Operations in
16 accordance with G.S. 120-76.1(b)."

17 **SECTION 2.(b)** This section becomes effective August 1, 2024, and applies to
18 requests for proposed dispositions submitted to the Department of Administration for approval
19 on or after that date.

20
21 **CLARIFY THE APPLICABILITY OF STATUTORY BUILT-UPON AREA**
22 **REQUIREMENTS FOR STATE AND LOCAL GOVERNMENT STORMWATER**
23 **PROGRAMS AND SPECIFY THAT CERTAIN ARTIFICIAL TURF IS NOT**
24 **BUILT-UPON AREA**

25 **SECTION 3.(a)** G.S. 143-214.7(b2) reads as rewritten:

26 ~~"(b2) For purposes of implementing stormwater programs, "built-upon area" means~~
27 ~~impervious surface and partially impervious surface to the extent that the partially impervious~~
28 ~~surface does not allow water to infiltrate through the surface and into the subsoil. "Built upon~~
29 ~~area" does not include a slatted deck; the water area of a swimming pool; a surface of number 57~~
30 ~~stone, as designated by the American Society for Testing and Materials, laid at least four inches~~
31 ~~thick over a geotextile fabric; a trail as defined in G.S. 113A-85 that is either unpaved or paved~~
32 ~~as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters~~
33 ~~per second (1.41 inches per hour); or landscaping material, including, but not limited to, gravel,~~
34 ~~mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on~~
35 ~~portions of driveways and parking areas that will not be compacted by the weight of a vehicle,~~
36 ~~such as the area between sections of pavement that support the weight of a vehicle. The owner~~
37 ~~or developer of a property may opt out of any of the exemptions from "built-upon area" set out~~
38 ~~in this subsection. For State stormwater programs and local stormwater programs approved~~
39 ~~pursuant to subsection (d) of this section, all of the following shall apply:~~

- 40 (1) The volume, velocity, and discharge rates of water associated with the
41 one-year, 24-hour storm and the difference in stormwater runoff from the
42 predevelopment and postdevelopment conditions for the one-year, 24-hour
43 storm shall be calculated using any acceptable engineering hydrologic and
44 hydraulic methods.
45 (2) Development may occur within the area that would otherwise be required to
46 be placed within a vegetative buffer required by the Commission pursuant to
47 G.S. 143-214.1 and this section provided the stormwater runoff from the
48 entire impervious area of the development is collected, treated, and discharged
49 so that it passes through a segment of the vegetative buffer and is managed so
50 that it otherwise complies with all applicable State and federal stormwater
51 management requirements. For the purpose of this subdivision, the entire

1 impervious area of the development shall not include any portion of a project
2 that is within a North Carolina Department of Transportation or municipal
3 right-of-way.

- 4 (3) The requirements that apply to development activities within one-half mile of
5 and draining to Class SA waters or within one-half mile of Class SA waters
6 and draining to unnamed freshwater tributaries shall not apply to development
7 activities and associated stormwater discharges that do not occur within
8 one-half mile of and draining to Class SA waters or are not within one-half
9 mile of Class SA waters and draining to unnamed freshwater tributaries."

10 **SECTION 3.(b)** Article 21 of Chapter 143 of the General Statutes is amended by
11 adding a new section to read:

12 **"§ 143-214.7D. Limitations on built-upon area requirements.**

13 (a) As used in this section, the term "built-upon area" means impervious surface and
14 partially impervious surface to the extent that the partially impervious surface does not allow
15 water to infiltrate through the surface and into the subsoil.

16 (b) For the purposes of implementing State or local government stormwater programs,
17 none of the following surfaces shall be considered "built-upon area" or an impervious or partially
18 impervious surface:

19 (1) A slatted deck.

20 (2) The water area of a swimming pool.

21 (3) A surface of number 57 stone, as designated by the American Society for
22 Testing and Materials, laid at least 4 inches thick over a geotextile fabric.

23 (4) A trail as defined in G.S. 113A-85 that is either unpaved or paved as long as
24 the pavement is porous with a hydraulic conductivity greater than 0.001
25 centimeters per second (1.41 inches per hour).

26 (5) Landscaping material, including, but not limited to, gravel, mulch, sand, and
27 vegetation, placed on areas that receive pedestrian or bicycle traffic or on
28 portions of driveways and parking areas that will not be compacted by the
29 weight of a vehicle, such as the area between sections of pavement that support
30 the weight of a vehicle.

31 (6) Artificial turf, manufactured to allow water to drain through the backing of
32 the turf, and installed according to the manufacturer's specifications over a
33 pervious surface.

34 (c) The owner or developer of a property may opt out of any of the exemptions from
35 "built-upon area" set out in subsection (b) of this section.

36 (d) Except as specifically required by federal law, a local government may not enact,
37 implement, or enforce a local government ordinance, comprehensive plan, or stormwater
38 program that establishes a definition of "built-upon area" or impervious surface that does not
39 comply with subsection (b) of this section. This limitation shall apply regardless of any authority
40 granted by G.S. 143-214.5, G.S. 143-214.7, or Chapter 153A, 160A, or 160D of the General
41 Statutes.

42 (e) The Commission may adopt rules to implement this section."

43 **SECTION 3.(c)** Each unit of local government that operates a stormwater program
44 shall update its program to be consistent with G.S. 143-214.7D, as enacted by subsection (b) of
45 this section.

46 **EFFECTIVE DATE**

47 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
48 law.
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