

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 2156*

Short Title: Tax Credits for Certain Real Prop. Donations. (Public)

Sponsors: Representatives Gibson; Harrison and Wray.

Referred to: Finance.

May 18, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO RECODIFY THE CREDIT FOR CERTAIN REAL PROPERTY
3 DONATIONS AND TO INCREASE THE CREDIT FOR CERTAIN
4 PASS-THROUGH ENTITIES, AS RECOMMENDED BY THE
5 ENVIRONMENTAL REVIEW COMMISSION.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 105 of the General Statutes is amended by adding a
8 new Article to read:

9 "Article 3H.

10 "Tax Credit for Certain Real Property Donations.

11 "**§ 105-129.70. Tax credit allowed.**

12 A person who makes a qualified donation of an interest in real property located in
13 North Carolina during the taxable year that is useful for (i) public beach access or use,
14 (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv)
15 other similar land conservation purposes is allowed a credit equal to twenty-five percent
16 (25%) of the fair market value of the donated property interest. To be eligible for this
17 credit, the interest in property must be donated in perpetuity to and accepted by the
18 State, a local government, or a body that is both organized to receive and administer
19 lands for conservation purposes and qualified to receive charitable contributions under
20 the Code. Lands required to be dedicated pursuant to local governmental regulation or
21 ordinance and dedications made to increase building density levels permitted under a
22 regulation or ordinance are not eligible for this credit. To support the credit allowed by
23 this Article, the taxpayer must file with the tax return for the taxable year in which the
24 credit is claimed a certification by the Department of Environment and Natural
25 Resources that the property donated is suitable for one or more of the valid public
26 benefits set forth in this section. The certification for a qualified donation made by a
27 pass-through entity must be filed by the pass-through entity.

28 "**§ 105-129.71. Credit amount.**

1 (a) Corporations. – The aggregate amount of credit allowed to a corporation in a
2 taxable year under this Article for one or more qualified donations, whether made
3 directly or indirectly as owner of a pass-through entity, may not exceed five hundred
4 thousand dollars (\$500,000). That portion of a qualifying donation that is the basis for a
5 credit allowed under this subsection is not eligible for deduction as a charitable
6 contribution under G.S. 105-130.9 if it is claimed against income tax under Article 4 of
7 this Chapter.

8 (b) Individuals. – The aggregate amount of credit allowed to an individual in a
9 taxable year under this Article for one or more qualified donations, whether made
10 directly or indirectly as owner of a pass-through entity, may not exceed two hundred
11 fifty thousand dollars (\$250,000). In the case of property owned by a married couple, if
12 both spouses are required to file North Carolina income tax returns, the credit allowed
13 by this section may be claimed only if the spouses file a joint return. If only one spouse
14 is required to file a North Carolina income tax return, that spouse may claim the credit
15 allowed by this Article on a separate return.

16 (c) Pass-Through Entities. – The aggregate amount of credit allowed to a
17 pass-through entity in a taxable year under this section for one or more qualified
18 donations, whether made directly or indirectly as owner of another pass-through entity,
19 may not exceed five hundred thousand dollars (\$500,000). Each individual who is an
20 owner of a pass-through entity is allowed as a credit an amount equal to the owner's
21 allocated share of the credit to which the pass-through entity is eligible under this
22 subsection, not to exceed two hundred fifty thousand dollars (\$250,000). Each
23 corporation that is an owner of a pass-through entity is allowed as a credit an amount
24 equal to the owner's allocated share of the credit to which the pass-through entity is
25 eligible under this subsection, not to exceed five hundred thousand dollars (\$500,000).

26 **"§ 105-129.72. Tax Election; cap.**

27 (a) Tax Election. – The credits provided in this Article are allowed against the
28 franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of
29 this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The
30 taxpayer must elect the tax against which a credit will be claimed when filing the return
31 on which the credit is claimed. This election is binding. Any carryforwards of a credit
32 must be claimed against the same tax.

33 (b) Cap. – The credit allowed in this Article may not exceed the amount of tax
34 against which it is claimed for the taxable year reduced by the sum of all credits allowed
35 except payments of tax made by or on behalf of the taxpayer. This limitation applies to
36 the cumulative amount of credit, including carryforwards, claimed by the taxpayer
37 under this Article against each tax for the taxable year.

38 **"§ 105-129.73. Carryforward election; refund.**

39 A taxpayer may elect to carry forward any unused portion of this credit as follows:

40 (1) For the next succeeding five years or

41 (2) For the next succeeding two years, and after a credit has been carried
42 forward for two years, the Secretary must refund to the taxpayer in the
43 next succeeding year an amount equal to fifty percent (50%) of the
44 remaining unused amount of the credit.

1 **"§ 105-129.74. Marshland.**

2 In the case of marshland for which a claim has been filed pursuant to G.S. 113-205,
3 the offer of donation must be made before December 31, 2003, to qualify for the credit
4 allowed by this section.

5 **"§ 105-129.75. Reports.**

6 The Department of Revenue must report to the Revenue Laws Study Committee and
7 the Fiscal Research Division of the General Assembly by May 1 of each year all of the
8 following information for the 12-month period ending the preceding December 31:

9 (1) The number of taxpayers that claimed a credit allowed in this Article.

10 (2) The amount of each credit claimed.

11 (3) The total amount refunded in excess of tax liability.

12 (4) The total cost to the General Fund of the credits claimed."

13 **SECTION 2.** G.S. 105-130.34 is repealed.

14 **SECTION 3.** G.S. 105-151.12 is repealed.

15 **SECTION 4.** In order to pay for its costs of computer programming to
16 implement this act, the Department of Revenue may withhold not more than fifty-five
17 thousand dollars (\$55,000) during the 2006-2007 fiscal year from individual income tax
18 collections under Part 2 of Article 4 of Chapter 105 of the General Statutes.

19 **SECTION 5.** The title of Article 16 of Chapter 113A of the General Statutes
20 reads as rewritten:

21 "Article 16.

22 Conservation ~~Easements~~-Incentive Program."

23 **SECTION 6.** G.S. 113A-231 reads as rewritten:

24 **"§ 113A-230. Legislative findings; intent.**

25 The General Assembly finds that a statewide network of protected natural areas,
26 riparian buffers, and greenways can best be accomplished through a conservation
27 ~~easements-incentive~~ program. The General Assembly further finds that other public
28 conservation and use programs, such as natural area protection, beach access, trail
29 systems, historic landscape protection, and agricultural preservation, can benefit from
30 increased conservation tools. In this Article, the General Assembly therefore intends to
31 extend the ability of the Department of Environment and Natural Resources to achieve
32 these purposes and to strengthen the capability of private nonprofit land trusts to
33 participate in land and water conservation."

34 **SECTION 7.** G.S. 113A-231 reads as rewritten:

35 **"§ 113A-231. Program to accomplish conservation purposes.**

36 The Department of Environment and Natural Resources shall develop a
37 nonregulatory program that uses conservation tax credits as a prominent tool to
38 accomplish conservation purposes, including the maintenance of ecological systems. As
39 a part of this program, the Department shall exercise its powers to protect real property
40 and interests in real property: donated for tax credit under ~~G.S. 105-130.34~~ or
41 ~~G.S. 105-151.12~~; G.S. 105-129.70; conserved with the use of other financial incentives;
42 or, conserved through nonregulatory programs. The Department shall call upon the
43 Attorney General for legal assistance in developing and implementing the program."

44 **SECTION 8.** G.S. 113A-232(c) reads as rewritten:

1 "(c) Property Eligibility. – In order for real property or an interest in real property
2 to be the subject of a grant under this Article, the real property or interest in real
3 property must possess or have a high potential to possess ecological value, must be
4 reasonably restorable, and must qualify for tax credits under ~~G.S. 105-130.34 or~~
5 ~~G.S. 105-151.12~~ G.S. 105-129.70."

6 **SECTION 9.** G.S. 113A-232(c1) reads as rewritten:

7 "(c1) Grant Eligibility. – State conservation land management agencies, local
8 government conservation land management agencies, and private nonprofit land trust
9 organizations are eligible to receive grants from the Conservation Grant Fund. Private
10 nonprofit land trust organizations must be qualified pursuant to ~~G.S. 105-130.34 and~~
11 ~~G.S. 105-151.12~~ G.S. 105-129.70 and must be certified under section 501(c)(3) of the
12 Internal Revenue Code."

13 **SECTION 10.** G.S. 113A-233 reads as rewritten:

14 "**§ 113A-233. Uses of a grant from the Conservation Grant Fund.**

15 (a) Allowable Uses. – A grant from the Conservation Grant Fund may be used
16 only to pay for one or more of the following costs:

- 17 (1) Reimbursement for total or partial transaction costs for a donation of
18 real property or an interest in real property from an individual or
19 corporation satisfying either of the following:
 - 20 a. Insufficient financial ability to pay all costs or insufficient
21 taxable income to allow these costs to be included in the
22 donated value.
 - 23 b. Insufficient tax burdens to allow these costs to be offset by the
24 value of tax credits under ~~G.S. 105-130.34 or G.S. 105-151.12~~
25 G.S. 105-129.70 or by charitable deductions.
- 26 (2) Management support, including initial baseline inventory and
27 planning.
- 28 (3) Monitoring compliance with conservation easements, the related use of
29 riparian buffers, natural areas, and greenways, and the presence of
30 ecological integrity.
- 31 (4) Education on conservation, including information materials intended
32 for landowners and education for staff and volunteers.
- 33 (5) Stewardship of land.
- 34 (6) Transaction costs for recipients, including legal expenses, closing and
35 title costs, and unusual direct costs, such as overnight travel.
- 36 (7) Administrative costs for short-term growth or for building capacity.

37 (b) Prohibition. – The Fund shall not be used to pay the purchase price of real
38 property or an interest in real property."

39 **SECTION 11.** G.S. 105-130.9 reads as rewritten:

40 "**§ 105-130.9. Contributions.**

41 Contributions shall be allowed as a deduction to the extent and in the manner
42 provided as follows:

- 43 (1) Charitable contributions as defined in section 170(c) of the Code,
44 exclusive of contributions allowed in subdivision (2) of this section,

1 shall be allowed as a deduction to the extent provided herein. The
2 amount allowed as a deduction hereunder shall be limited to an amount
3 not in excess of five percent (5%) of the corporation's net income as
4 computed without the benefit of this subdivision or subdivision (2) of
5 this section. Provided, that a carryover of contributions shall not be
6 allowed and that contributions made to North Carolina donees by
7 corporations allocating a part of their total net income outside this
8 State shall not be allowed under this subdivision, but shall be allowed
9 under subdivision (3) of this section.

- 10 (2) Contributions by any corporation to the State of North Carolina, any of
11 its institutions, instrumentalities, or agencies, any county of this State,
12 its institutions, instrumentalities, or agencies, any municipality of this
13 State, its institutions, instrumentalities, or agencies, and contributions
14 or gifts by any corporation to educational institutions located within
15 North Carolina, no part of the net earnings of which inures to the
16 benefit of any private stockholders or dividend. For the purpose of this
17 subdivision, the words "educational institution" shall mean only an
18 educational institution which normally maintains a regular faculty and
19 curriculum and normally has a regularly organized body of students in
20 attendance at the place where the educational activities are carried on.
21 The words "educational institution" shall be deemed to include all of
22 such institution's departments, schools and colleges, a group of
23 "educational institutions" and an organization (corporation, trust,
24 foundation, association or other entity) organized and operated
25 exclusively to receive, hold, invest and administer property and to
26 make expenditures to or for the sole benefit of an "educational
27 institution" or group of "educational institutions."
- 28 (3) Corporations allocating a part of their total net income outside North
29 Carolina under the provisions of G.S. 105-130.4 shall deduct from
30 total income allocable to North Carolina contributions made to North
31 Carolina donees qualified under subdivisions (1) and (2) of this section
32 or made through North Carolina offices or branches of other donees
33 qualified under the above-mentioned subdivisions of this section;
34 provided, such deduction for contributions made to North Carolina
35 donees qualified under subdivision (1) of this section shall be limited
36 in amount to five percent (5%) of the total income allocated to North
37 Carolina as computed without the benefit of this deduction for
38 contributions.
- 39 (4) The amount of a contribution for which the taxpayer claimed a tax
40 credit pursuant to ~~G.S. 105-130.34~~ G.S. 105-129.70 shall not be
41 eligible for a deduction under this section. The amount of the credit
42 claimed with respect to the contribution is not, however, required to be
43 added to income under G.S. 105-130.5(a)(10)."

44 **SECTION 12.** G.S. 105-277.3(d1) reads as rewritten:

1 "(d1) Exception for Easements on Qualified Conservation Lands Previously
2 Appraised at Use Value. – Property that is appraised at its present-use value under
3 G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as
4 provided in G.S. 105-277.2 through G.S. 105-277.7 as long as the property is subject to
5 an enforceable conservation easement that would qualify for the conservation tax credit
6 provided in ~~G.S. 105-130.34 and G.S. 105-151.12~~, G.S. 105-129.70 without regard to
7 actual production or income requirements of this section. Notwithstanding
8 G.S. 105-277.3(b) and (b1), subsequent transfer of the property does not extinguish its
9 present-use value eligibility as long as the property remains subject to an enforceable
10 conservation easement that qualifies for the conservation tax credit provided in
11 ~~G.S. 105-130.34 and G.S. 105-151.12~~. G.S. 105-129.70. The exception provided in this
12 subsection applies only to that part of the property that is subject to the easement."

13 **SECTION 13.** G.S. 113-77.9(d) reads as rewritten:

14 "(d) Acquisition. – The Department of Administration may, pursuant to
15 G.S. 143-341, acquire by purchase, gift, or devise all lands selected by the Trustees for
16 acquisition pursuant to this Article. Title to any land acquired pursuant to this Article
17 shall be vested in the State. A State agency with management responsibility for land
18 acquired pursuant to this Article may enter into a management agreement or lease with a
19 county, city, town, or private nonprofit organization qualified under ~~G.S. 105-151.12~~
20 ~~and G.S. 105-130.34~~ G.S. 105-129.70 and certified under section 501(c)(3) of the
21 Internal Revenue Code to aid in managing the land. A management agreement or lease
22 shall be executed by the Department of Administration pursuant to G.S. 143-341."

23 **SECTION 14.** G.S. 113A-256(g) reads as rewritten:

24 "(g) Tax Credit Certification. – The Trustees shall develop guidelines to determine
25 whether land donated for a tax credit under ~~G.S. 105-130.34 or G.S. 105-151.12~~ G.S.
26 105-129.70 are suitable for one of the purposes under this Article and may be certified
27 for a tax credit."

28 **SECTION 15.** G.S. 105-151.26 reads as rewritten:

29 **"§ 105-151.26. Credit for charitable contributions by nonitemizers.**

30 A taxpayer who elects the standard deduction under section 63 of the Code for
31 federal tax purposes is allowed as a credit against the tax imposed by this Part an
32 amount equal to seven percent (7%) of the taxpayer's excess charitable contributions.
33 The taxpayer's excess charitable contributions are the amount by which the taxpayer's
34 charitable contributions for the taxable year that would have been deductible under
35 section 170 of the Code if the taxpayer had not elected the standard deduction exceed
36 two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

37 No credit shall be allowed under this section for amounts deducted from gross
38 income in calculating taxable income under the Code or for contributions for which a
39 credit was claimed under ~~G.S. 105-151.12~~ G.S. 105-129.70 or G.S. 105-151.14. A
40 nonresident or part-year resident who claims the credit allowed by this section shall
41 reduce the amount of the credit by multiplying it by the fraction calculated under
42 G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not
43 exceed the amount of tax imposed by this Part for the taxable year reduced by the sum
44 of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

1 **SECTION 16.** Section 1 of this act is effective for credits claimed against
2 income tax or gross premiums tax for taxable years beginning on or after January 1,
3 2006, and for credits claimed against franchise tax for taxable years beginning on or
4 after January 1, 2007, and applies to property interests contributed on or after January 1,
5 2006. Sections 4 and 16 of this act are effective when this act becomes law. The
6 remainder of this act is effective for taxable years beginning on or after January 1, 2006.