

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2017

**SESSION LAW 2017-145
SENATE BILL 107**

AN ACT TO REMOVE SAFETY HAZARDS AND RESTORE NORTH CAROLINA'S NATURAL RIVERINE RESOURCES BY FACILITATING THE REMOVAL OF OBSOLETE AND UNWANTED DAMS.

The General Assembly of North Carolina enacts:

EXEMPT CERTAIN DAM REMOVALS FROM PERMITTING REQUIREMENTS

SECTION 1.(a) G.S. 143-215.25 reads as rewritten:

"§ 143-215.25. Definitions.

- (1) "Dam" means ~~a Dam.~~ – A structure and appurtenant works erected to impound or divert water.
- (1a) Mill dam. – A dam built across a stream to raise the level of water for the purpose of providing water to a mill for the operation of the mill.
- (2) "Minimum stream flow" or "minimum flow" means ~~a Minimum stream flow or minimum flow.~~ – A stream flow of a quantity and quality sufficient in the judgment of the Department to meet and maintain stream classifications and water quality standards established by the Department under G.S. 143-214.1 and applicable to the waters affected by the project under consideration, and to maintain aquatic habitat in the length of the stream that is affected.
- (3) Professionally supervised dam removal. – The voluntary removal of a low or intermediate hazard mill dam or run-of-river dam that (i) is not operated primarily for flood control or hydroelectric power generation purposes and (ii) the removal of which is designed and supervised by a qualified engineer.
- (4) Qualified engineer. – An engineer licensed as a professional engineer under Chapter 89C of the General Statutes.
- (5) Run-of-river dam. – A riverine or stream dam that is designed or operated to release water at approximately the same rate as the natural flow of the river or stream."

SECTION 1.(b) G.S. 143-215.27 reads as rewritten:

"§ 143-215.27. Repair, alteration, or removal of dam.

- (a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it may be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of



original construction. This subsection shall not apply to a professionally supervised dam removal.

...
(c) A professionally supervised dam removal is not subject to the procedures set forth in subsection (a) of this section, provided that the dam removal complies with all of the following:

- (1) A qualified engineer determines, based on good engineering practices, that the removal of the dam can be accomplished safely, certifies that the dam is a low or intermediate hazard dam, and the removal plan reflects (i) the geomorphology of the streambed upriver and downriver from the dam site and (ii) the most desirable longitudinal profile for the post-removal stream channel that will minimize physical impacts on riparian landowners.
- (2) The person who proposes to remove the dam notifies the director of the Division of Energy, Mineral, and Land Resources of the Department of the proposed removal no less than 60 days prior to removal. The notice shall include information identifying the dam, including the stream and county where the dam is located, the dam's height and impoundment capacity, a map showing the dam location and vicinity, the qualified engineer's name and North Carolina license number, and a notarized certification from the owner of the dam that the dam is a low or intermediate hazard dam not currently operated for the purposes of flood control or hydroelectric power generation. The notification and certification required by this subdivision may be provided electronically.
- (3) The person who proposes to remove the dam notifies the North Carolina Floodplain Mapping Program of the Department of Public Safety, the North Carolina Department of Transportation, adjacent property owners of the dam and reservoir, and all impacted local governments of the proposed removal no less than 60 days prior to removal. The notice shall include a qualified engineer's determination that (i) the removal plan for the dam is based on the criteria set forth in subdivision (1) of this subsection and (ii) the removal will lower or maintain water levels above the location of the dam and will not cause an increase in the risk of flood damage or impacts to downstream bridges or road crossings. For purposes of the notice required by this subdivision, an "impacted local government" shall mean any unit of local government that could experience changes to its base floodplain, as defined in G.S. 143-215.52, as a result of the dam removal."

SECTION 1.(c) G.S. 143-215.28A reads as rewritten:

"§ 143-215.28A. Application fees.

(a) In accordance with G.S. 143-215.3(a)(1a), the Commission may establish a fee schedule for processing applications for approvals of construction or removal of dams issued under this Part. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing the applications and for related compliance activities. The total amount of fees collected in any fiscal year may not exceed one-third of the total personnel and administrative costs incurred by the Department for processing the applications and for related compliance activities in the prior fiscal year. An approval fee may not exceed the larger of two hundred dollars (\$200.00) or two percent (2%) of the actual cost of construction or removal of the applicable dam. The fee for notification of a professionally supervised dam removal under G.S. 143-215.27(c)(1) shall be five hundred dollars (\$500.00) and shall be paid to the Department. The provisions of G.S. 143-215.3(a)(1b) do not apply to these fees.

...."

SECTION 1.(d) G.S. 143-215.30 reads as rewritten:

"§ 143-215.30. Notice of completion; certification of final approval; notice of transfer.

(a) ImmediatelyExcept as set forth in subsection (d1) of this section, immediately upon completion, enlargement, repair, alteration or removal of a dam, notice of completion shall be given the Commission. As soon as possible thereafter supplementary drawings or descriptive matter showing or describing the dam as actually constructed shall be filed with the Department in such detail as the Commission may require.

...

(d1) The requirements of this section shall not apply to a professionally supervised dam removal under G.S. 143-215.27(c) if the person removing the dam provides confirmation of completion of dam removal to the Department within 10 days of completion of the removal.

(e) The owner of a dam shall provide written notice of transfer to the Department within 30 days after title to the dam has been legally transferred. The notice of transfer shall include the name and address of the new dam owner."

SECTION 1.(e) G.S. 143-215.56 is amended by adding a new subsection to read:

"§ 143-215.56. Delineation of flood hazard areas and 100-year floodplains; powers of Department; powers of local governments and of the Department.

...

(d) The Department may prepare a floodplain map that identifies the 100-year floodplain and base flood elevations for an area for the purposes of this Part if all of the following conditions apply:

- (1) The 100-year floodplain and base flood elevations for the area are not identified on a floodplain map prepared pursuant to the National Flood Insurance Program within the previous five years.
- (2) The Department determines that the 100-year floodplain and the base flood elevations for the area need to be identified and the use of the area regulated in accordance with the requirements of this Part in order to prevent damage from flooding.
- (3) The Department prepares the floodplain map in accordance with the federal standards required for maps to be accepted for use in administering the National Flood Insurance Program.

(e) Prior to preparing a floodplain map pursuant to subsection (d) of this section, the Department shall advise each local government whose jurisdiction includes a portion of the area to be mapped.

(f) Upon completing a floodplain map pursuant to subsection (d) of this section, the Department shall both:

- (1) Provide copies of the floodplain map to every local government whose jurisdiction includes a portion of the 100-year floodplain identified on the floodplain map.
- (2) Submit the floodplain map to the Federal Emergency Management Agency for approval for use in administering the National Flood Insurance Program.

(g) Upon approval of a floodplain map prepared pursuant to subsection (d) of this section by the Federal Emergency Management Agency for use in administering the National Flood Insurance Program, it shall be the responsibility of each local government whose jurisdiction includes a portion of the 100-year floodplain identified in the floodplain map to incorporate the revised map into its floodplain ordinance.

(h) To the extent permitted by National Flood Insurance Program requirements, a professionally supervised dam removal, as defined in G.S. 143-215.25, that complies with the requirements of G.S. 143-215.27(c) shall not be required to submit a Letter of Map Revision to the Department."

STREAMLINE ENVIRONMENTAL PERMITTING OF DAM REMOVAL

SECTION 2.(a) G.S. 143-214.7C reads as rewritten:

"§ 143-214.7C. Prohibit the requirement of mitigation for impacts to intermittent streams; certain impacts; establish threshold for mitigation of impacts to streams.

(a) Except as required by federal law, the Department of Environmental Quality shall not require mitigation for impacts to any of the following:

(1) Impacts to an intermittent stream. For purposes of this section, "intermittent stream" means a well-defined channel that has all of the following characteristics:

- (1)a. It contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table.
- (2)b. The flow of water in the intermittent stream may be heavily supplemented by stormwater runoff.
- (3)c. It often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.

(2) Impacts associated with the removal of a dam when the removal complies with the requirements of Part 3 of this Article.

(b) Except as required by federal law, the Department of Environmental Quality shall not require mitigation for losses of 300 linear feet or less of stream bed."

SECTION 2.(b) The Division of Water Resources of the Department of Environmental Quality shall develop a water quality general certification under section 401 of the Clean Water Act for short-term sediment releases associated with the construction phase of a dam removal when all of the following occur:

- (1) The removal meets the definition and requirements of a professionally supervised dam removal under G.S. 143-215.27, as amended by Section 1 of this act.
- (2) The applicant for the water quality general certification demonstrates that the sediment to be released has similar or lower level of contamination than sediment sampled from downstream of the dam.

STUDY FURTHER STREAMLINING OF DAM REMOVAL

SECTION 3. The Department of Environmental Quality and the Department of Public Safety shall jointly study the dam removal process in North Carolina and recommend further changes in statutes or rules to reduce regulatory barriers to the removal of obsolete and unwanted dams and consolidate duplicative permit processes. As part of its study, the Departments shall review the dam removal permitting processes in New Hampshire, Massachusetts, and Pennsylvania and other states as the Department finds relevant. The Departments shall jointly submit its report to the Environmental Review Commission no later than March 1, 2020.

EFFECTIVE DATE

SECTION 4. Section 3 of this act is effective when it becomes law. The remainder of this act becomes effective July 1, 2017.

In the General Assembly read three times and ratified this the 29th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 4:16 p.m. this 20th day of July, 2017