

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 25
Committee Substitute Favorable 4/11/91

Short Title: Comm. Serv. for Remitted Fines.

(Public)

Sponsors:

Referred to:

February 6, 1991

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ESTABLISH A COMMUNITY SERVICE PROGRAM; AND TO REQUIRE THAT COMMUNITY SERVICE SHALL BE PERFORMED IN EXCHANGE FOR REMITTED FINES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-282.1 reads as rewritten:

"§ 143B-282.1. Environmental Management Commission – quasi-judicial powers; procedures.

(a) With respect to those matters within its jurisdiction, the Environmental Management Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Environmental Management Commission shall govern such proceedings:

- (1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the chairman of the Commission.
- (2) Oral arguments by the parties may be allowed by the chairman of the Commission upon request of the parties.
- (3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in an executive session pursuant to G.S. 143-318.11.

1 (b) The final agency decision in contested cases that arise from civil penalty
2 assessments shall be made by the Commission. In the evaluation of each violation, the
3 Commission shall recognize that harm to the natural resources of the State arising from
4 the violation of standards or limitations established to protect those resources may be
5 immediately observed through damaged resources or may be incremental or cumulative
6 with no damage that can be immediately observed or documented. Penalties up to the
7 maximum authorized may be based on any one or combination of the following factors:

- 8 (1) The degree and extent of harm to the natural resources of the State, to
9 the public health, or to private property resulting from the violation;
- 10 (2) The duration and gravity of the violation;
- 11 (3) The effect on ground or surface water quantity or quality or on air
12 quality;
- 13 (4) The cost of rectifying the damage;
- 14 (5) The amount of money saved by noncompliance;
- 15 (6) Whether the violation was committed willfully or intentionally;
- 16 (7) The prior record of the violator in complying or failing to comply with
17 programs over which the Environmental Management Commission has
18 regulatory authority; and
- 19 (8) The cost to the State of the enforcement procedures.

20 (c) The chairman shall appoint a Committee on Civil Penalty Remissions from
21 the members of the Commission. No member of the Committee on Civil Penalty
22 Remissions may hear or vote on any matter in which he has an economic interest. The
23 Committee on Civil Penalty Remissions shall make the final agency decision on
24 remission requests. In determining whether a remission request will be approved, the
25 Committee shall consider the recommendation of the Secretary and the following
26 factors:

- 27 (1) Whether one or more of the civil penalty assessment factors in
28 subsection (b) of this section were wrongly applied to the detriment of
29 the petitioner;
- 30 (2) Whether the violator promptly abated continuing environmental
31 damage resulting from the violation;
- 32 (3) Whether the violation was inadvertent or a result of an accident;
- 33 (4) Whether the violator had been assessed civil penalties for any previous
34 violations;
- 35 (5) Whether payment of the civil penalty will prevent payment for the
36 remaining necessary remedial ~~actions~~-actions;
- 37 (6) Whether the violator has agreed to substitute a proportionate amount
38 of community service as prescribed by the Environmental
39 Management Commission.

40 (d) The Committee on Civil Penalty Remissions may remit the entire amount of
41 the penalty only when the violator has not been assessed civil penalties for previous
42 ~~violations, and~~ violations; when payment of the civil penalty will prevent payment for the
43 remaining necessary remedial ~~actions~~-actions; and when the petitioner has agreed to
44 substitute a proportionate amount of community service. The Commission may waive

1 the community service requirement for a person, who otherwise meets the criteria in this
2 subsection for remittance of a fine, but who is physically unable to perform any
3 community service. The Commission shall establish, and the Division of
4 Environmental Management of the Department shall monitor, a community service
5 program with a primary focus on environmental projects, when possible. The
6 Commission shall use existing community service restitution program resources and the
7 violator shall pay any required fee. Community service programs shall emphasize
8 governmental or nonprofit organizations, but may include environmental cleanup on
9 private property of creeks, rivers, beaches, roads, or highways. The program shall
10 include, but not be limited to, reporting requirements, a formula for commuting dollars
11 to hours of service, a system for validating community service programs, and a
12 verification procedure upon completion of service. Under this program, a violator shall
13 not be subject to perform community service for any portion of a fine which has been
14 reduced due to departmental error when the initial fine was assessed.

15 (e) If any civil penalty has not been paid within 30 days after the final agency
16 decision or court order has been served on the violator, the Secretary of ~~Environment,~~
17 ~~Health, and Natural Resources~~ shall request the Attorney General to institute a civil action
18 in the Superior Court of any county in which the violator resides or has his or its
19 principal place of business to recover the amount of the assessment.

20 (e1) The civil penalty shall be suspended during the time allotted for completing
21 the community service program described in subsection (d). If the community service
22 has not been completed and verified during the specified time, the full penalty shall be
23 payable upon demand by the State.

24 (f) As used in this section, 'Secretary' means the Secretary of Environment,
25 Health, and Natural Resources. The Secretary may delegate his powers and duties
26 under this section to the Director of the Division of Environmental Management of the
27 Department of Environment, Health, and Natural Resources."

28 Sec. 2. G.S. 143B-475.1 is amended by adding a new subsection (d) to read:

29 "(d) Immunity for Injury to Violator Performing Community Service. A person is
30 not liable for damages for any injury or loss sustained by a violator performing
31 community or reparation service unless the injury is caused by the person's gross
32 negligence or intentional wrongdoing. As used in this subsection, 'person' includes any
33 governmental unit or agency, nonprofit corporation, or other nonprofit agency that is
34 supervising the violator or for whom the violator is performing community service
35 work, as well as any person employed by the agency or corporation while acting in the
36 scope and course of his employment. This subsection does not affect the immunity from
37 civil liability in tort available to local governmental units or agencies. Notice of the
38 provisions of this subsection shall be furnished to the violator."

39 Sec. 3. This act is effective upon ratification.