

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1340*

Short Title: Riparian Buffers Program.

(Public)

Sponsors: Representative Nichols.

Referred to: Health and Environment.

May 24, 1996

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH A NONREGULATORY PROGRAM TO PROTECT
2 WATER QUALITY AND TO CREATE THE RIPARIAN BUFFER
3 FACILITATION AND ASSISTANCE GRANT FUND TO SUSTAIN WATER
4 QUALITY IN THE STATE THROUGH COOPERATIVE METHODS, AS
5 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
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7 The General Assembly of North Carolina enacts:

8 Section 1. Chapter 113A of the General Statutes is amended by adding a new
9 Article to read:

10 **"ARTICLE 16.**

11 **"NONREGULATORY PROGRAM FOR PROTECTING WATER QUALITY.**

12 **"§ 113A-230. Legislative findings; intent.**

13 The General Assembly finds that past efforts to protect water quality in the State's
14 rivers and streams have been inadequate. These efforts have included a selective
15 approach for encouraging vegetated buffers along watercourses adjoining only some
16 water bodies or land uses. While the value of adequate vegetated buffers for providing
17 water quality protection is well documented, it is clear that a more comprehensive
18 approach is required if the desired result of maintaining and improving water quality is to
19 be achieved. The General Assembly finds that regulatory efforts to protect water quality
20 must be complemented by the establishment of a nonregulatory program directed to the

1 establishment of vegetated riparian buffers along the State's rivers, streams, lakes, and
2 estuarine shorelines. While temporary buffers have transient benefits for water quality
3 protection, this nonregulatory program to establish vegetated riparian buffers should be
4 directed toward permanent buffers to protect public waters in perpetuity. Recognizing
5 that flexibility is essential to the success of this effort, the program should utilize a broad
6 range of nonregulatory approaches and cooperate with all interested parties in its
7 activities. Because public understanding and acceptance is crucial to the nonregulatory
8 program, activities should include public education and involvement in efforts to
9 establish a system of vegetated riparian buffers. Potential exists to accomplish multiple
10 public purposes on riparian lands, and every reasonable effort should be made to
11 accommodate compatible uses without diminishing water quality protection. In those
12 cases where lands adjoining water bodies have been previously degraded, allowances
13 should be made to restore these lands so that they will again serve as riparian buffers that
14 protect water quality. The General Assembly intends to extend the ability of the
15 Department of Environment, Health, and Natural Resources to achieve these purposes
16 and to strengthen the ability of private nonprofit land trusts to participate in land and
17 water conservation.

18 **"§ 113A-231. Duties of the Department.**

19 The Department of Environment, Health, and Natural Resources shall develop a
20 nonregulatory program to establish vegetated riparian buffers along North Carolina's
21 water bodies. The Secretary of Environment, Health, and Natural Resources, in carrying
22 out the purposes of this Article, shall:

- 23 (1) Adopt a plan to guide efforts to create permanent, vegetated riparian
24 buffers adjoining the State's rivers, streams, lakes, and estuarine
25 shorelines.
- 26 (2) Set goals for the incremental establishment of a continuous system of
27 vegetated riparian buffers over a reasonable and foreseeable length of
28 time and monitor progress toward achieving those goals.
- 29 (3) Adopt rules for program operation that will ensure maximum
30 effectiveness and long-term efficiency.
- 31 (4) Support the nonregulatory program from any of the following funding
32 sources:
- 33 a. Donations that are eligible for the tax credits under G.S. 105-
34 151.12 or G.S. 105-130.34 or that constitute State or federal
35 charitable contributions.
- 36 b. Acquisition of title in fee through funds made available from
37 public or private sources.
- 38 c. Other funding sources that may be available to protect or
39 improve water quality.
- 40 (5) Award grants and execute contracts and other routine agreements as
41 necessary to conduct the nonregulatory program.

- 1 (6) Execute title transfers in fee, conservation easements, land transfers,
2 land trades, management agreements, and other binding instruments or
3 methods to secure the system of riparian buffers.
- 4 (7) Cooperate with federal, State, and local government agencies, nonprofit
5 organizations, corporations, and individuals to conduct the program.
- 6 (8) Involve professional associations, business leagues, community groups,
7 and other volunteers in program activities.
- 8 (9) Facilitate public education about the function and importance of
9 vegetated riparian buffers and the methods available for their protection.
- 10 (10) Coordinate with other programs involved with lands adjoining water
11 bodies to gain the most public benefit while protecting water quality.
- 12 (11) Pursue restoration of previously degraded lands brought under the
13 public trust to reestablish their water quality protection function.

14 **"§ 113A-232. Riparian Buffer Facilitation and Assistance Grant Fund.**

15 (a) Fund Created. – The Riparian Buffer Facilitation and Assistance Grant Fund is
16 created and shall be administered by the Department of Environment, Health, and Natural
17 Resources for the purpose of stimulating formation of a continuous system of
18 permanently protected riparian buffers adjoining water bodies, reduce nonpoint source
19 pollution, improve water quality, protect included significant natural resources, establish
20 a network of greenways, increase citizen participation in land and water conservation,
21 and provide an opportunity to leverage private and other public monies.

22 (b) Fund Sources. – The Riparian Buffer Facilitation and Assistance Grant Fund
23 shall consist of any monies appropriated by the General Assembly or monies received
24 from other public or private sources. Monies made available to the Fund by action of the
25 General Assembly shall not remain in the Fund at the end of each fiscal year and shall be
26 used as further appropriated or allocated by the General Assembly. Other monies in the
27 Fund shall not revert and shall remain available until such time as they are expended
28 consistent with this Article.

29 (c) Administration of Fund. – The Secretary of the Department of Environment,
30 Health, and Natural Resources shall adopt rules that set forth the process for awarding
31 grants and administering the Riparian Buffer Facilitation and Assistance Grant Fund,
32 using the best available information to focus grants activity on those areas, approaches,
33 and techniques that are likely to provide the optimum positive effect on water quality.
34 The Secretary may contract for administrative services to assist in administering the Fund
35 and program under this Article.

36 (d) Eligibility. – In order to be the subject of a grant under this Article, riparian
37 and littoral areas adjoining water bodies must be the lands most suitable to perform water
38 quality buffering functions under this program and must qualify for tax credits under G.S.
39 105-151.12 and G. S. 105-130.34 as having bona fide conservation value. Nonprofit
40 private land trust organizations must be qualified pursuant to G.S. 105-151.12 and G.S.
41 105-130.34 and must be certified under section 501(c)(3) of the United States Internal
42 Revenue Code.

1 **"§ 113A-233. Expenses that are eligible for payment from the Riparian Buffer**
2 **Facilitation and Assistance Grant Fund.**

3 (a) The Riparian Buffer Facilitation and Assistance Grant Fund shall be used for
4 the costs of administering the grants program under this Article. The Fund may be used
5 for grants from the net Fund balance after these administrative costs have been paid.

6 (b) The Fund may be used for grants to grantees for any of the following expenses
7 of the grantee, but are not limited to the following expenses of the grantee:

8 (1) Administrative support: staff personnel and the cost of report
9 preparations.

10 (2) Transaction support: legal expenses, closing and title costs, and unusual
11 direct costs, such as overnight travel.

12 (3) Reimbursements for total or partial transaction costs for individuals and
13 corporations with:

14 a. Insufficient income to allow these costs to be included in the
15 value; or

16 b. Insufficient tax burdens to allow these costs to be offset by the
17 value of tax credits under G.S. 105-151.12 and G.S. 105-130.34
18 and charitable deductions.

19 (4) Management support: baseline inventory, management plan, and
20 protection planning.

21 (5) Education support: information materials intended for landowners;
22 educational opportunities for staff, volunteers, and involved
23 professionals.

24 (6) Stewardship support not to exceed ten percent (10%) of each grant to be
25 set aside in a protected endowment account for monitoring and
26 enforcement. The principal and interest on this account shall not revert
27 and the interest shall be available in the next succeeding year for
28 stewardship support under this subdivision.

29 (7) Cost of administering the grants program under G.S. 113A-234.

30 (c) The Fund shall not be used for consideration for the purchase of any interest in
31 land.

32 **"§ 113A-234. Administration of grants program.**

33 (a) The Department may administer the grants program under this Article in its
34 entirety or may contract for administration of selected activities under this Article. If
35 administrative services are contracted, the Department shall contract with a statewide
36 nonprofit land trust service organization.

37 (b) The Secretary shall adopt rules for the award of grants. The rules may address,
38 but are not limited to, the following considerations:

39 (1) Application and award frequency.

40 (2) Organizational capability of the grantees.

41 (3) Viability of the donor.

42 (4) Location and biological and conservation values.

43 (5) Legal parameters of protective instruments.

- 1 (6) Procedural considerations.
2 (7) Management policies.
3 (8) Stewardship expectations.
4 (9) Requirements for matching funds.

5 (c) The Secretary shall make the final decision on the award of grants and shall
6 announce the award publicly in a timely manner.

7 **"§ 113A-235. Enforcement.**

8 A conservation easement secured with the assistance of the Grant Fund created by this
9 Article shall be conveyed jointly to both the Department of Environment, Health, and
10 Natural Resources as trustee for the State of North Carolina and to any qualified
11 nonprofit organization that assumes responsibility for the management of the vegetated
12 riparian buffer created by the easement. In the event that a qualified nonprofit
13 organization that holds an easement under this Article ceases to exist or ceases to manage
14 the riparian buffer, the easement shall vest solely in the Department of Environment,
15 Health, and Natural Resources. If a fee interest is transferred to a qualified nonprofit
16 organization, the Department of Environment, Health, and Natural Resources shall retain
17 a reversionary interest and any restrictive covenants that the Department determines to be
18 necessary to achieve the purposes of this Article. The Department shall work
19 cooperatively with State and local agencies and qualified nonprofit organizations to
20 monitor compliance with conservation easements and the viability of protected riparian
21 buffers. Grant funds may be used to assist agencies and organization with reasonable
22 monitoring costs."

23 Sec. 2. There is appropriated from the General Fund to the Department of
24 Environment, Health, and Natural Resources the sum of three hundred thousand dollars
25 (\$300,000) for the 1996-97 fiscal year to implement the provisions of this act.

26 Sec. 3. This act becomes effective 1 July 1996.