

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1340*
Committee Substitute Favorable 6/12/96

Short Title: Riparian Buffers Program.

(Public)

Sponsors:

Referred to:

May 24, 1996

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A NONREGULATORY PROGRAM TO PROTECT WATER QUALITY, TO CREATE THE RIPARIAN BUFFER FACILITATION AND ASSISTANCE GRANT FUND TO SUSTAIN WATER QUALITY IN THE STATE THROUGH COOPERATIVE METHODS, AND TO INCREASE THE CAP ON THE INCOME TAX CREDIT FOR REAL PROPERTY DONATED FOR CONSERVATION PURPOSES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

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

"ARTICLE 16.

"NONREGULATORY PROGRAM FOR PROTECTING WATER QUALITY.

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

The General Assembly finds that past efforts to protect water quality in the State's rivers and streams have been inadequate. These efforts have included a selective approach for encouraging vegetated buffers along watercourses adjoining only some water bodies or land uses. While the value of adequate vegetated buffers for providing water quality protection is well documented, it is clear that a more comprehensive

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

21 **"§ 113A-231. Duties of the Department.**

22 The Department of Environment, Health, and Natural Resources shall develop a
23 nonregulatory program to establish vegetated riparian buffers along the State's water
24 bodies. The Secretary of Environment, Health, and Natural Resources, in carrying out
25 the purposes of this Article, shall:

- 26 (1) Adopt a plan to guide efforts to create permanent, vegetated riparian
27 buffers adjoining the State's rivers, streams, lakes, and estuarine
28 shorelines.
- 29 (2) Set goals for the incremental establishment of a continuous system of
30 vegetated riparian buffers over a reasonable and foreseeable length of
31 time and monitor progress toward achieving those goals.
- 32 (3) Adopt rules for program operation that will ensure maximum
33 effectiveness and long-term efficiency.
- 34 (4) Award grants and execute contracts and other agreements as necessary
35 to conduct the nonregulatory program.
- 36 (5) Acquire through donation, hold, and transfer any interest in land
37 necessary to secure the system of riparian buffers.
- 38 (6) Accept donations that are eligible for tax credits under G.S. 105-130.34
39 or G.S. 105-151.12 or that constitute a charitable deduction under
40 federal or State law.
- 41 (7) Cooperate with federal, State, and local government agencies, nonprofit
42 organizations, corporations, and individuals to conduct the program.

- 1 (8) Involve professional associations, business leagues, community groups,
2 and other volunteer groups in program activities.
- 3 (9) Facilitate public education regarding the function and importance of
4 vegetated riparian buffers and the methods available for their protection.
- 5 (10) Coordinate with other programs involved with lands adjoining water
6 bodies to gain the most public benefit while protecting water quality.
- 7 (11) Pursue restoration of previously degraded lands brought under the
8 public trust to reestablish their water quality protection function.

9 **"§ 113A-232. Riparian Buffer Facilitation and Assistance Grant Fund.**

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

17 (b) Fund Sources. – The Riparian Buffer Facilitation and Assistance Grant Fund
18 shall consist of any monies appropriated by the General Assembly and any monies
19 received from public or private sources. Unexpended monies in the Fund that were
20 appropriated from the General Fund by the General Assembly shall revert at the end of
21 the biennium unless the General Assembly otherwise provides. Unexpended monies in
22 the Fund from other sources shall not revert and shall remain available until such time as
23 they are expended consistent with this Article.

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

31 (d) Eligibility. – In order to be the subject of a grant under this Article, riparian
32 and littoral areas adjoining water bodies must be the lands most suitable to perform water
33 quality buffering functions under this program and must qualify for tax credits under G.S.
34 105-151.12 and G. S. 105-130.34 as having bona fide conservation value. Nonprofit
35 private land trust organizations must be qualified pursuant to G.S. 105-151.12 and G.S.
36 105-130.34 and must be certified under section 501(c)(3) of the United States Internal
37 Revenue Code.

38 **"§ 113A-233. Uses of the Riparian Buffer Facilitation and Assistance Grant Fund.**

39 (a) The Riparian Buffer Facilitation and Assistance Grant Fund shall be used to
40 pay costs reasonably necessary to administer the grants program. After administrative
41 costs are paid, the Fund may be used to make grants to agencies and organizations for:

- 42 (1) Reimbursement for total or partial transaction costs for individuals or
43 corporations with:

- 1 a. Insufficient income to allow these costs to be included in the
2 value; or
3 b. Insufficient tax burdens to allow these costs to be offset by the
4 value of tax credits under G.S. 105-130.34 or G.S. 105-151.12, or
5 by charitable deductions.

- 6 (2) Management support, including baseline inventory and planning.
7 (3) Monitoring compliance with conservation easements and management
8 of vegetated riparian buffer.
9 (4) Education support, including information materials intended for
10 landowners and educational opportunities for staff, volunteers, and
11 involved professionals.
12 (5) Stewardship support, as provided in subsection (b) of this section.
13 (6) Transaction support, including legal expenses, closing and title costs,
14 and unusual direct costs, such as overnight travel.
15 (7) Costs of administering the grants program.

16 (b) The Secretary may allocate up to ten percent (10%) of available grant funds to
17 a protected endowment account to monitor compliance with conservation easements and
18 to manage any vegetated riparian buffer for which the State assumes responsibility.

19 (c) The Fund shall not be used to pay the purchase price for any interest in land.

20 **§ 113A-234. Administration of grants program.**

21 (a) The Department of Environment, Health, and Natural Resources may
22 administer the grants program under this Article in its entirety or may contract for
23 administration of selected activities under this Article. If administrative services are
24 contracted, the Department shall contract with a statewide nonprofit land trust service
25 organization.

26 (b) The Secretary of Environment, Health, and Natural Resources shall adopt rules
27 for the award of grants. The rules may address, but are not limited to, the following
28 considerations:

- 29 (1) Application and award frequency.
30 (2) Organizational capability of the grantees.
31 (3) Viability of the donor.
32 (4) Location.
33 (5) Biological and conservation value.
34 (6) Legal parameters of protective instruments.
35 (7) Procedural considerations.
36 (8) Management policies.
37 (9) Stewardship expectations.
38 (10) Requirements for matching funds.

39 (c) The Secretary of Environment, Health, and Natural Resources shall make the
40 final decision on the award of grants and shall announce the award publicly in a timely
41 manner.

42 **§ 113A-235. Conservation easements.**

1 Riparian buffers may be secured and protected through conservation easements,
2 including conservation agreements under the Conservation and Historic Preservation
3 Agreements Act, G.S. 121-34, et seq. A conservation easement or conservation
4 agreement secured with the assistance of the Riparian Buffer Facilitation and Assistance
5 Grant Fund shall provide that all rights under the easement or conservation agreement
6 may be transferred to the Department of Environment, Health, and Natural Resources.
7 As a condition of receiving funds under this Article, the holder of the conservation
8 easement or conservation agreement shall grant to the Department of Environment,
9 Health, and Natural Resources as trustee for the State a first right of refusal to acquire all
10 rights in the conservation easement or conservation agreement under such terms and
11 conditions as agreed to between the holder of the conservation easement or conservation
12 agreement and the Department of Environment, Health, and Natural Resources. Any
13 holder of a conservation easement or conservation agreement secured under this Article
14 shall assume responsibility for the management of the vegetated riparian buffer created
15 by the easement. The Department of Environment, Health, and Natural Resources shall
16 work cooperatively with State and local agencies and qualified nonprofit organizations to
17 monitor compliance with conservation easements and conservation agreements and
18 ensure the continued viability of protected riparian buffers."

19 Sec. 2. G.S. 105-130.34 reads as rewritten:

20 "**§ 105-130.34. Credit for certain real property donations.**

21 (a) Any corporation that makes a qualified donation of an interest in real property
22 located in North Carolina during the taxable year that is useful for public beach access or
23 use, public access to public waters or trails, fish and wildlife conservation, or other
24 similar land conservation purposes, ~~shall be~~ is allowed a credit against the ~~taxes~~ tax
25 imposed by this Division equal to twenty-five percent (25%) of the fair market value of
26 the donated property interest. To be eligible for this credit, the interest in real property
27 must be donated to and accepted by either the State, ~~local government~~ a local government,
28 or a body that is both organized to receive and administer lands for conservation purposes
29 and ~~is~~ qualified to receive charitable contributions pursuant to G.S. 105-130.9; ~~provided,~~
30 ~~however, that lands~~ 105-130.9. Lands required to be dedicated pursuant to local
31 governmental regulation or ordinance and dedications made to increase building density
32 levels permitted under ~~such regulations or ordinances shall not be~~ the regulation or ordinance
33 are not eligible for this credit. The credit allowed under this section may not exceed
34 ~~twenty-five thousand dollars (\$25,000).~~ two hundred fifty thousand dollars (\$250,000). To
35 support the credit allowed by this section, the taxpayer shall file with its income tax
36 return for the taxable year in which the credit is claimed, a certification by the
37 Department of Environment, Health, and Natural Resources that the property donated is
38 suitable for one or more of the valid public benefits set forth in this subsection.

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

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

1 (d) ~~The fair market value, or any portion thereof, of a~~ A qualifying donation that is
2 ~~not eligible for a credit pursuant to this section may be considered as a charitable~~
3 ~~contribution pursuant to G.S. 105-130.9. That portion of the donation the basis for a~~
4 ~~credit allowed as a credit pursuant to under this section shall not be is not eligible for~~
5 ~~deduction as a charitable ~~contribution.~~ contribution under G.S. 105-130.9."~~

6 Sec. 3. G.S. 105-151.12 reads as rewritten:

7 "**§ 105-151.12. Credit for certain real property donations.**

8 (a) A person who makes a qualified donation of ~~interests~~ an interest in real
9 property located in North Carolina during the taxable year that is useful for (i) public
10 beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife
11 conservation, or (iv) other similar land conservation purposes, ~~shall be~~ is allowed as a
12 credit against the tax imposed by this Division an amount equal to twenty-five percent
13 (25%) of the fair market value of the donated property interest. To be eligible for this
14 credit, the interest in property must be donated to and accepted by either the State, a local
15 government, or a body that is both organized to receive and administer lands for
16 conservation purposes and ~~is qualified to receive charitable contributions under the Code;~~
17 ~~provided, however, that lands~~ Code. Lands required to be dedicated pursuant to local
18 governmental regulation or ordinance and dedications made to increase building density
19 levels permitted under ~~such~~ the regulations or ordinances are not eligible for this credit.
20 The credit allowed under this section may not exceed ~~twenty-five thousand dollars~~
21 ~~(\$25,000).~~ one hundred thousand dollars (\$100,000). To support the credit allowed by
22 this section, the taxpayer shall file with the income tax return for the taxable year in
23 which the credit is claimed a certification by the Department of Environment, Health, and
24 Natural Resources that the property donated is suitable for one or more of the valid public
25 benefits set forth by this subsection.

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

29 Any unused portion of this credit may be carried forward for the next succeeding five
30 years.

31 (c) In order to claim the credit allowed under this section, the taxpayer must add
32 the fair market value of the donated property interest, up to a maximum of ~~one hundred~~
33 ~~thousand dollars (\$100,000),~~ four hundred thousand dollars (\$400,000), to taxable income
34 as provided in G.S. 105-134.6(c).

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

40 (e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-
41 205, the offer of donation must be made before December 31, 1998, to qualify for the
42 credit allowed by this section."

43 Sec. 4. G.S. 105-134.6(c)(5) reads as rewritten:

1 "(5) The fair market value, up to a maximum of ~~one~~ four hundred thousand
2 dollars ~~(\$100,000)~~, (\$400,000) of the donated property interest for which
3 the taxpayer claims a credit for the taxable year under G.S. 105-151.12
4 and the market price of the gleaned crop for which the taxpayer claims a
5 credit for the taxable year under G.S. 105-151.14."

6 Sec. 5. G.S. 105-287(a) reads as rewritten:

7 "(a) In a year in which a general reappraisal or horizontal adjustment of real
8 property in the county is not made, the assessor shall increase or decrease the appraised
9 value of real property, as determined under G.S. 105-286, to:

10 (1) Correct a clerical or mathematical error;

11 (2) Correct an appraisal error resulting from a misapplication of the
12 schedules, standards, and rules used in the county's most recent general
13 reappraisal or horizontal adjustment; ~~or~~

14 (2a) Recognize changes in value resulting from agreements made pursuant to
15 the Conservation and Historic Preservation Agreements Act, G.S. 121-
16 34, et seq.; or

17 (3) Recognize an increase or decrease in the value of the property resulting
18 from a factor other than one listed in subsection (b)."

19 Sec. 6. G.S. 105-317(a) reads as rewritten:

20 "(a) Whenever any real property is appraised it shall be the duty of the persons
21 making appraisals:

22 (1) In determining the true value of land, to consider as to each tract,
23 parcel, or lot separately listed at least its advantages and disadvantages
24 as to location; zoning; quality of soil; waterpower; water privileges;
25 dedication as a nature preserve; conservation easements; historic
26 preservation agreements; mineral, quarry, or other valuable deposits;
27 fertility; adaptability for agricultural, timber-producing, commercial,
28 industrial, or other uses; past income; probable future income; and any
29 other factors that may affect its value except growing crops of a
30 seasonal or annual nature.

31 (2) In determining the true value of a building or other improvement, to
32 consider at least its location; type of construction; age; replacement
33 cost; cost; adaptability for residence, commercial, industrial, or other
34 uses; past income; probable future income; and any other factors that
35 may affect its value.

36 (3) To appraise partially completed buildings in accordance with the degree
37 of completion on January 1."

38 Sec. 7. There is appropriated from the General Fund to the Riparian Buffer
39 Facilitation and Assistance Grant Fund created by G.S. 113A-232, as enacted by Section
40 1 of this act, the sum of three hundred thousand dollars (\$300,000) for the 1996-97 fiscal
41 year to implement the provisions of this act. There is appropriated from the General
42 Fund to the Department of Environment, Health, and Natural Resources the sum of two
43 hundred eleven thousand dollars (\$211,000) for the 1996-97 fiscal year to establish and

1 support the positions of Conservation Tax Credit Administrator and Administrative
2 Assistant to implement the Conservation Tax Credit Program.

3 Sec. 8. This act becomes effective 1 July 1996. Sections 2 through 6 of this
4 act are effective for taxable years beginning on or after 1 January 1996.