



# SENATE BILL 389: DEQ/DNCR Omnibus.

2021-2022 General Assembly

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<b>Committee:</b>		<b>Date:</b>	September 8, 2021
<b>Introduced by:</b>	Sens. B. Jackson, Sanderson, Edwards	<b>Prepared by:</b>	Kyle Evans
<b>Analysis of:</b>	Third Edition		Staff Attorney

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**OVERVIEW:** *Senate Bill 389 would make various changes to the natural, environmental, and cultural resources laws of the State, as recommended by the Department of Environmental Quality and the Department of Natural and Cultural Resources.*

## CURRENT LAW & BILL ANALYSIS:

### MODIFY CONDITIONS FOR STATE FUNDING OF BEACH ACCESS PROPERTY

The Public Beach and Coastal Waterfront Access Program (Program) provides matching funds for local governments to acquire or develop land for pedestrian access to beaches or coastal waters. Grants awarded pursuant to the Program require that the local government agrees to transfer title to any real property acquired with grant fund to the State if the local government uses the property for a purpose other than beach or coastal water access.

**Section 1** would eliminate the requirement that local governments transfer title any real property to the State if used for non-beach/coastal water access purposes, and instead would require that:

- Local governments dedicate acquired lands in perpetuity for public access and for the benefit of the public and record such dedication in the office of the register of deeds in the relevant county.
- Leases or easements acquired with Program grant funds must have a minimum term of 25 years.
- Local governments that use real property acquired with Program grant funds for any purpose other than beach or coastal water access, or otherwise sell or dispose of the property, must reimburse the State in an amount that is the greater of (i) the amount of Program grant funds provided to purchase the land or (ii) an amount equal to the same proportion of the current market value of the property as the proportion of the original purchase price of the property funded with Program grant funds.

### MODERNIZE COASTAL AREA MANAGEMENT ACT NOTIFICATION REQUIREMENTS

When the Department of Environmental Quality (DEQ) receives an application for a major development in an area of environmental concern, a significant modification to an application, or an application to modify substantially a previously issued major permit, the Coastal Area Management Act requires that DEQ provide public notice of the proposed development: (i) by mailing a copy of the application to all interested citizens, groups, or State agencies, (ii) by posting a notice at the location of the proposed development, and (iii) by publishing notice of the application in a newspaper of general circulation in the relevant county or counties.

Jeffrey Hudson  
Director



Legislative Analysis  
Division  
919-733-2578

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**Section 2** would remove the requirement that DEQ notify interested parties of major permit applications and modification by regular mail.

This section would become effective July 1, 2021 and apply to permit applications received on or after that date.

## **COASTAL AREA MANAGEMENT ACT PERMIT THIRD-PARTY APPEAL REVIEW TIMELINE**

Pursuant to the Coastal Area Management Act, when a person other than the permit applicant or the Secretary challenges a development permit decision, the Coastal Resources Commission has 15 days to review the appropriateness of the challenge and decide whether to hear the challenge.

**Section 3** would extend the Coastal Resources Commission's review period from 15 to 30 days for third-party challenges.

## **STORMWATER PROGRAM AMENDMENTS**

**Section 4** would make several amendments to DEQ's Stormwater Management Program, including:

- Adding an annual compliance certification for new and existing stormwater permits, clarifying that the addition of the annual compliance certification is not a new or increased stormwater controls, providing that DEQ must provide for electronic submission of the annual certification, and providing that DEQ may only require the permit holder or their designee, and not a different party, to submit the annual certification.
- Modifying the stormwater permit transfer process, including timelines for submitting permit transfer applications and providing for a schedule of remedial actions, as needed, to bring permitted activities into compliance with the approved stormwater plan and permit conditions.
- For low density permits issued prior to January 1, 2017 that have exceeded a permitted built-upon area, establishing a permit modification request mechanism to bring those projects into compliance with the existing or modified built-upon area limit.
- Providing that low density stormwater certifications and approvals issued prior to September 1, 1995, are revoked as of January 1, 2022, and the built-upon area will be considered as "existing development" for the purposes of G.S. 143-214.7(a1).

## **CONFORM SEDIMENTATION AND EROSION CONTROL PROGRAM PENALTY REMISSION REQUEST TIMELINE**

The Sedimentation Pollution Control Act provides that a person assessed a civil penalty has 60 days from the receipt of notice of the assessment to request a remission of that civil penalty.

**Section 5** would shorten the deadline to request a civil penalty remission from 60 to 30 days.

This section would become effective October 1, 2021 and apply to penalties assessed on or after that date.

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## **UST TRUST FUND PAYMENT REQUEST TIMELINE EXTENSION**

The Underground Storage Tank Commercial Trust Fund (UST Trust Fund) provides reimbursement for costs incurred during the cleanup of soil and groundwater contamination resulting from a release of petroleum from a commercial underground storage tank. The UST Trust Fund has been established to reimburse tank owners, operators, and landowners for costs associated with cleanups. A UST owner, operator, or landowner has 12 months from the completion of a cleanup task to request reimbursement for associated costs.

**Section 6** would provide that if DEQ requests additional information regarding UST Trust Fund reimbursement requests, the UST owner, operator, or landowner may have up to 30 days to provide that additional information. The additional 30 days allowed by this section would not count against the 12-month deadline for making a reimbursement request.

## **MODIFY AND SIMPLIFY HAZARDOUS WASTE SITE NOTICES**

Within 180 days of receiving official notice from DEQ that an inactive hazardous substance or waste disposal site exists, the owner of the real property on which the site is located must submit a survey plat and notice to DEQ for approval and certification before filing it with the register of deeds' office in the relevant county or counties.

**Section 7** would shorten the deadline to submit a survey plat and notice from 180 to 90 days. This section would also make technical and clarifying changes to the language of the required notice.

## **REVISE AND CLARIFY BASINWIDE WATER RESOURCES MANAGEMENT PLANS**

**Section 8** would make various technical and clarifying changes to the statute concerning basinwide water quality management plans, including requiring management plans to provide certain information regarding surface and groundwater resources, other withdrawals, permitted minimum instream flow requirements, and pertinent information contained in the local water supply and water shortage response plans. This section would also define North Carolina's 17 major river basins by the relevant 8-digit hydrologic unit code (HUC).

## **CORRECT INACCURATE STATUTORY REFERENCE**

**Section 9** would provide that the Department of Public Safety, not the Department of Environmental Quality, is responsible for supervising the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the Division of Adult Correction and Juvenile Justice within the Department of Public Safety.

## **MODIFY NOTICE REQUIREMENT FOR SEDIMENTATION AND EROSION CONTROL PROGRAM VIOLATIONS**

A notice of violation given pursuant to the Sedimentation and Erosion Control Program may be served by any means authorized under G.S. 1A-1, Rule 4 of the NC Rules of Civil Procedure. For a first-time violator, notice must be delivered in person. If notice to a first-time violator cannot be delivered in person within 15 days of discovery of the violation, notice may be served as outlined in G.S. 1A-1, Rule 4.

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**Section 10** would eliminate the requirement that a person receiving a notice of violation for the first time under the Sedimentation and Erosion Control Program be delivered that notice in person.

This section would become effective October 1, 2021.

## **REVISE SEDIMENTATION AND EROSION CONTROL STOP-WORK ORDER PROCEDURES**

G.S. 113A-65.1(f) provides that a stop-work order issued pursuant to the Sedimentation and Erosion Control Program is a final agency decision subject to judicial review in the same manner as an order in an administrative contested case. Subsection (h) of that section requires the Attorney General to file a cause of action to abate the violations which resulted in the issuance of a stop-work order within two days of the service of the stop-work order. A stop-work order issued pursuant to this section can last for no more than 5 days.

**Section 11** would repeal subsections (f) and (h) of G.S. 113A-65.1.

This section would become effective October 1, 2021.

## **BROADEN ACCESS TO DEPARTMENT OF NATURAL AND CULTURAL RESOURCES LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED**

The North Carolina Library for the Blind and Physically Handicapped (NCLBPH) is a public library that circulates books and magazines especially made for persons who cannot use regular printed material because of a visual or physical disability. The NCLBPH is a State agency operated by the State Library of North Carolina as a part of the Department of Natural and Cultural Resources. It is also a part of the network of regional libraries operated by the Library of Congress National Library Service for the Blind and Print Disabled (NLS).

**Section 12** would broaden access to NCLBPH to include all people who are unable to use standard print materials due to reading challenges beyond visual or physical handicaps.

## **CLARIFY DNCR NAMING RIGHTS**

The Department of Natural and Cultural Resources (DNCR) has the authority to accept gifts, devises, and endowments for purposes that fall within DNCR's general legal powers and duties.

**Section 12.5** would clarify that DNCR may recognize gifts by naming exhibits, features, or programs administered by DNCR.

**EFFECTIVE DATE:** Except as otherwise provided, this act would be effective when it becomes law.