

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

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SENATE BILL 744

Short Title: Environmental Permitting Reforms. (Public)

Sponsors: Senator Moffitt (Primary Sponsor).

Referred to: Rules and Operations of the Senate

April 10, 2023

A BILL TO BE ENTITLED

AN ACT TO PROVIDE REGULATORY RELIEF TO CITIZENS OF THE STATE BY
REFORMING ENVIRONMENTAL PERMITTING PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Definitions. – For purposes of this section and its implementation, "Wetlands Definition" means 15A NCAC 02B .0202 (Definitions).

SECTION 1.(b) Wetlands Definition Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission (Commission) is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the Wetlands Definition Rule as provided in subsection (c) of this section.

SECTION 1.(c) Implementation. – Wetlands classified as waters of the State are restricted to waters of the United States as defined by 33 C.F.R. § 328.3 and 40 C.F.R. § 230.3.

SECTION 1.(d) Additional Rulemaking Authority. – The Commission shall adopt a rule to amend the Wetlands Definition Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

SECTION 1.(e) Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

SECTION 2.(a) G.S. 143B-279.13 reads as rewritten:

"§ 143B-279.13. Express permit and certification reviews.

(a) The Department of Environmental Quality shall develop an express review program to provide express permit and certification reviews in all of its regional offices. Participation in the express review program is voluntary, and the program is to become supported by the fees determined pursuant to subsection (b) of this section. The Department of Environmental Quality shall determine the project applications to review under the express review program from those who request to participate in the program. The express review program may be applied to any one or all of the permits, approvals, or certifications in the following programs: the erosion and sedimentation control program, the coastal management program, and the water quality programs, including water quality certifications and stormwater management. The express review program shall ~~focus on~~ include the following permits or ~~certifications~~ certifications, and the Department shall issue or deny such permits or certifications within the following processing days, as calculated pursuant to subsection (a2) of this section:



- 1 (1) ~~Stormwater~~ Forty-five days for stormwater permits under Part 1 of Article 21
2 of Chapter 143 of the General Statutes.
- 3 (2) ~~Stream~~ Forty-five days for stream origination certifications under Article 21
4 of Chapter 143 of the General Statutes.
- 5 (3) ~~Water~~ Forty-five days for water quality certification under Article 21 of
6 Chapter 143 of the General Statutes.
- 7 (4) ~~Erosion~~ Fifteen days for erosion and sedimentation control permits under
8 Article 4 of Chapter 113A of the General Statutes.
- 9 (5) ~~Permits~~ Sixty days for permits under the Coastal Area Management Act
10 (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.

11 (a1) A permit or certification shall be deemed approved if the Department fails to issue or
12 deny the permit or certification within the following processing days, as calculated pursuant to
13 subsection (a2) of this section:

- 14 (1) Ninety days for stormwater permits under Part 1 of Article 21 of Chapter 143
15 of the General Statutes.
- 16 (2) Sixty days for stream origination certifications under Article 21 of Chapter
17 143 of the General Statutes.
- 18 (3) Sixty days for water quality certification under Article 21 of Chapter 143 of
19 the General Statutes.
- 20 (4) Thirty days for erosion and sedimentation control permits under Article 4 of
21 Chapter 113A of the General Statutes.
- 22 (5) Seventy-five days for permits under the Coastal Area Management Act
23 (CAMA), under Part 4 of Article 7 of Chapter 113A of the General Statutes.

24 (a2) For purposes of calculating processing days pursuant to subsections (a) and (a1) of
25 this section, the following criteria shall be applied:

- 26 (1) The processing time shall begin on the first business day that the application
27 is received by the Department through (i) electronic means, (ii) first-class,
28 registered, or certified mail, or (iii) hand delivery by the applicant.
- 29 (2) If an application is determined to be incomplete, the Department shall notify
30 the applicant accordingly and specify the deficiencies identified by the
31 Department's initial review. Such notice may be sent electronically, or by
32 certified or registered mail. Calculation of processing days shall pause on the
33 day that such notice is sent and shall resume on the first business day that the
34 requested information is received by the Department through (i) electronic
35 means, (ii) first-class, registered, or certified mail, or (iii) hand delivery by the
36 applicant. After the applicant's response to any deficiencies identified in the
37 initial review, a subsequent determination of the application to be incomplete
38 shall be considered as a subsequent review. Any comments made by the
39 Department during a subsequent review that are not directly related to the
40 applicant's attempt to satisfy specific initial review comments shall be treated
41 by the Department as comments that were not properly made during initial
42 review, and therefore shall be addressed at the next time the permit is renewed
43 or reopened. The processing days shall continue during the request for
44 comment period unless the applicant takes longer than three business days to
45 respond to electronic comments, or one week from the postmarked day to
46 respond to comments received by mail.

47 (b) The Department of Environmental Quality may determine the fees for express
48 application review under the express review program. Notwithstanding G.S. 143-215.3D, the
49 maximum permit application fee to be charged under subsection (a) of this section for the express
50 review of a project application requiring all of the permits under subdivisions (1) through (5) of
51 subsection (a) of this section shall not exceed five thousand five hundred dollars (\$5,500).

1 Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged for the
2 express review of a project application requiring all of the permits under subdivisions (1) through
3 (4) of subsection (a) of this section shall not exceed four thousand five hundred dollars (\$4,500).
4 Notwithstanding G.S. 143-215.3D, the maximum permit application fee charged for the express
5 review of a project application for any other combination of permits under subdivisions (1)
6 through (5) of subsection (a) of this section shall not exceed four thousand dollars (\$4,000).
7 Express review of a project application involving additional permits or certifications issued by
8 the Department of Environmental Quality other than those under subdivisions (1) through (5) of
9 subsection (a) of this section may be allowed by the Department, and, notwithstanding
10 G.S. 143-215.3D or any other statute or rule that sets a permit fee, the maximum permit
11 application fee charged for the express review of a project application shall not exceed four
12 thousand dollars (\$4,000), plus one hundred fifty percent (150%) of the fee that would otherwise
13 apply by statute or rule for that particular permit or certification. Additional fees, not to exceed
14 fifty percent (50%) of the original permit application fee under this section, may be charged for
15 subsequent reviews due to the insufficiency of the permit applications. The Department of
16 Environmental Quality may establish the procedure by which the amount of the fees under this
17 subsection is determined, and the fees and procedures are not rules under G.S. 150B-2(8a) for
18 the express review program under this section.

19 (b1) The Department shall return one thousand dollars (\$1,000) of the application fee to
20 an applicant for a permit or certification that is issued or denied beyond the number of processing
21 days authorized in subsection (a2) of this section.

22 (c) Repealed by Session Laws 2008-198, s. 10.2, effective August 8, 2008."

23 **SECTION 2.(b)** G.S. 143-215.3D reads as rewritten:

24 "**§ 143-215.3D. Fee schedule for water quality permits.**

25 ...

26 (d1) State Stormwater Permits. –

27 (1) The following application fees for permits regulating stormwater runoff under
28 G.S. 143-214.7 and G.S. 143-215.1 apply:

29 a. Five hundred five dollars (\$505.00) for a permit regulating stormwater
30 runoff for a development of 5 acres or less.

31 b. Five hundred fifty-five dollars (\$555.00) for a permit regulating
32 stormwater runoff for development greater than 10 acres and not
33 exceeding 25 acres.

34 c. Six hundred twenty-five dollars (\$625.00) for a permit regulating
35 stormwater runoff for a development greater than 25 acres.

36 (2) The Department shall return any amount in excess of five hundred five dollars
37 (\$505.00) of the application fee to an applicant for a stormwater permit,
38 however, if the permit is not issued or denied within 90 processing days as
39 required by G.S. 143-214.7(b5).

40 (e) Other fees under this Article. –

41 (1) Sewer System Extension Permits. – The application fee for a permit for the
42 construction of a new sewer system or for the extension of an existing sewer
43 system is four hundred eighty dollars (\$480.00).

44 ~~(2) State Stormwater Permits. – The application fee for a permit regulating~~
45 ~~stormwater runoff under G.S. 143-214.7 and G.S. 143-215.1 is five hundred~~
46 ~~five dollars (\$505.00).~~

47 (3) Major Water Quality Certifications. – The fee for a water quality certification
48 involving one acre or more of wetland fill or 150 feet or more of stream impact
49 is five hundred seventy dollars (\$570.00).

- 1 (4) Minor Water Quality Certifications. – The fee for a water quality certification
2 involving less than one acre of wetland fill or less than 150 feet of stream
3 impact is two hundred forty dollars (\$240.00).
4 (5) Permit for Land Application of Petroleum Contaminated Soils. – The fee for
5 a permit to apply petroleum contaminated soil to land is four hundred eighty
6 dollars (\$480.00).
7 (6) Fee Nonrefundable. – If an application for a permit or a certification described
8 in this subsection is denied, the application or certification fee shall not be
9 refunded.
10 (7) Limit Water Quality Certification Fee Required for CAMA Permit. – An
11 applicant for a permit under Article 7 of Chapter 113A of the General Statutes
12 for which a water quality certification is required shall pay a fee established
13 by the Secretary. The Secretary shall not establish a fee that exceeds the
14 greater of the fee for a permit under Article 7 of Chapter 113A of the General
15 Statutes or the fee for a water quality certification under subdivision (3) or (4)
16 of this subsection.

17 (f) Local Government Fee Authority Not Impaired. – This section shall not be construed
18 to limit any authority that a unit of local government may have pursuant to any other provision
19 of law to assess or collect a fee for the review of an application for a permit, the review of a
20 mitigation plan, or the inspection of a site or a facility under any local program that is approved
21 by the Commission under this Article."

22 **SECTION 2.(c)** This section is effective when it becomes law and applies to
23 applications for permits and certifications pending on, or submitted on or after, that date.
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25 **FAST-TRACK STORMWATER PERMITTING PROGRAM CHANGES**

26 **SECTION 3.(a)** Definitions. – For purposes of this section and its implementation,
27 "Fast-Track Stormwater Permit Rule" means 15A NCAC 02H .1044 (Fast Track Permitting
28 Process: Final Permit Rule).

29 **SECTION 3.(b)** Fast-Track Stormwater Permit Rule. – Until the effective date of
30 the revised permanent rule that the Environmental Management Commission is required to adopt
31 pursuant to subsection (d) of this section, the Commission shall implement the Fast-Track
32 Stormwater Permit Rule as provided in subsection (c) of this section.

33 **SECTION 3.(c)** Implementation. – Field surveys and signed, sealed, and dated plans
34 of the site layout and the stormwater collection system shall not be required. In the event of an
35 increase in built-upon area or a change in SCM design from the permitted plans, the permit
36 applicant shall not have the burden of providing evidence to ensure that the proposed system
37 complies with all applicable water quality standards and requirements. A site inspection of the
38 project shall not be allowed. The Division shall, within 30 days of receipt of a complete as-built
39 package, take a final action on the permit application.

40 **SECTION 3.(d)** Additional Rulemaking Authority. – The Commission shall adopt
41 a rule to amend the Fast-Track Stormwater Permit Rule consistent with subsection (c) of this
42 section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this
43 section shall be substantively identical to the provisions of subsection (c) of this section. Rules
44 adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the
45 General Statutes. Rules adopted pursuant to this section shall become effective as provided in
46 G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in
47 G.S. 150B-21.3(b2).

48 **SECTION 3.(e)** Sunset. – This section expires when permanent rules adopted as
49 required by subsection (d) of this section become effective.

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