

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1995

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SENATE BILL 1128

Short Title: Clean Water Management Fund.

(Public)

Sponsors: Senators Perdue; Warren, Parnell, Plexico, Conder, Gulley, Martin of Guilford, Odom, Martin of Pitt, Ballance, Kerr, Rand, Plyler, Lucas, Speed, Albertson, Edwards, Soles, Dannelly, Winner, Cooper, Sherron, and Hobbs.

Referred to: Finance.

May 14, 1996

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH THE CLEAN WATER MANAGEMENT TRUST FUND
3 AND A BOARD OF TRUSTEES TO ADMINISTER THE FUND, TO PROVIDE
4 TAX CREDITS FOR CERTAIN EFFORTS TO CLEAN UP OR PREVENT
5 SURFACE WATER POLLUTION, AND TO PROVIDE THAT A CERTAIN
6 PERCENTAGE OF GENERAL FUND REVERSIONS SHALL BE
7 APPROPRIATED TO FUND THE CLEAN WATER MANAGEMENT TRUST
8 FUND.

9 The General Assembly of North Carolina enacts:

10 Section 1. Chapter 113 of the General Statutes is amended by adding a new
11 Article to read:

" ARTICLE 13A.

"Clean Water Management Trust Fund.

12 "§ 113-145.1. Purpose.

13 The General Assembly recognizes that a critical need exists in this State to clean up
14 pollution in the State's surface waters and to protect and conserve those waters that are
15 not yet polluted. The task of cleaning up polluted waters and protecting the State's
16 surface water resources is multifaceted and requires different approaches that take into
17 account the problems, the type of pollution, the geographical area, and the recognition
18 that the hydrological and ecological values of each resource sought to be upgraded,
19 conserved, and protected are unique.

20 It is the intent of the General Assembly that moneys from the Fund created under
21 this Article shall be used to help finance projects that specifically address surface water
22 pollution problems and focus on upgrading surface waters, eliminating pollution, and
23 protecting and conserving surface waters that have escaped pollution. It is the further
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1 intent of the General Assembly that moneys from the Fund also be used to build a
2 network of riparian buffers and greenways for environmental, educational, and
3 recreational benefits. While the purpose of this Article is to focus on the cleanup and
4 prevention of pollution of the State's surface waters and the establishment of a network
5 of riparian buffers and greenways, it is hoped that the results of this effort will also be
6 beneficial to wildlife and marine fisheries habitats.

7 **"§ 113-145.2. Definitions.**

8 As used in this Article:

- 9 (1) Council. -- The advisory council for the Clean Water Mangement
10 Trust Fund.
11 (2) Fund. -- The Clean Water Management Trust Fund created pursuant to
12 this Article.
13 (3) Land. -- Real property and any interest in, easement in, or restriction
14 on real property.
15 (5) Trustees. -- The trustees of the Clean Water Management Trust Fund.

16 **"§ 113-145.3. Water Quality Protection and Conservation Trust Fund: established.**

17 (a) Fund Established. -- There is established a Clean Water Management Trust
18 Fund in the State Treasurer's Office that shall be used to finance projects to clean up or
19 prevent surface water pollution in accordance with this Article.

20 (b) Fund Earnings, Assets, and Balances. -- The State Treasurer shall hold the
21 Fund separate and apart from all other moneys, funds, and accounts. Investment
22 earnings credited to the assets of the Fund shall become part of the Fund. Any balance
23 remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund
24 for the next succeeding fiscal year. Payments from the Fund shall be made on the
25 warrant of the Chair of the Board of Trustees.

26 (c) Fund Purposes. -- Moneys from the Fund may be used for any of the
27 following purposes:

- 28 (1) To acquire land for riparian buffers for the purposes of providing
29 environmental protection and establishing a network of greenways for
30 environmental, educational, and recreational uses.
31 (2) To acquire conservation easements or other interests in real property.
32 (3) To coordinate with other programs involved with lands adjoining
33 water bodies to gain the most public benefit while protecting and
34 improving water quality.
35 (4) To restore previously degraded lands to reestablish their water bodies
36 to gain the most public benefit while protecting water quality.
37 (5) To repair failing waste treatment systems if: (i) an application has first
38 been submitted to receive a grant from the Clean Water Revolving
39 Loan and Grant Fund and denied solely on the grounds that the
40 applicant lacks the financial resources needed to qualify for a grant
41 from the Clean Water Revolving Loan and Grant Fund; (ii) the repair
42 is a reasonable remedy for resolving an existing waste treatment
43 problem; and (iii) the repair is not for the purpose of expanding the
44 system to accommodate future anticipated growth of a community.

1 (6) To repair and eliminate failing septic tank systems, to eliminate illegal
2 drainage connections, and to expand waste treatment systems if the
3 system is being expanded as a remedy to eliminate failing septic tank
4 systems or illegal drainage connections.

5 (7) To improve stormwater controls and management practices.

6 (8) To facilitate planning that targets reductions in surface water pollution.

7 (9) To make capital improvements to greenways in accordance with this
8 Article.

9 (10) To fund operating expenses of the Board of Trustees and its staff.

10 (d) Capital Improvements to Greenways. -- Up to five percent (5%) of the Fund
11 may be used each fiscal year for certain capital improvements to greenways. Capital
12 improvements for which funds may be used shall include those that provide access for
13 pedestrians and portages for small nonmotorized watercraft such as canoes or kayaks.
14 Funds shall not be used under this section to build boat ramps for motorized watercraft
15 or other similar types of 'boat ramp' projects approved by the Wildlife Resources
16 Commission.

17 (e) Two Percent Limit on Operating and Administrative Expenses. -- No more
18 than two percent (2%) of the annual balance of the Fund may be used each year for
19 administrative and operating expenses of the Board of Trustees and its staff.

20 **§ 113-145.4. Clean Water Management Trust Fund: eligibility for grants;**
21 **matching funds or property requirement.**

22 (a) Eligible Grant Applicants. -- Any of the following are eligible to apply for a
23 grant from the Fund:

24 (1) A State agency.

25 (2) A local government or other political subdivision of the State.

26 (3) A nonprofit corporation whose primary purpose is the conservation,
27 preservation, and restoration of our State's environmental and natural
28 resources.

29 (b) Grant Matching Requirement. -- The Board of Trustees shall establish
30 matching requirements for grants awarded under this Article. The Board of Trustees
31 may require a match of up to twenty percent (20%) of the amount of the grant awarded.
32 This requirement may be satisfied by the donation of land to a public or private
33 nonprofit conservation organization as approved by the Board of Trustees. The Board of
34 Trustees may also waive the requirement to match a grant if deemed appropriate.

35 **§ 113-145.5. Clean Water Management Trust Fund: Board of Trustees**
36 **established; membership qualifications; vacancies; meetings and meeting**
37 **facilities.**

38 (a) Board of Trustees Established. -- There is established the Clean Water
39 Management Trust Fund Board of Trustees. The Clean Water Management Trust Fund
40 Board of Trustees shall be independent, but for administrative purposes shall be located
41 under the Department of Environment, Health, and Natural Resources.

42 (b) Membership. -- The Clean Water Management Trust Fund Board of Trustees
43 shall be composed of 18 members. Six members shall be appointed by the Governor, six
44 by the General Assembly upon the recommendation of the President Pro Tempore of the

1 Senate in accordance with G.S. 120-121, and six by the General Assembly upon the
2 recommendation of the Speaker of the House of Representatives in accordance with
3 G.S. 120-121. The office of Trustee is declared to be an office that may be held
4 concurrently with any other executive or appointive office, under the authority of
5 Article VI, Section 9, of the North Carolina Constitution.

6 Persons appointed shall be knowledgeable in one of the following areas:

7 (1) Acquisition and management of natural areas.

8 (2) Conservation and restoration of water quality.

9 (3) Wildlife and fisheries habitats and resources.

10 (4) Environmental management.

11 (c) Initial Appointments. -- Each appointing officer shall designate two of the
12 officer's initial appointments to serve a two-year term, two to serve a four-year term.,
13 and two to serve a six-year term. Thereafter, all appointments shall be for four years,
14 subject to reappointment. All initial appointments shall be made on or before January 1,
15 1997. The Governor shall appoint one Trustee to serve as Chair of the Board.

16 (d) Vacancies. -- If a vacancy occurs, other than by the expiration of term, of a
17 member subject to appointment by the General Assembly upon the recommendation of
18 the Speaker of the House of Representatives or the President Pro Tempore of the
19 Senate, the vacancy shall be filled in accordance with G.S. 120-122. All other vacancies
20 shall be filled by the appointing official in the original manner.

21 (e) Frequency of Meetings. -- The Trustees shall meet at least twice each year
22 and may hold special meetings at the call of the Chair or a majority of the members.

23 (f) Per Diem and Expenses. -- The Trustees shall receive the per diem allowed
24 for other members of boards and commissions of the State as fixed in the Biennial
25 Appropriations Act, and, in addition, the Trustees shall receive subsistence and travel
26 expenses as fixed by statute for such purposes. Travel and subsistence expenses shall be
27 allowed while going to or from any place of meeting or when on official business. Per
28 diem payments shall include necessary time spent in traveling to and from their places
29 of residence to any meeting place or while traveling on official business. Per diem,
30 subsistence, and travel expenses of the Trustees shall be paid from the Fund.

31 (g) Meeting Facilities. -- The Secretary of the Department of Environment,
32 Health, and Natural Resources shall provide meeting facilities for the Board of Trustees
33 and its staff as requested by the Trustees. The expenditures for the meeting facilities
34 shall be taken from the Fund.

35 **§ 113-145.6. Clean Water Management Trust Fund Board of Trustees: powers**
36 **and duties.**

37 (a) Allocate Grant Funds. -- The Trustees shall allocate moneys from the Fund as
38 grants. A grant may be awarded only for a project or activity that satisfies the criteria
39 and furthers the purposes of this Article.

40 (b) Develop Grant Criteria. -- The Trustees shall develop criteria for awarding
41 grants under this Article. The criteria developed shall include consideration of the
42 following:

43 (1) The significant enhancement and conservation of water quality in the
44 State.

- 1 (2) The objectives of the basinwide management plans for the State's river
2 basins.
- 3 (3) The promotion of regional integrated ecological networks.
- 4 (4) The specific areas targeted as being environmentally sensitive.
- 5 (5) The geographic distribution of funds as appropriate.
- 6 (6) The preservation of water resources with significant recreational value
7 and uses.
- 8 (7) The development of a network of greenways bordering and connecting
9 the State's waterways that will serve environmental, educational, and
10 recreational uses.

11 (c) Develop Additional Guidelines. -- The Trustees may develop guidelines in
12 addition to the grant criteria as necessary to implement this Article.

13 **"§ 113-145.7. Clean Water Management Trust Fund: Executive Director and staff.**

14 The Clean Water Management Trust Fund Board of Trustees, as soon as practicable
15 after its organization, shall select and appoint a competent person in accordance with
16 this section as Executive Director of the Clean Water Management Trust Fund Board of
17 Trustees. The Executive Director shall be charged with the supervision of all activities
18 under the jurisdiction of the Trustees and shall serve as the chief administrative officer
19 of the Trustees. Subject to the approval of the Trustees and the Director of the Budget,
20 the Executive Director may employ such clerical and other assistants as may be deemed
21 necessary.

22 The person selected as Executive Director shall have had training and experience in
23 conservation, protection, and management of surface water resources. The salary of the
24 Executive Director shall be fixed by the Trustees, and the Executive Director shall be
25 allowed actual expenses incurred while on official duties away from resident
26 headquarters. The Executive Director's salary and expenses shall be paid from the Clean
27 Water Management Trust Fund subject to the provisions of the Executive Budget Act.
28 The term of office of the Executive Director shall be at the pleasure of the Trustees.

29 **"§ 113-145.8. Clean Water Management Trust Fund: Advisory Council.**

30 There is established the Clean Water Management Trust Fund Advisory Council.
31 The Council shall advise the Trustees with regard to allocations made from the Fund as
32 requested by the Trustees. The Council shall be composed of the following or its
33 designees:

- 34 (1) Commissioner of Agriculture.
- 35 (2) Chair of the Wildlife Resources Commission.
- 36 (3) Secretary of the Department of Environment, Health, and Natural
37 Resources.
- 38 (4) Secretary of the Department of Commerce."

39 Sec. 2. G.S. 150B-1(c) is amended by adding a new subdivision to read:

40 "(6) The Clean Water Management Trust Fund Board of Trustees."

41 Sec. 3. Article 1 of Chapter 143 of the General Statutes is amended by adding
42 a new section to read:

43 **"§ 143-15.3B. The Clean Water Management Trust Fund.**

1 (a) The Clean Water Management Trust Fund is established in G.S. 113-145.3.
2 The State Controller shall reserve to the Clean Water Management Trust Fund six and
3 one-half percent (6.5%) of any unreserved credit balance remaining in the General Fund
4 at the end of each fiscal year. As used in this section, the term 'unreserved credit
5 balance' means the credit balance amount, as determined on a cash basis, before funds
6 are reserved by the State Controller to the Savings Reserve Account, the Repairs and
7 Renovations Reserve Account, or the Clean Water Management Trust Fund pursuant to
8 this section, G.S. 143-15.3. and G.S. 143-15.3A.

9 (b) The funds in the Clean Water Management Trust Fund shall be used only in
10 accordance with Article 13A of Chapter 113 of the General Statutes."

11 Sec. 4. G.S. 105-130.34 reads as rewritten:

12 **"§ 105-130.34. Credit for certain real property donations.**

13 (a) Any corporation that makes a qualified donation of an interest in real property
14 located in North Carolina during the taxable year that is useful for public beach access
15 or use, public access to public waters or trails, fish and wildlife conservation, protection
16 of water quality, or other similar land conservation purposes, ~~shall be~~ is allowed a credit
17 against the ~~taxes~~ tax imposed by this Division equal to twenty-five percent (25%) of the
18 fair market value of the donated property interest. To be eligible for this credit, the
19 interest in real property must be donated to and accepted by either the State, ~~local~~
20 ~~government~~ a unit of local government, or a body that is both organized to receive and
21 administer lands for conservation purposes and qualified to receive charitable
22 contributions pursuant to G.S. ~~105-130.9~~; ~~provided, however, that lands~~ 105-130.9.
23 Lands required to be dedicated pursuant to local governmental regulation or ordinance
24 and dedications made to increase building density levels permitted under ~~such~~
25 ~~regulations or ordinances shall not be~~ the regulation or ordinance are not eligible for this
26 credit. ~~The credit allowed under this section may not exceed twenty five thousand~~
27 ~~dollars (\$25,000).~~ To support the credit allowed by this section, the taxpayer shall file
28 with its income tax return for the taxable year in which the credit is claimed, a
29 certification by the Department of Environment, Health, and Natural Resources that the
30 property donated is suitable for one or more of the valid public benefits set forth in this
31 subsection.

32 (b) The credit allowed by this section may not exceed the amount of tax imposed
33 by this Division for the taxable year reduced by the sum of all credits ~~allowed under this~~
34 ~~Division~~, allowed, except payments of tax made by or on behalf of the taxpayer.

35 (c) Any unused portion of this credit may be carried forward for the next
36 succeeding five years.

37 (d) The fair market value, or any portion thereof, of a qualifying donation that is
38 not eligible for a credit pursuant to this section may be considered as a charitable
39 contribution pursuant to G.S. 105-130.9. That portion of the donation allowed as a
40 credit pursuant to this section shall not be eligible as a charitable contribution."

41 Sec. 5. G.S. 105-151.12 reads as rewritten:

42 **"§ 105-151.12. Credit for certain real property donations.**

43 (a) A person who makes a qualified donation of ~~interests~~ an interest in real
44 property located in North Carolina during the taxable year that is useful for (i) public

1 beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife
2 conservation, ~~or (iv) protection of water quality, or (v) other similar land conservation~~
3 purposes, ~~shall be~~ is allowed as a credit against the tax imposed by this Division an
4 amount equal to twenty-five percent (25%) of the fair market value of the donated
5 property interest. To be eligible for this credit, the interest in property must be donated
6 to and accepted by either the State, a local government, or a body that is both organized
7 to receive and administer lands for conservation purposes and is qualified to receive
8 charitable contributions under the ~~Code; provided, however, that lands~~ Code. Lands
9 required to be dedicated pursuant to local governmental regulation or ordinance and
10 dedications made to increase building density levels permitted under ~~such~~ the
11 regulations or ordinances are not eligible for this credit. ~~The credit allowed under this~~
12 ~~section may not exceed twenty-five thousand dollars (\$25,000).~~ To support the credit
13 allowed by this section, the taxpayer shall file with the income tax return for the taxable
14 year in which the credit is claimed a certification by the Department of Environment,
15 Health, and Natural Resources that the property donated is suitable for one or more of
16 the valid public benefits set forth by this subsection.

17 (b) The credit allowed by this section may not exceed the amount of tax imposed
18 by this Division for the taxable year reduced by the sum of all credits ~~allowed under this~~
19 ~~Division, allowed,~~ except payments of tax made by or on behalf of the taxpayer. Any
20 unused portion of this credit may be carried forward for the next succeeding five years.

21 (c) In order to claim the credit allowed under this section, the taxpayer must add
22 the fair market value of the donated property ~~interest, up to a maximum of one hundred~~
23 ~~thousand dollars (\$100,000),~~ interest to taxable income as provided in G.S. 39
24 105-134.6(c).

25 (d) In the case of property owned by a married couple, if both spouses are
26 required to file North Carolina income tax returns, the credit allowed by this section
27 may be claimed only if the spouses file a joint return. If only one spouse is required to
28 file a North Carolina income tax return, that spouse may claim the credit allowed by this
29 section on a separate return.

30 (e) In the case of marshland for which a claim has been filed pursuant to
31 G.S.113-205, the offer of donation must be made before December 31, 1998, to qualify
32 for the credit allowed by this section."

33 Sec. 6. G.S. 105-134.6(c)(5) reads as rewritten:

34 "(5) The fair market value, ~~up to a maximum of one hundred thousand~~
35 ~~dollars (\$100,000),~~ value of the donated property interest for which the
36 taxpayer claims a credit for the taxable year under G.S. 105-151.12
37 and the market price of the gleaned crop for which the taxpayer claims
38 a credit for the taxable year under G.S. 105-151.14."

39 Sec. 7. The position of environmental analysis program manager responsible
40 for the certification of conservation easement tax credits pursuant to G.S. 105-151.12
41 and G.S. 105-130.34 is transferred from the Department of Environment, Health, and
42 Natural Resources to the Clean Water Management Trust Fund Board of Trustees. The
43 statutory authority, powers, duties, and functions, records, property, and unexpended
44 balances of appropriations, allocations, or other funds for the position of environmental

1 analysis program manager responsible for the certification of conservation easement tax
2 credits pursuant to G.S. 105-151.12 and G.S. 105-130.34 are also transferred from the
3 Department of Environment, Health, and Natural Resources to the Clean Water
4 Management Trust Fund Board of Trustees. This transfer has all the elements of a Type
5 I transfer as defined by G.S. 143A-6.

6 Sec. 8. Sections 4, 5, and 6 of this act are effective for taxable years
7 beginning on or after January 1, 1996. The remainder of this act becomes effective June
8 30, 1996.