

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 855

Short Title: Airport Facilities Defined.

(Public)

Sponsors: Senators Gulley, Reeves, and Lee.

Referred to: Commerce.

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF AIRPORT FACILITIES FOR  
CERTAIN PURPOSES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 63-1 is amended by adding a new subdivision to read:

"(8a) "Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases "air navigation facility," "airport," or "airport protection privileges" under G.S. 63-1; the definition of "aeronautical facilities" in G.S. 63-79(1); the phrase "airport facilities" as used in G.S. 159-48(b)(1); the phrase "aeronautical facilities" as defined in G.S. 159-81 and G.S. 159-97; and the phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina Constitution. This definition includes, without limitation, any and all of the following: airports, clear zones, fields, hangars, land, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, terminals, terminal and other airport shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or other interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of

1 which is necessary to insure safe approaches to the landing areas of  
2 airports and restricted landing areas, and the safe and efficient  
3 operation thereof; and any combination of any or all of such facilities.  
4 This definition of Airport Facilities shall be applicable to any and all  
5 rules and regulations heretofore or hereafter adopted by any  
6 governmental body, agency, or authority of the State of North Carolina  
7 or any subdivision thereof."

8 **SECTION 2.** The General Assembly finds that:

- 9 (1) The provision of adequate air service is vital to the continued  
10 development of North Carolina, including the provision of adequate  
11 airport facilities for flights into and out of the State.
- 12 (2) The areas in the Neuse River Basin are among the fastest growing in  
13 North Carolina and, indeed, in the United States, with concomitant  
14 growth in the need for air service and airport facilities.
- 15 (3) In order to ensure safe and adequate air service, the Federal Aviation  
16 Administration has imposed, and continues to impose, new and  
17 increasingly stringent requirements on airports and airport facilities,  
18 such as the construction to safety areas at the ends of airport runways.
- 19 (4) Increased air traffic into and out of airports has created a need for  
20 construction, expansion, renovation and other work at and on all parts  
21 of the airport facilities, including clear zones, fields, hangars, land,  
22 landing lighting, airport and airport-related offices, parking facilities,  
23 related navigational and signal systems, runways, terminals, terminal  
24 and other airport shops, and all appurtenant areas used or suitable for  
25 airport buildings or other airport facilities, and all appurtenant  
26 rights-of-way.
- 27 (5) Such work needs to proceed in a timely fashion and with predictable  
28 timetables, given the need to schedule air traffic to accommodate this  
29 construction work.
- 30 (6) The General Assembly established in 1996 (and as amended by  
31 Session Law 1998-221) a goal to reduce the average annual load of  
32 nitrogen delivered from point and nonpoint sources to the Neuse River  
33 Estuary by a minimum of thirty percent (30%) of the average load for  
34 the period 1991 through 1995 by the year 2001 and directed the  
35 Environmental Management Commission ("EMC") to develop and  
36 adopt a plan to achieve this goal.
- 37 (7) In 1997 the General Assembly directed the EMC to develop and  
38 implement a basinwide water quality plan for each of the State's 17  
39 major river basins.
- 40 (8) In 1997, in response to these legislative mandates, the EMC adopted a  
41 Neuse River Nutrient Sensitive Water Management Strategy as  
42 temporary and permanent rules and adopted revisions to these rules in  
43 1998.

- 1 (9) In 1998 the General Assembly enacted legislation to disapprove 15A  
2 NCAC 2B.0233, entitled the "Neuse River Nutrient Sensitive Waters  
3 Management Strategy: Protection and Maintenance of Riparian Areas  
4 with Existing Forest Vegetation" (the "Temporary Neuse Buffer  
5 Rule") as a permanent rule while continuing this rule in effect as a  
6 temporary rule with certain modifications until the EMC adopted a  
7 revised temporary and permanent rule.
- 8 (10) The EMC has also proposed and, in some cases, adopted other  
9 basinwide water quality management plans (the "Basinwide  
10 Management Plans"), pursuant to G.S. 143-214.1, 143-214.7,  
11 143-215.3, and 143B-282, in order to protect water quality standards  
12 and uses as required to implement basinwide water quality  
13 management plans, including temporary or permanent rules adopted  
14 for the Tar-Pamlico River Basin.
- 15 (11) Legislation has been introduced to invalidate the Tar-Pamlico River  
16 Basin rules.
- 17 (12) The Temporary Neuse Buffer Rule and the other Basinwide  
18 Management Plans impact on airport facilities located within their  
19 respective basin areas.
- 20 (13) The Temporary Neuse Buffer and the Tar-Pamlico River Basin Rules  
21 both contain references to the application of those rules to "airport  
22 facilities," and allow work to occur at those airport facilities,  
23 sometimes with mitigation, but those rules do not contain a definition  
24 of what is meant by the phrase "airport facilities".
- 25 (14) The phrase "airport facilities" as used in the Temporary Neuse Buffer  
26 Rule has been interpreted by the Division of Water Quality ("DWQ")  
27 within the Department of Environment and Natural Resources  
28 ("DENR") very narrowly, such as to include only runways.
- 29 (15) The lack of definition and the narrowness of interpretation of the  
30 phrase "airport facilities" as used in the Temporary Neuse Buffer and  
31 the Tar-Pamlico River Basin Rules have created ambiguity, delay,  
32 additional expense and other problems for airports seeking to meet the  
33 needs for increased air service and FAA regulations.

34 **SECTION 3.** Definitions. – Unless otherwise required by the context, the  
35 following definitions apply throughout this act:

- 36 (1) "Basinwide Management Plans" means rules to protect water quality  
37 standards and uses as required to implement basinwide water quality  
38 management plans pursuant to G.S. 143-214.1, 143-214.7, 143-215.3,  
39 and 143B-282, including the Temporary Neuse Buffer Rule and any  
40 temporary or permanent rules adopted for the Cape Fear, Catawba, and  
41 Tar-Pamlico River Basins.
- 42 (2) "Commission" means the Environmental Management Commission.
- 43 (3) "Department" means the Department of Environment and Natural  
44 Resources.

1 (4) "Disapproval Legislation" means Sections 1.1, 1.2, 1.3, 1.4, 1.6, 1.7,  
2 1.8, and 1.14 of Session Law 1998-221, effective November 5, 1998.

3 (5) "Secretary" means the Secretary of Environment and Natural  
4 Resources.

5 (6) "Temporary Neuse Buffer Rule" means 15A NCAC 2B.0233 (Neuse  
6 River Basin: Nutrient Sensitive Waters Management Strategy:  
7 Protection and Maintenance of Riparian Areas with Existing Forest  
8 Vegetation), adopted as a temporary rule by the Commission effective  
9 22 July 1997, amended by the Commission effective 22 April 1998,  
10 and continued in effect by Section 1.2 of the Disapproval Legislation.

11 **SECTION 4.** Temporary rule continued in effect. – Notwithstanding G.S.  
12 150B-21.1(d), the Temporary Neuse Buffer Rule shall remain in effect as a temporary  
13 rule until replaced by a permanent rule and the Basinwide Management Plans are  
14 similarly continued in effect.

15 **SECTION 5.** Airport Facilities defined and Work Allowed. – (a) Until the  
16 effective date of the revised temporary rule that the Commission is required to adopt by  
17 Section 1.8 of the Disapproval Legislation, the Commission and the Department shall  
18 implement Temporary Neuse Buffer Rule and Basinwide Management Plans as  
19 provided in this section.

20 (b) As used in Temporary Neuse Buffer Rule and the Basinwide  
21 Management Plans adopted as of the date of this act, the phrase "airport facilities" is not  
22 defined within those rules, but the Department and the Commission shall interpret the  
23 phrase "airport facilities" for purposes of interpreting and applying the Temporary  
24 Neuse Buffer Rule and any Basinwide Management Plans to have the same meaning as  
25 in G.S. 63-1.

26 (c) As used in Temporary Neuse Buffer Rule and the Basinwide  
27 Management Plans adopted as of the date of this act, work occurring at "airport  
28 facilities" shall be classified as exempt, rather than allowable or allowable with  
29 mitigation.

30 **SECTION 6.** Revision of Temporary Neuse Buffer Rule; adoption of a  
31 permanent rule to replace the temporary rule. – (a) The Commission shall revise the  
32 Temporary Neuse Buffer Rule and any adopted Basin Management Plans in accordance  
33 with this act.

34 (b) Once the Temporary Neuse Buffer Rule has been revised as required  
35 by this section, the Commission shall proceed, in accordance with Article 2A of Chapter  
36 150B of the General Statutes, with the adoption of a permanent rule to replace the  
37 revised temporary rule.

38 **SECTION 7.** Construction of act. – This act shall not be construed to  
39 obligate the General Assembly to appropriate any funds to implement the provisions of  
40 this act. Every State agency to which this act applies shall implement the provisions of  
41 this act from funds otherwise appropriated or available to that agency. Similarly, this  
42 act does not invalidate any development and implementation of any of the Basinwide  
43 Management Plans adopted by the Commission prior to the effective date of this act.

44 **SECTION 8.** This act is effective when it becomes law.