

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 426
PROPOSED SENATE COMMITTEE SUBSTITUTE H426-CSTQ-40 [v.3]
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Short Title: Various Environmental Amendments.

(Public)

Sponsors:

Referred to:

March 22, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE COASTAL RESOURCES COMMISSION TO IMPLEMENT A
3 RULE DESIGNATING JOCKEY'S RIDGE STATE PARK AS AN AREA OF
4 ENVIRONMENTAL CONCERN UNTIL PERMANENT RULES ARE ADOPTED; TO
5 REQUIRE THE DEPARTMENT OF ADMINISTRATION TO HOLD A PUBLIC
6 HEARING AND CONSULT WITH THE JOINT LEGISLATIVE COMMISSION ON
7 GOVERNMENTAL OPERATIONS PRIOR TO GRANTING CERTAIN EASEMENTS
8 ON STATE PROPERTY; AND TO CLARIFY THE APPLICABILITY OF STATUTORY
9 BUILT-UPON AREA REQUIREMENTS FOR STATE AND LOCAL GOVERNMENT
10 STORMWATER PROGRAMS AND SPECIFY THAT CERTAIN ARTIFICIAL TURF IS
11 NOT BUILT-UPON AREA.

12 The General Assembly of North Carolina enacts:

13
14 **DIRECT THE COASTAL RESOURCES COMMISSION TO IMPLEMENT A RULE**
15 **DESIGNATING JOCKEY'S RIDGE STATE PARK AS AN AREA OF**
16 **ENVIRONMENTAL CONCERN UNTIL PERMANENT RULES ARE ADOPTED**

17 **SECTION 1.(a)** Definitions. – For purposes of this section and its implementation,
18 the following definitions apply:

19 (1) "Jockey's Ridge Unique Coastal Geologic Formations Rule" means 15A
20 NCAC 7H .0507 as adopted by the Coastal Resources Commission effective
21 September 9, 1977, and amended effective March 1, 1988, and objected to by
22 the Rules Review Commission on September 15, 2022 and returned to the
23 agency on October 5, 2023.

24 (2) "Jockey's Ridge Area of Environmental Concern Rule" means 15A NCAC 7H
25 .0508, as approved for the initiation of permanent rulemaking by the Coastal
26 Resources Commission on April 25, 2024.

27 **SECTION 1.(b)** Jockey's Ridge Unique Coastal Geologic Formations Rule. – Until
28 the effective date of the Jockey's Ridge Area of Environmental Concern Rule, the Coastal
29 Resources Commission shall implement the Jockey's Ridge Unique Coastal Geologic
30 Formations Rule, as provided in subsection (c) of this section.

31 **SECTION 1.(c)** Implementation. – The Coastal Resources Commission shall
32 implement subsections (a), (d), and (e) of the Jockey's Ridge Unique Coastal Geologic
33 Formations Rule as if the rule were effective.

34 **SECTION 1.(d)** Sunset. – This section expires when the Jockey's Ridge Area of
35 Environmental Concern Rule becomes effective.

36



1 **REQUIRE THE DEPARTMENT OF ADMINISTRATION TO HOLD A PUBLIC**
2 **HEARING AND CONSULT WITH THE JOINT LEGISLATIVE COMMISSION ON**
3 **GOVERNMENTAL OPERATIONS PRIOR TO GRANTING CERTAIN EASEMENTS**
4 **ON STATE PROPERTY**

5 SECTION 2.(a) Article 7 of Chapter 146 of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 146-29.3. Disposition of easements for spoil disposal and dumping rights.**

8 Notwithstanding G.S. 146-11, if a proposed disposition is an easement for disposal of spoil
9 materials lawfully dug or dredged from navigable waters, or dumping rights for spoil materials
10 lawfully dug or dredged from navigable waters, the Department of Administration may not grant
11 the easement or dumping rights until it completes both of the following requirements:

- 12 (1) Hold a public hearing in the county where the proposed disposition is located.
13 (2) Following the public hearing, submit the proposed disposition for consultation
14 with the Joint Legislative Commission on Governmental Operations in
15 accordance with G.S. 120-76.1(b)."

16 SECTION 2.(b) This section becomes effective August 1, 2024, and applies to
17 requests for proposed dispositions submitted to the Department of Administration for approval
18 on or after that date.

19
20 **CLARIFY THE APPLICABILITY OF STATUTORY BUILT-UPON AREA**
21 **REQUIREMENTS FOR STATE AND LOCAL GOVERNMENT STORMWATER**
22 **PROGRAMS AND SPECIFY THAT CERTAIN ARTIFICIAL TURF IS NOT BUILT-**
23 **UPON AREA**

24 SECTION 3.(a) G.S. 143-214.7(b2) reads as rewritten:

25 (b2) ~~For purposes of implementing stormwater programs, "built upon area" means~~
26 ~~impervious surface and partially impervious surface to the extent that the partially impervious~~
27 ~~surface does not allow water to infiltrate through the surface and into the subsoil. "Built upon~~
28 ~~area" does not include a slatted deck; the water area of a swimming pool; a surface of number 57~~
29 ~~stone, as designated by the American Society for Testing and Materials, laid at least four inches~~
30 ~~thick over a geotextile fabric; a trail as defined in G.S. 113A-85 that is either unpaved or paved~~
31 ~~as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters~~
32 ~~per second (1.41 inches per hour); or landscaping material, including, but not limited to, gravel,~~
33 ~~mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on~~
34 ~~portions of driveways and parking areas that will not be compacted by the weight of a vehicle,~~
35 ~~such as the area between sections of pavement that support the weight of a vehicle. The owner~~
36 ~~or developer of a property may opt out of any of the exemptions from "built upon area" set out~~
37 ~~in this subsection. For State stormwater programs and local stormwater programs approved~~
38 pursuant to subsection (d) of this section, all of the following shall apply:

- 39 (1) The volume, velocity, and discharge rates of water associated with the
40 one-year, 24-hour storm and the difference in stormwater runoff from the
41 predevelopment and postdevelopment conditions for the one-year, 24-hour
42 storm shall be calculated using any acceptable engineering hydrologic and
43 hydraulic methods.
- 44 (2) Development may occur within the area that would otherwise be required to
45 be placed within a vegetative buffer required by the Commission pursuant to
46 G.S. 143-214.1 and this section provided the stormwater runoff from the
47 entire impervious area of the development is collected, treated, and discharged
48 so that it passes through a segment of the vegetative buffer and is managed so
49 that it otherwise complies with all applicable State and federal stormwater
50 management requirements. For the purpose of this subdivision, the entire
51 impervious area of the development shall not include any portion of a project

1 that is within a North Carolina Department of Transportation or municipal
2 right-of-way.

- 3 (3) The requirements that apply to development activities within one-half mile of
4 and draining to Class SA waters or within one-half mile of Class SA waters
5 and draining to unnamed freshwater tributaries shall not apply to development
6 activities and associated stormwater discharges that do not occur within
7 one-half mile of and draining to Class SA waters or are not within one-half
8 mile of Class SA waters and draining to unnamed freshwater tributaries.

9 **SECTION 3.(b)** Article 21 of Chapter 143 of the General Statutes is amended by
10 adding a new section to read:

11 **§ 143-214.7D. Limitations on built-upon area requirements.**

12 (a) As used in this section, the term "built-upon area" means impervious surface and
13 partially impervious surface to the extent that the partially impervious surface does not allow
14 water to infiltrate through the surface and into the subsoil.

15 (b) For the purposes of implementing State or local government stormwater programs,
16 none of the following surfaces shall be considered "built-upon area" or an impervious or partially
17 impervious surface:

18 (1) A slatted deck.

19 (2) The water area of a swimming pool.

20 (3) A surface of number 57 stone, as designated by the American Society for
21 Testing and Materials, laid at least four inches thick over a geotextile fabric.

22 (4) A trail as defined in G.S. 113A-85 that is either unpaved or paved as long as
23 the pavement is porous with a hydraulic conductivity greater than 0.001
24 centimeters per second (1.41 inches per hour).

25 (5) Landscaping material, including, but not limited to, gravel, mulch, sand, and
26 vegetation, placed on areas that receive pedestrian or bicycle traffic or on
27 portions of driveways and parking areas that will not be compacted by the
28 weight of a vehicle, such as the area between sections of pavement that support
29 the weight of a vehicle.

30 (6) Artificial turf, installed over a pervious surface according to the
31 manufacturer's specifications.

32 (c) The owner or developer of a property may opt out of any of the exemptions from
33 "built-upon area" set out in subsection (b) of this section.

34 (d) Except as specifically required by federal law, a local government may not enact,
35 implement, or enforce a local government ordinance, comprehensive plan, or stormwater
36 program that establishes a definition of "built-upon area" or impervious surface that does not
37 comply with subsection (b) of this section. This limitation shall apply regardless of any authority
38 granted by G.S. 143-214.5, G.S. 143-214.7, or Chapters 153A, 160A, or 160D of the General
39 Statutes.

40 (e) The Commission may adopt rules to implement this section."

41 **SECTION 3.(c)** Each unit of local government that operates a stormwater program
42 shall update its program to be consistent with G.S. 143-214.7D, as enacted by subsection (b) of
43 this section.

44 **EFFECTIVE DATE**

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