

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS15298-MHa-86

Short Title: Stormwater Program Revisions. (Public)

Sponsors: Senators Lee, Jarvis, and Perry (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH DEADLINES FOR DECISIONS BY THE DEPARTMENT OF
3 ENVIRONMENTAL QUALITY ON APPLICATIONS FOR STORMWATER PERMITS
4 AND APPLICATIONS FOR PERMITS PROCEEDING UNDER THE EXPRESS REVIEW
5 PROGRAM AND TO MAKE OTHER CHANGES.

6 The General Assembly of North Carolina enacts:

7
8 **PERMIT CHOICE**

9 **SECTION 1.** G.S. 143-214.7 reads as rewritten:

10 "**§ 143-214.7. Stormwater runoff rules and programs.**

11 ...

12 (b5) The following provisions shall apply to applications for a new stormwater permit, or
13 the reissuance of a permit due to transfer, modification, or renewal:

14 (1) An applicant shall have the option to submit a permit application for
15 processing to (i) the Department, (ii) a unit of local government with
16 permitting authority in whose jurisdiction the project to be permitted is
17 located, or (iii), where a unit of local government with permitting authority in
18 whose jurisdiction the project to be permitted is located has established a joint
19 program with one or more units of local government pursuant to subsection
20 (c) of this section, other local governments in the joint program.

21 (2) For development located in a coastal area, as defined in G.S. 113A-103(2), an
22 applicant shall have the option to submit a permit application to the
23 Washington or Wilmington Regional Offices of the Department.

24 (3) The Department shall approve or deny a stormwater permit, stream origination
25 certification, or water quality certification within 90 processing days. The
26 stormwater permit shall be deemed approved when the Department has not
27 issued or denied the permit within 120 processing days. For purposes of
28 calculating processing days under this subdivision, the following criteria shall
29 be applied:

30 a. The processing time shall begin on the first business day that the
31 application is received by the Department through (i) electronic
32 means, (ii) first-class, registered, or certified mail, or (iii) hand
33 delivery by the applicant.

34 b. If an application is determined to be incomplete, the Department shall
35 notify the applicant accordingly and specify the deficiencies identified
36 by the Department's initial review. Such notice may be sent



electronically or by certified or registered mail. Calculation of processing days shall pause on the day that such notice is sent and shall resume on the first business day that the requested information is received by the Department through (i) electronic means, (ii) first-class, registered, or certified mail, or (iii) hand delivery by the applicant. After the applicant's response to any deficiencies identified in the initial review, a subsequent determination of the application to be incomplete shall be considered as a subsequent review. Any comments made by the Department during a subsequent review that are not directly related to the applicant's attempt to satisfy specific initial review comments are considered to be comments that were failed to be properly made during initial review. The process days shall continue during the request for comment period unless the applicant takes longer than three business days to respond to electronic comments or one week from the postmarked day to respond to comments received by mail.

(c) The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. Model stormwater management programs shall be developed to protect existing water uses and assure compliance with water quality standards and classifications. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program or a stormwater permitting program for implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control ~~programs.~~programs and stormwater permitting programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program or a joint stormwater permitting program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

...."

PERMIT REVIEW TIME LINES AND UNTIMELINESS PENALTY

SECTION 2. 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) ~~Stormwater~~Forty-five days for stormwater permits under Part 1 of Article 21 of Chapter 143 of the General Statutes.
- (2) ~~Stream~~Forty-five days for stream origination certifications under Article 21 of Chapter 143 of the General Statutes.
- (3) ~~Water~~Forty-five days for water quality certification under Article 21 of Chapter 143 of the General Statutes.

- 1 (4) ~~Erosion~~ Fifteen days for erosion and sedimentation control permits under
2 Article 4 of Chapter 113A of the General Statutes.
- 3 (5) ~~Permits~~ Sixty days for permits under the Coastal Area Management Act
4 (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.
- 5 (a1) A permit or certification shall be deemed approved if the Department fails to issue or
6 deny the permit or certification within the following processing days, as calculated pursuant to
7 subsection (a2) of this section:
- 8 (1) Ninety days for stormwater permits under Part 1 of Article 21 of Chapter 143
9 of the General Statutes.
- 10 (2) Sixty days for stream origination certifications under Article 21 of Chapter
11 143 of the General Statutes.
- 12 (3) Sixty days for water quality certification under Article 21 of Chapter 143 of
13 the General Statutes.
- 14 (4) Thirty days for erosion and sedimentation control permits under Article 4 of
15 Chapter 113A of the General Statutes.
- 16 (5) Seventy-five days for permits under the Coastal Area Management Act
17 (CAMA), under Part 4 of Article 7 of Chapter 113A of the General Statutes.
- 18 (a2) For purposes of calculating processing days pursuant to subsections (a) and (a1) of
19 this section, the following criteria shall be applied:
- 20 (1) The processing time shall begin on the first business day that the application
21 is received by the Department through (i) electronic means, (ii) first-class,
22 registered, or certified mail, or (iii) hand delivery by the applicant.
- 23 (2) If an application is determined to be incomplete, the Department shall notify
24 the applicant accordingly and specify the deficiencies identified by the
25 Department's initial review. Such notice may be sent electronically, or by
26 certified or registered mail. Calculation of processing days shall pause on the
27 day that such notice is sent and shall resume on the first business day that the
28 requested information is received by the Department through (i) electronic
29 means, (ii) first-class, registered, or certified mail, or (iii) hand delivery by the
30 applicant. After the applicant's response to any deficiencies identified in the
31 initial review, a subsequent determination of the application to be incomplete
32 shall be considered as a subsequent review. Any comments made by the
33 Department during a subsequent review that are not directly related to the
34 applicant's attempt to satisfy specific initial review comments are considered
35 to be comments that were failed to be properly made during initial review.
36 The processing days shall continue during the request for comment period
37 unless the applicant takes longer than three business days to respond to
38 electronic comments, or one week from the postmarked day to respond to
39 comments received by mail.
- 40 (b) The Department of Environmental Quality may determine the fees for express
41 application review under the express review program. Notwithstanding G.S. 143-215.3D, the
42 maximum permit application fee to be charged under subsection (a) of this section for the express
43 review of a project application requiring all of the permits under subdivisions (1) through (5) of
44 subsection (a) of this section shall not exceed five thousand five hundred dollars (\$5,500).
45 Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged for the
46 express review of a project application requiring all of the permits under subdivisions (1) through
47 (4) of subsection (a) of this section shall not exceed four thousand five hundred dollars (\$4,500).
48 Notwithstanding G.S. 143-215.3D, the maximum permit application fee charged for the express
49 review of a project application for any other combination of permits under subdivisions (1)
50 through (5) of subsection (a) of this section shall not exceed four thousand dollars (\$4,000).
51 Express review of a project application involving additional permits or certifications issued by

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

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

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

16 **SECTION 3.** G.S. 143-215.3D reads as rewritten:

17 "**§ 143-215.3D. Fee schedule for water quality permits.**

18 ...

19 (d1) State Stormwater Permits. –

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

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

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

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

29 (2) The Department shall return any amount in excess of five hundred five dollars
30 (\$505.00) of the application fee to an applicant for a stormwater permit,
31 however, if the permit is not issued or denied within 90 processing days as
32 required by G.S. 143-214.7(b5).

33 (e) Other fees under this Article. –

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

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

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

43 (4) Minor Water Quality Certifications. – The fee for a water quality certification
44 involving less than one acre of wetland fill or less than 150 feet of stream
45 impact is two hundred forty dollars (\$240.00).

46 (5) Permit for Land Application of Petroleum Contaminated Soils. – The fee for
47 a permit to apply petroleum contaminated soil to land is four hundred eighty
48 dollars (\$480.00).

49 (6) Fee Nonrefundable. – If an application for a permit or a certification described
50 in this subsection is denied, the application or certification fee shall not be
51 refunded.

1 (7) Limit Water Quality Certification Fee Required for CAMA Permit. – An
 2 applicant for a permit under Article 7 of Chapter 113A of the General Statutes
 3 for which a water quality certification is required shall pay a fee established
 4 by the Secretary. The Secretary shall not establish a fee that exceeds the
 5 greater of the fee for a permit under Article 7 of Chapter 113A of the General
 6 Statutes or the fee for a water quality certification under subdivision (3) or (4)
 7 of this subsection.

8 (f) Local Government Fee Authority Not Impaired. – This section shall not be construed
 9 to limit any authority that a unit of local government may have pursuant to any other provision
 10 of law to assess or collect a fee for the review of an application for a permit, the review of a
 11 mitigation plan, or the inspection of a site or a facility under any local program that is approved
 12 by the Commission under this Article."
 13

14 **TECHNOLOGY-ASSISTED PERMITTING INITIATIVES**

15 **SECTION 4.** The sum of five hundred thousand dollars (\$500,000) in nonrecurring
 16 funds for the 2023-2024 fiscal year is appropriated from the General Fund to the North Carolina
 17 Collaboratory (Collaboratory) for the following:

- 18 (1) The creation of a system for automated completeness reviews of applications
 19 for the following permits upon submission and the generation of an electronic
 20 notification to the applicant that the application is complete or listing the
 21 information required for the application to be deemed complete:
 22 a. Stormwater permits under Part 1 of Article 21 of Chapter 143 of the
 23 General Statutes.
 24 b. Erosion and sedimentation control permits under Article 4 of Chapter
 25 113A of the General Statutes.
 26 c. Coastal Area Management Act (CAMA) permits under Part 4 of
 27 Article 7 of Chapter 113A of the General Statutes.
 28 (2) Utilizing machine learning, testing of the accuracy of the automated
 29 completeness review system required by subdivision (1) of this section
 30 compared to completeness reviews made by the Department of Environmental
 31 Quality and using machine learning to improve the completeness review.
 32 (3) Upon a determination by the Collaboratory that the automated completeness
 33 review system is accurate and effective, deployment of the automated
 34 completeness review system to the Department of Environmental Quality for
 35 its use.

36 **SECTION 5.** The sum of one hundred thousand dollars (\$100,000) in nonrecurring
 37 funds for the 2023-2024 fiscal year is appropriated from the General Fund to North Carolina
 38 State University to conduct a study on the use of artificial intelligence (AI) to generate
 39 stormwater permits. The study shall evaluate the quality and accuracy of AI-generated permits
 40 and the feasibility of implementing AI-assisted stormwater permitting within the Department of
 41 Environmental Quality.
 42

43 **EFFECTIVE DATE**

44 **SECTION 6.** This act is effective when it becomes law and applies to applications
 45 for permits and certifications pending on, or submitted on or after, that date.