

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1989**

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**2**

HOUSE BILL 2093  
Committee Substitute Favorable 6/14/90

Short Title: Erosion Control Plan Penalty Fees.

(Public)

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Sponsors:

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Referred to:

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May 24, 1990

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW ANY LOCAL GOVERNMENT WHICH HAS ESTABLISHED  
2 AN EROSION AND SEDIMENT CONTROL PLAN APPROVED BY THE  
3 NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION TO  
4 RECEIVE THE PENALTY FEES IMPOSED FOR FAILURE TO SUBMIT AN  
5 EROSION CONTROL PLAN.  
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 113A-64(a) reads as rewritten:

9 "(a) Civil Penalties.

10 (1) Any person who violates any of the provisions of this Article or any  
11 ordinance, rule, or order adopted or issued pursuant to this Article by  
12 the Commission or by a local government, or who initiates or  
13 continues a land-disturbing activity for which an erosion control plan  
14 is required except in accordance with the terms, conditions, and  
15 provisions of an approved plan, shall be subject to a civil penalty of  
16 not more than five hundred dollars (\$500.00), except that the penalty  
17 for failure to submit an erosion control plan shall be as provided in  
18 subdivision (4) of this subsection. No penalty shall be assessed until  
19 the person alleged to be in violation has been notified of the violation.  
20 Each day of a continuing violation shall constitute a separate violation.

21 (2) The Secretary, for violations under the Commission's jurisdiction, or  
22 the governing body of any local government having jurisdiction, shall  
23 determine the amount of the civil penalty to be assessed under G.S.

1 113A-64(a) and shall make written demand for payment upon the  
2 person responsible for the violation, and shall set forth in detail the  
3 violation for which the penalty has been invoked. If payment is not  
4 received or equitable settlement reached within 30 days after demand  
5 for payment is made, the Secretary shall refer the matter to the  
6 Attorney General for the institution of a civil action in the name of the  
7 State in the superior court of the county in which the violation is  
8 alleged to have occurred to recover the amount of the penalty, and  
9 local governments shall refer such matters to their respective attorneys  
10 for the institution of a civil action in the name of the local government  
11 in the appropriate division of the General Court of Justice of the  
12 county in which the violation is alleged to have occurred for recovery  
13 of the penalty. Any sums recovered shall be used to carry out the  
14 purposes and requirements of this Article.

15 (3) In determining the amount of the penalty, the Secretary shall consider  
16 the degree and extent of harm caused by the violation, the cost of  
17 rectifying the damage, the amount of money the violator saved by his  
18 noncompliance, whether the violation was committed willfully, and  
19 the prior record of the violator in complying or failing to comply with  
20 this Article.

21 (4) Any person who fails to submit an erosion control plan for approval by  
22 the Commission pursuant to G.S. 113A-54(d)(4) or by a local  
23 government pursuant to G.S. 113A-61 shall be subject to a single,  
24 noncontinuing civil penalty of not more than one thousand dollars  
25 (\$1,000). Any penalty which is recovered ~~pursuant to this subdivision~~  
26 for failure to submit an erosion control plan for approval by the  
27 Commission pursuant to G.S. 113A-54(d)(4) shall be deposited in the  
28 General Fund. Any penalty which is recovered for failure to submit an  
29 erosion control plan for approval by a local government pursuant to  
30 G.S. 113A-61 shall be paid to the local government. Any person who  
31 is subject to a civil penalty under this subdivision may be subject to  
32 additional civil penalties for violation of any other provision of this  
33 Article or any ordinance, rule, or order adopted or issued pursuant to  
34 this Article by the Commission or a local government."

35 Sec. 2. This act shall become effective July 1, 1990. ♦