GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H **1**

HOUSE BILL 1756

Short Title:	Safe Artificial Slope Construction Act.	(Public)
Sponsors:	Representatives Rapp, Haire, Fisher (Primary Sponsors); Glazier and Harrison.	
Referred to:	Environment and Natural Resources, if favorable, Judiciary II.	

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO (1) REQUIRE LOCAL GOVERNMENTS TO ADOPT ORDINANCES TO REGULATE SITE PLANNING, DESIGN, AND CONSTRUCTION OF ARTIFICIAL SLOPES IN MOUNTAINOUS AREAS TO PROMOTE SAFE AND STABLE SLOPES FOR DEVELOPMENT AND TO REDUCE THE LIKELIHOOD OF SLOPE FAILURES ON DEVELOPED OR DISTURBED LAND, IN ORDER TO PROTECT HUMAN SAFETY AND PROPERTY; (2) DIRECT THE SEDIMENTATION CONTROL COMMISSION TO ASSIST LOCAL GOVERNMENTS IN DEVELOPMENT AND IMPLEMENTATION OF SAFE SLOPE CONSTRUCTION PROGRAMS; AND (3) PROVIDE FOR DISCLOSURE OF LANDSLIDE HAZARDS TO PURCHASERS OF PROPERTIES LOCATED IN AREAS VULNERABLE TO LANDSLIDES AS INDICATED ON MAPS PREPARED BY THE NORTH CAROLINA GEOLOGICAL SURVEY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 113A of the General Statutes is amended by adding a new Article to read as follows:

"Article 19.

"Safe Artificial Slope Construction.

"**§ 113A-261. Short title.**

This act shall be known as the Safe Artificial Slope Construction Act of 2007.

"**§ 113A-262. Definitions.**

Except with respect to the term 'land-disturbing activity,' the definitions set forth in G.S. 113A-52 apply to this Article. In addition, the following definitions apply to this Article:

(1) 'Affected area' means an area located on a mountain face or steep hillside that (i) has a slope of twenty-five percent (25%) or greater, or (ii) is designated with a slide hazard ranking of 'moderate' or 'high' on

a Stability Index Map prepared by the North Carolina Geological Survey.

(2) 'Artificial slope construction' means any land-disturbing activity that creates or changes any slope, or attempts to do so.

(3) 'Bench' means a relatively long, narrow linear step or break that is excavated or built into consolidated earth material of a slope that generally runs with the contour.

(4) 'Construction' means any land-disturbing activity, and includes reconstruction, repair, stabilization, alteration, or expansion.

(5) 'Critical slope' means any cut slope, fill slope, or retaining wall where failure due to mass instability would be a hazard to human safety, property, natural watercourses, or use of a public road.

(6) 'Cut slope' means any area of ground that is (i) subject to a land-disturbing activity that forms an artificial incline, expressed as the ratio of horizontal to vertical projection; and (ii) where earth material is to be or has been removed by excavation or other methods, and that exposes lower horizons of earth material in situ, and where any face of the excavated area lies in repose at any angle other than a horizontal plane.

(7) 'Earth material' means any rock, natural soil, fill, or combination thereof.

(8) 'Excavation' means a land-disturbing activity that is the mechanical removal of earth material.

(9) 'Factor of safety' means a dimensionless number computed using the infinite slope equation that represents the ratio of the stabilizing forces that resist slope movement to destabilizing forces that drive slope movement. A factor of safety greater than one indicates a stable slope, a factor of safety less than one indicates an unstable slope, and a factor of safety equal to one indicates the marginally stable situation where the resisting forces and the driving forces are in balance.

(10) 'Fill slope' means any area of ground (i) that is subject to a land-disturbing activity that forms an artificial incline; or (ii) where soil is to be or has been placed by excavation or other methods, and where any face of the excavated area lies in repose at any angle other than a horizontal plane.

(11) 'Land-disturbing activity' means any use of the land by any person in residential, industrial, educational, institutional, or commercial development, and highway and road construction and maintenance that results in a change in topography of the land.

(12) 'Natural watercourse' means any lake, stream, river, brook, wetland, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded.

(13) 'Slope' means an inclined ground or earth material surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

(14) 'Terrace' means a relatively long, narrow linear step or break that is excavated or built into unconsolidated earth material of a slope, which generally runs with the contour, that is built to control runoff, reduce erosion, and provide for maintenance of the slope.

"**§ 113A-263. Legislative findings.**

Improper development on steep slopes poses a threat to human safety and property. Economic pressures, unknown site conditions, inadequate or inappropriate design, and inexperienced persons conducting land-disturbing activity can affect the quality, safety, and stability of development on steep slopes. It is the intent of this Article to implement reasonable, effective control standards for artificial slope construction and to improve construction and development practices that will result in higher levels of safety and stability on developed land, and to decrease the potential for damage to human health, property, and natural resources. This Article provides for a cooperative program of artificial slope safe construction to be administered by local governments consistent with minimum statewide management requirements established by the Sedimentation Control Commission. If a local government required to do so fails to adopt an artificial slope safe construction ordinance or does not adequately carry out its responsibility to enforce its approved program, the Commission shall administer and enforce the minimum statewide requirements.

"**§ 113A-264. Applicability of this Article.**

This Article applies to artificial slope construction in any affected area as defined in G.S. 113A-262. This Article shall not apply to artificial slope construction activities conducted in connection with the following:

(1) Graves for the burial of human remains.

(2) Local government operation of a landfill.

(3) Excavations for wells or tunnels.

(4) Exploratory excavations not requiring a building permit that are less than one-half acre of disturbed area conducted under the direction of a professional engineer licensed under Chapter 89C of the General Statutes or other professional approved by the agency having jurisdiction.

(5) Natural slope failures, including, but not limited to, landslides.

(6) Underground storage tanks exempt from regulation under the Occupational Safety and Health Act.

(7) Ditches exempt from regulation under the Occupational Safety and Health Act.

(8) Artificial slope construction for below grade portions of a residential or commercial structure for which an unexpired building permit has been issued if the construction complies with all applicable local, State, and federal regulations, including, but not limited to, the North Carolina State Building Code.

(9) Activities set forth in G.S. 113A-52.01, except that this Article applies to land-disturbing activity for the construction of roads for any purpose, including roads for the harvesting of timber or timber products.

"**§ 113A-265. Duties of the Sedimentation Control Commission.**

(a) The Commission shall identify the jurisdictions that are required to adopt ordinances pursuant to this Article by showing them on a map or drawing, describing them in a document, or any combination thereof. These maps, drawings, or documents shall identify the affected areas within the jurisdiction. The Commission shall file this information with the governing body of each identified jurisdiction. Determinations by the Commission of slopes under this section shall be conclusive in the absence of fraud.

(b) The Commission shall provide assistance to local governments in the development of safe artificial slope construction programs that comply with this Article. Local government programs shall include an implementing local ordinance and shall provide for inspection and enforcement procedures. As part of its assistance to local governments, the Commission shall approve and make available a model safe artificial slope construction ordinance. The model ordinance adopted by the Commission shall, at a minimum, include the requirements set forth in G.S. 113A-267, 113A-268, and 113A-269.

(c) The Commission shall review each ordinance that regulates the construction of artificial slopes in affected areas submitted by a local government pursuant to G.S. 113A-266 and within 90 calendar days of receipt thereof shall notify the local government submitting the ordinance that the ordinance has been approved, approved with modifications, or disapproved. The Commission shall approve an ordinance only if it determines that the requirements of the ordinance meet or exceed the requirements of this Article.

(d) The Commission shall assume responsibility for safe artificial slope construction programs in affected areas if a local government fails to adopt an ordinance that meets the requirements of this Article or if a local government fails to adequately administer and enforce the provisions of an adopted ordinance. The Commission shall not assume responsibility for a program until it notifies the local government in writing by certified mail, return receipt requested, of local program deficiencies, recommendations for changes and improvements in the local program, and the deadline for compliance. The Commission shall allow a local government a minimum of 120 calendar days to bring its program into compliance. The Commission shall order assumption of a local program if it finds that the local government has made no substantial progress toward compliance. The Commission may make this finding at any time between 120 calendar days and 365 calendar days after receipt of notice under this subsection by the local government, with no further notice. Proceedings to review a Commission order to assume responsibility for a local program shall be conducted by the superior court pursuant to Article 4 of Chapter 150B of the General Statutes based on the agency record submitted by the Commission.

(e) If the Commission assumes responsibility for a safe artificial slope construction program in an affected area pursuant to subsection (d) of this section, it

may establish a fee for the review of artificial slope construction plans and related activities.

"**§ 113A-266. Mandatory local programs.**

(a) Each local government having within its jurisdiction an affected area shall adopt an ordinance that regulates the construction of artificial slopes in affected areas by any person. The ordinance shall at least meet and may exceed the minimum requirements of this Article and rules adopted pursuant to this Article.

(b) Prior to adoption of an ordinance that regulates the construction of artificial slopes in affected areas, or modification of the ordinance, a local government shall submit the ordinance to the Commission for review and receive approval from the Commission for the ordinance.

(c) The governing body of a local government must hold a public hearing on the question of adoption of an ordinance that regulates the construction of artificial slopes in affected areas prior to adoption. The public hearing required by this section shall be held upon at least 10 calendar days' notice in a newspaper of general circulation in the jurisdiction adopting the ordinance. Testimony at the hearing shall be recorded, and any and all exhibits shall be preserved within the custody of the governing body of the local government. The testimony and evidence shall be made available for inspection and scrutiny by any person.

(d) Each local government that adopts an ordinance pursuant to the provisions of this Article shall file a copy of the ordinance with the Commission. The local government shall file the information provided by the Commission pursuant to G.S. 113A-265(a) with the register of deeds in the jurisdiction where the affected area is located. Copies of the maps, drawings, or documents that are certified by the register of deeds shall be admitted in evidence in all courts and shall have the same force and effect as would the original.

(e) An ordinance adopted pursuant to the provisions of this Article shall apply to all affected areas as defined in G.S. 113A-262 within the jurisdiction. A local government may apply the ordinance to other areas within its jurisdiction if it finds that this application is reasonably necessary to protect against some or all of the hazards or problems set forth in G.S. 113A-263. Determinations by a local government of slopes made pursuant to the provisions of this Article shall be conclusive in the absence of fraud.

(f) An ordinance adopted by a local government may establish a fee for the review of an artificial slope construction plan and related activities.

(g) Each local government that is required to adopt an ordinance pursuant to the provisions of this Article shall implement and enforce the ordinance in accordance with the requirements of this Article and rules adopted thereunder.

(h) Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the ordinance. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of a safe artificial slope construction ordinance. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each local

government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(i) The agency having jurisdiction shall inspect or cause to be inspected the sites of slope construction activities to ensure compliance with this Article and to assess whether the measures required in an approved plan are effective to construct a stable artificial slope at the site. Notice of this right of inspection shall be included in the certificate of approval of each plan.

(j) The agency having jurisdiction shall require the submission of reports or certifications from financially responsible persons and their agents undertaking artificial slope construction concerning the activity to document compliance with the provisions of this Article.

(k) If an agency having jurisdiction determines that the person engaged in the slope construction activity has failed to comply with an ordinance adopted pursuant to the provisions of this Article, the agency shall immediately serve a notice of violation upon that person. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. A notice of violation shall specify a date by which the person must comply with this Article and the governing ordinance and inform the person of the actions that need to be taken for compliance. Any person who fails to comply within the time specified is subject to civil and criminal penalties for violations as provided in G.S. 113A-270.

(l) A local government shall not issue any permit to allow occupancy of any building or structure located on land where slope construction activity that is subject to the provisions of this Article has occurred until the appropriate inspector for the jurisdiction has documented that the completed work complies with this Article.

"**§ 113A-267. Artificial slope construction plans.**

(a) No person shall initiate any artificial slope construction activity on affected areas unless, 30 or more calendar days prior to initiating the activity, an artificial slope construction plan for the activity is filed with the agency having jurisdiction. An artificial slope construction plan may be filed less than 30 calendar days prior to initiation of an artificial slope construction activity if the plan is submitted under an approved express permit program.

(b) An artificial slope construction plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the agency having jurisdiction of compliance or noncompliance with the plan, this Article, or a governing ordinance adopted pursuant to this Article. If the applicant is not the owner of the land on which the slope construction activities are to occur, the artificial slope construction plan must include the owner's written consent for the applicant to submit the plan and to conduct the anticipated slope construction activity. The agency having jurisdiction shall approve, approve with modifications, or disapprove an artificial slope construction plan for slope construction activities for which prior plan approval is required within 30 calendar days of receipt of a completed plan. The agency having jurisdiction shall only approve a plan if it determines that the plan is adequate to meet the requirements of this Article and rules adopted pursuant to this Article. The agency shall condition approval of an artificial slope construction plan upon the applicant's compliance with federal, State, and local

laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed artificial slope construction plan within 30 calendar days of receipt of a completed plan shall be deemed approval of the plan. If the agency disapproves an artificial slope construction plan or a revised plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised artificial slope construction plan within 30 calendar days of receipt of a completed plan shall be deemed approval of the plan.

(c) An artificial slope construction plan shall contain architectural and engineering drawings, maps, assumptions, calculations, analysis, construction details, and narrative statements as needed to adequately describe the slope construction to be conducted, and the measures planned to comply with the requirements of this Article and a governing ordinance adopted pursuant to this Article using methods, requirements, and criteria of standard engineering practices used in the State of North Carolina. Plans submitted shall also contain the following:

(1) A description of the slope construction activity to be conducted, including identification of who will perform the work associated with the slope construction.

(2) A specific time schedule for the slope construction activity.

(3) Maps and accompanying material containing the following site-appropriate features:

a. A true scale that is adequate to describe the slope and a contour interval of not more than five feet.

b. Boundaries, interior lines or easements, relation to streets, roads, or highways, proposed location and height of all retaining walls, delineation of all cut and fill slopes, length of slope, shape of slope, steepness of slope, placement within slope of structures or appurtenances, scale and north arrow, proposed drainage easements, road locations and centerlines, as well as accurate estimates, cross-sectional views, and surface area calculations.

c. Information on existing surrounding conditions including buildings, septic tank and drain field locations, driveways, creeks, or other bodies of water, wetlands, seeps, springs, culverts, bridges, road grades, soil erodibility, areas of special environmental concern or those subject to any hazard from slope failure from the activity, or other information that may be pertinent in evaluation of the artificial slope construction plan.

d. Information on soils, soil types, soil analysis, rock types, analysis of the strike and dip of rock formations, stability and load bearing capability of rock and soil formations from the standpoint of strength of the material, faults and slip plans, compaction of fills, compacted or engineered lifts, water bearing formations and hydrology, aspect, benches, terraces, drainage patterns and topographic conditions, base preparation,

other criteria as specified by the professional that prepares the artificial slope construction plan, proposed ground cover, proposed methods for intercepting stormwater runoff, and groundwater conditions so as to protect the slope from unstable saturation, the geomorphology of the area relating to soil stability and mass wasting, and any other item of consideration that may be important in addressing site-specific slope stabilization.

e. Delineation of cut slopes and fill slopes, proposed soil densities, waste areas, ditches, measures and structures, and existing and proposed ground cover.

f. Supporting documentation, calculations, yardage estimates, and methods to be used for slope construction.

(4) If a Stability Index Map prepared by the North Carolina Geological Survey exists for the affected area on which the artificial slope construction activity is to be conducted, the slope construction plan shall include documentation that:

a. The Stability Index Map has been examined to determine whether areas upslope of the area on which the artificial slope construction activity is to be conducted have been designated with a slide hazard ranking of 'moderate' or 'high' on the map.

b. If upslope areas have been designated with a slide hazard ranking of 'moderate' or 'high' on a Stability Index Map, a description of measures taken to site any residential structures to be constructed on the site where artificial slope construction activity is planned in order to minimize risks to human health and property.

(d) An artificial slope construction plan shall be prepared by a professional engineer licensed under Chapter 89C of the General Statutes to practice as a professional engineer in the State. A completed plan shall be certified and stamped with the seal or facsimile of the seal of the engineer that prepared the plan. Upon completion of the artificial slope construction activity, the financially responsible party shall submit a statement, certified and stamped with the seal or facsimile of the seal of a professional engineer, that the construction was completed in accordance with the approved safe slope construction plan.

(e) An artificial slope construction plan shall include a statement of ownership and a demonstration of financial responsibility to guarantee compliance with the provisions of this Article. The person financially responsible for the slope development activity or his or her attorney shall sign the statement of financial responsibility and ownership. The property owner shall also sign the statement. The statement shall include the mailing and street address of the principal place of business of the financially responsible person and of the owner of the land. If the financially responsible person or the owner of the land is not a resident of the State, a North Carolina agent shall be designated in the statement for the purpose of receiving notice of

compliance or noncompliance with the plan, this Article, a governing ordinance, or rules or orders adopted or issued pursuant to this Article.

(f) The agency having jurisdiction may disapprove an artificial slope construction plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant has done any of the following:

(1) Is conducting or has conducted slope construction activity without an approved artificial slope construction plan as required by this Article, or has received notice of violation of a plan previously approved by the agency having jurisdiction and has not complied with the notice within the time specified in the notice.

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due.

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-270 or any criminal provision of a local ordinance adopted pursuant to this Article.

(4) Has failed to substantially comply with the provisions of this Article, or rules or local ordinances adopted pursuant to this Article.

(g) In the event that an artificial slope construction plan is disapproved by the agency having jurisdiction pursuant to subsection (f) of this section, the agency having jurisdiction shall state in writing the reasons that the plan was disapproved. The applicant may appeal the disapproval of the plan to the agency having jurisdiction. For purposes of this subsection and subsection (f) of this section, an applicant's record may be considered for only the two years prior to the application date.

(h) Artificial slope construction activity shall be initiated and conducted in accordance with the artificial slope construction plan once the plan has been approved. If, following commencement of a slope construction activity pursuant to an approved artificial slope construction plan, a professional engineer licensed under Chapter 89C of the General Statutes determines after an inspection of the slope construction activity that a modification is required to meet the requirements of this Article, the modification may be made as directed by the engineer. Any modification of approved slope construction activity shall be promptly reported to the agency having jurisdiction.

(i) If, following commencement of a slope construction activity pursuant to an approved artificial slope construction plan, the agency having jurisdiction determines that the plan is inadequate to meet the requirements of this Article or rules adopted pursuant to this Article, the agency may require any revision of the plan that is necessary to comply with this Article. Failure to approve, approve with modifications, or disapprove a revised plan within 30 calendar days of receipt of a completed plan shall be deemed approval of the plan.

(j) The financially responsible person or his or her agent shall perform an inspection of the slope construction covered by the artificial slope construction plan after each phase of the plan has been completed. The person who performs the inspection shall maintain and make available a record of the inspection at the site of the slope construction activity. The record shall set out any significant deviation from the

approved slope construction plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained on the site for 30 calendar days after completion of the slope construction activities as approved under the plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-266.

(k) The financially responsible person shall promptly notify the agency having jurisdiction of any change in information provided pursuant to subdivision (1) of subsection (c) of this section concerning identification of who will perform the work associated with the slope construction.

(l) Slope construction activity authorized under an approved artificial slope construction plan shall be commenced within 24 months of notification of approval. If work is not commenced within 24 months of approval of a plan, that plan shall be deemed void, and a new plan shall be submitted for approval of the work to be conducted.

"**§ 113A-268. Slope inclination; site-specific assessment; measurements; limitations.**

(a) Determination of stable slope inclination shall be based upon guidelines used historically by the State of North Carolina and professionals experienced in the design and construction of artificial slopes and shall be based on site-specific conditions, including soil types, hydrology, geology, weather patterns, natural slope, aspect, surrounding uses, planned use, historic use, depth to bedrock, quality of construction, and other applicable factors. The financially responsible person shall be responsible for proper assessment of site conditions.

(b) Site-specific slope measurement shall be taken by the following methods:

(1) On residential lots, the average slope will be determined by triangulating the line of the highest natural elevation to the lowest natural elevation in relation to the horizontal. However, if convex slopes, concave slopes, bluffs, cliffs, other areas of concern, or signs of failure including slope creep are evident, then horizontal lines may be adjusted to more specifically describe slope in areas of concern.

(2) On roadwork, the average slope will be determined from the toe of the fill to the top of the cut plus any areas of concern above or below the roadwork area, this triangulated against the horizontal.

(3) Slope steepness may be measured by using standard engineering methods used in the State of North Carolina and approved by the agency having jurisdiction.

(c) Any slope or contiguous series of graded or filled slopes 40 feet or greater on the face, and steeper than 1:1 for cut slopes or steeper than 1.5:1 for fill slopes, shall not be allowed unless a variance is granted by the agency having jurisdiction. In considering a variance request, the agency having jurisdiction shall consider whether other alternatives exist, slope factor of safety, stability, and likelihood of failure among other factors. In cases where a variance is requested, the financially responsible person shall secure the services of a professional engineer licensed under Chapter 89C of the General Statutes or other professional approved by the agency having jurisdiction with

regard to adequate site assessment, planning, design, and construction of stable artificial slopes.

"**§ 113A-269. Specific requirements for artificial slope construction.**

No artificial slope construction subject to this Article shall be undertaken except in accordance with the following requirements:

(1) Any person who undertakes artificial slope construction shall be responsible for adequate site assessment, planning, design, and construction of stable artificial slopes.

(2) The financially responsible person shall provide proof to the agency having jurisdiction that all subdivision roads and shoulders on the site associated with the slope construction activity are compacted by methods approved by the agency having jurisdiction.

(3) Cut slopes steeper than 1:1 or fill slopes steeper than 1.5:1 and greater than 15 feet in vertical height shall be inspected by a professional engineer licensed under Chapter 89C of the General Statutes or other professional approved by the agency having jurisdiction to ensure that the slopes meet the provisions of this Article and a governing ordinance adopted pursuant to this Article.

(4) Cut slopes, fill slopes, or retaining walls subject to the requirements of this Article shall be designed, constructed, and repaired in a manner that they will be stable. A stable slope or retaining wall shall have a factor of safety against mass instability that is greater than or equal to the factors of safety shown in the following table.

Table 1 – Minimum Factors of Safety Against Mass Instability

Minimum Factor of Safety

Type of Slope	**Long-Term (Effective Stress Conditions)**	**End-of-Construction (Total Stress Conditions)**	**Pseudo-Static Conditions**
Critical Slope	1.5	1.2	1.2
Slope	1.3	1.1	1.1

a. Pseudo-static conditions are based on long-term (effective stress) conditions with the application of a pseudo-static coefficient. The pseudo-static coefficient is based on a design earthquake as one-half the peak ground acceleration from the United States Geological Survey of the United States Department of the Interior peak acceleration map for the eastern United States, with a two percent (2%) probability of exceedance in 50 years. In lieu of a site-specific value, a default acceleration value of fifteen percent (15%) of the standard acceleration of gravity may be used. Pseudo-static analyses should not be performed for sites evaluated with a Seismic Site

Classification of "E" or "F" as defined by the North Carolina Building Code, as a more detailed assessment of seismic stability would be needed.

(5) All fill slopes shall be compacted by methods approved by the agency having jurisdiction.

(6) All fill slopes shall be constructed by placement of only soil. Placement of trees, stumps, and logs in the construction of fill slopes is prohibited.

(7) Fill slopes that have a slope length of 40 feet or greater on the face shall be constructed with terraces that are adequate to protect the slope and convey runoff in a non-erosive manner to stable outlets away from the slope face. The terraces shall be stabilized and wide enough to also provide for maintenance activities.

(8) Cut slopes that have a slope length of 40 feet or greater on the face shall be constructed with benches that are adequate to protect the slope and convey runoff in a non-erosive manner to stable outlets away from the slope face. The benches shall be stabilized and wide enough to also provide for maintenance activities.

(9) Stabilized ditches or other methods approved by the agency having jurisdiction shall be used to prevent the uncontrolled runoff of stormwater over artificially constructed slopes.

(10) The agency having jurisdiction shall establish required setbacks from adjoining property lines, natural watercourses, buildings, and public rights-of-way. Slope construction shall not be allowed within required setbacks. Stormwater diversions within a setback shall protect disturbed areas from upslope runoff and shall be adequate to divert and carry runoff subject to crossing the slope, over, under, through, around, or away from the slope face in a safe and non-erosive manner. All diversions shall be stabilized. The diversions shall be constructed to carry the runoff from the 25-year storm using calculations that approximate the maximum urbanization of the watershed contributing runoff based upon runoff data contained within the North Carolina Erosion and Sediment Control Planning and Design Manual. Diverted flows should be directed to and exit upon or into stabilized areas, channels, or mitigated to the closest natural watercourse.

(11) Upon completion of slope construction activity, the financially responsible person must submit a certification to the agency having jurisdiction that the slope construction activity was completed in accordance with this Article and any governing ordinance adopted pursuant to this Article. Failure by the financially responsible person to submit the required certification within 60 calendar days of work completion shall be considered a violation of this Article.

(12) No person shall willfully resist, delay, or obstruct an authorized representative of the agency having jurisdiction while the

representative, employee, or agent is inspecting or attempting to inspect an artificial slope construction activity pursuant to G.S. 113A-266.

(13) Refusal of the financially responsible person to make required inspections, provide requested information, make requested repairs, or take other action necessary for compliance with the provisions of this Article and a governing ordinance adopted pursuant to this Article shall constitute a violation of this Article.

(14) Any pipe or conduit to be placed or constructed within a fill slope in a subdivision shall be placed or constructed within a stable fill slope. The fill slope shall be designed and constructed to prevent slope saturation by water from a sewer or water leak. A professional engineer licensed under Chapter 89C of the General Statutes shall inspect the work and shall submit a statement, certified and stamped with the seal or facsimile of the seal of the engineer, to the agency having jurisdiction that the work has been designed and constructed in a stable manner within 60 calendar days of completion of the work.

"**§ 113A-270. Enforcement and penalties.**

(a) Civil Penalties. –

(1) The Commission may assess a civil penalty of not more than ten thousand dollars ($10,000) per month against any local government that fails to adopt a safe artificial slope construction ordinance as required by this Article, or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide safe slope construction requirements of this Article. The Commission shall not impose a penalty against a local government pursuant to this subsection until the Commission has assumed the responsibility for administering and enforcing the safe slope construction program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be designed to recoup the costs of administration and enforcement.

(2) The Commission or a local government that administers a safe slope construction program may assess a civil penalty against any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a slope construction activity for which an artificial slope construction plan is required except in accordance with the terms, conditions, and provisions of an approved plan. The maximum civil penalty for a violation is five thousand dollars ($5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

a. The Commission or a local government that administers a safe slope construction program shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment within 30 calendar days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Commission within 30 calendar days after it is due, the Department shall request the Attorney General to institute a civil action to recover the amount of the assessment. If a violator does not pay a civil penalty assessed by a local government within 30 calendar days after it is due, the local government may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

b. In determining the amount of the penalty, the Commission or a local government that administers a safe slope construction program shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article.

(3) The clear proceeds of civil penalties collected by the Commission under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Civil penalties collected by a local government under this subsection shall be used as provided in Section 7 of Article IX of the Constitution of North Carolina.

(b) Criminal Penalties. – Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully initiates a slope construction activity for which an artificial slope construction plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars ($5,000).

(c) Injunctive Relief. –

(1) Whenever the governing body of a local government having jurisdiction has reasonable cause to believe that any person is violating or is threatening to violate any ordinance, rule, regulation, or order adopted or issued by the local government pursuant to this Article, or any term, condition, or provision of an artificial slope construction plan over which it has jurisdiction, may, either before or after the institution of any other action or proceeding authorized by this Article, institute a civil action in the name of the local government for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.

(2) Whenever the Commission has reasonable cause to believe that any person is violating or is threatening to violate the requirements of this Article, the Commission may, either before or after the institution of any other action or proceeding authorized by this Article, institute a civil action for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur, and shall be in the name of the State upon the relation of the Commission.

(3) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under subsection (a) or (b) of this section shall not relieve any party to the proceeding from any civil or criminal penalty prescribed for violations of this Article."

SECTION 2. G.S. 143B-298 reads as rewritten:

"**§ 143B-298. Sedimentation Control Commission – creation; powers and duties.**

There is hereby created the Sedimentation Control Commission of the Department of Environment and Natural Resources with the power and duty to develop and administer a sedimentation control program as herein provided.

The Sedimentation Control Commission has the following powers and duties:

(1) In cooperation with the Secretary of the Department of Transportation and Highway Safety and other appropriate State and federal agencies, develop, promulgate, publicize, and administer a comprehensive State erosion and sedimentation control program.

(2) Develop and adopt on or before July 1, 1974, rules and regulations for the control of erosion and sedimentation pursuant to G.S. 113A-54.

(3) Conduct public hearings pursuant to G.S. 113A-54.

(4) Assist local governments in developing erosion and sedimentation control programs pursuant to G.S. 113A-60.

(5) Assist and encourage other State agencies in developing erosion and sedimentation control programs pursuant to G.S. 113A-56.

(6) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques pursuant to G.S. 113A-54.

(7) Adopt a model safe artificial slope construction ordinance as provided in G.S. 113A-265(b).

(8) Assist local governments in developing safe artificial slope construction programs pursuant to G.S. 113A-265."

SECTION 3. G.S. 47E-4(b) reads as rewritten:

"(b) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this section. The disclosure statement shall specify that certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling, and shall include at least the following characteristics and conditions of the property:

(1) The water supply and sanitary sewage disposal ~~system;~~system.

(2) The roof, chimneys, floors, foundation, basement, and other structural components and any modifications of these structural ~~components;~~components.

(3) The plumbing, electrical, heating, cooling, and other mechanical ~~systems;~~systems.

(4) Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been ~~repaired;~~repaired.

(5) The zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from any governmental agency affecting this real ~~property; and~~property.

(6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered), and other environmental contamination.

(7) The location of the property within a landslide hazard area as designated on maps prepared by the North Carolina Geological Survey.

(b1) The disclosure statement shall provide the owner with the option to indicate whether the owner has actual knowledge of the specified characteristics or conditions, or the owner is making no representations as to any characteristic or condition. This subsection does not apply to subdivision (7) of subsection (b) of this section."

SECTION 4. Section 1 of this act becomes effective 1 December 2008 except that G.S. 113A-265, as enacted by Section 1 of this act, becomes effective when this act becomes law. Section 2 of this act and Section 4 of this act become effective when it becomes law. Section 3 of this act becomes effective 1 December 2007. Each

local government that is required to adopt a safe artificial slope construction ordinance pursuant to the provisions G.S. 113A-266, as enacted by Section 1 of this act, shall submit its ordinance to the Sedimentation Control Commission for approval on or before 1 August 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H **1**

HOUSE BILL 1868

Short Title:	Erosion/Sedimentation Control Fee/Positions.	(Public)
Sponsors:	Representatives Harrison; Alexander, Bordsen, Brown, Bryant, Coleman, Cotham, Faison, Farmer-Butterfield, Fisher, Glazier, Goodwin, Hall, T. Harrell, Insko, Martin, McAllister, Mobley, Rapp, Ross, Underhill, Weiss, Wilkins, Womble, and Wray.	
Referred to:	Environment and Natural Resources, if favorable, Finance.	

April 24, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE FOR THE REVIEW OF EROSION AND SEDIMENTATION CONTROL PLANS TO AN AMOUNT SUFFICIENT TO PROVIDE THE FUNDS NEEDED TO ESTABLISH AND SUPPORT SEVEN EROSION AND SEDIMENTATION CONTROL INSPECTOR POSITIONS IN THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-54.2(a) reads as rewritten:

"(a) ~~The Commission may establish a fee schedule for the review and approval of erosion and sedimentation control plans under this Article. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for reviewing the plans and for related compliance activities.~~ An application fee ~~may not exceed fifty dollars ($50.00)~~of sixty-five dollars ($65.00) per acre of disturbed land shown on an erosion and sedimentation control plan or of land actually disturbed during the life of the ~~project.~~project shall be charged for the review of erosion and sedimentation control plans."

SECTION 2. Of the fees collected under G.S. 113A-54.2 and credited to the Sedimentation Account established under G.S. 113A-54.2 for the costs of administering Article 4 of Chapter 113A of the General Statutes, the Department of Environment and Natural Resources shall use the sum of four hundred seventy-two thousand five hundred dollars ($472,500) for the 2007-2008 fiscal year and the sum of four hundred seventy-two thousand five hundred dollars ($472,500) for the 2008-2009 fiscal year for the Division of Land Resources to establish and support seven erosion and sedimentation control inspector positions.

SECTION 3. This act becomes effective July 1, 2007.