

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1128

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/20/96

Short Title: Clean Water Management Fund.

(Public)

Sponsors:

Referred to: Finance.

May 14, 1996

A BILL TO BE ENTITLED

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

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:

12 **"ARTICLE 13A.**

13 **"CLEAN WATER MANAGEMENT TRUST FUND.**

14 **"§ 113-145.1. Purpose.**

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

1 hydrological and ecological values of each resource sought to be upgraded, conserved,
2 and protected are unique.

3 It is the intent of the General Assembly that moneys from the Fund created under this
4 Article shall be used to help finance projects that specifically address water pollution
5 problems and focus on upgrading surface waters, eliminating pollution, and protecting
6 and conserving unpolluted surface waters. It is the further intent of the General
7 Assembly that moneys from the Fund also be used to build a network of riparian buffers
8 and greenways for environmental, educational, and recreational benefits. While the
9 purpose of this Article is to focus on the cleanup and prevention of pollution of the State's
10 surface waters and the establishment of a network of riparian buffers and greenways, the
11 General Assembly believes that the results of these efforts will also be beneficial to
12 wildlife and marine fisheries habitats.

13 **"§ 113-145.2. Definitions.**

14 As used in this Article:

- 15 (1) Council. – The advisory council for the Clean Water Management Trust
16 Fund.
17 (2) Fund. – The Clean Water Management Trust Fund created pursuant to
18 this Article.
19 (3) Land. – Real property and any interest in, easement in, or restriction on
20 real property.
21 (4) Trustees. – The trustees of the Clean Water Management Trust Fund.

22 **"§ 113-145.3. Clean Water Management Trust Fund: established.**

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

26 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the
27 Fund separate and apart from all other moneys, funds, and accounts. Investment earnings
28 credited to the assets of the Fund shall become part of the Fund. Any balance remaining
29 in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next
30 succeeding fiscal year. Payments from the Fund shall be made on the warrant of the
31 Chair of the Board of Trustees.

32 (c) Fund Purposes. – Moneys from the Fund may be used for any of the following
33 purposes:

- 34 (1) To acquire land for riparian buffers for the purposes of providing
35 environmental protection and establishing a network of riparian
36 greenways for environmental, educational, and recreational uses.
37 (2) To acquire conservation easements or other interests in real property for
38 the purpose of protecting and conserving surface waters.
39 (3) To coordinate with other public programs involved with lands adjoining
40 water bodies to gain the most public benefit while protecting and
41 improving water quality.
42 (4) To restore previously degraded lands to reestablish their ability to
43 protect water quality.

1 (5) To repair failing waste treatment systems if: (i) an application has first
2 been submitted to receive a loan or grant from the Clean Water
3 Revolving Loan and Grant Fund and the application was denied during
4 the latest review cycle; (ii) the repair is a reasonable remedy for
5 resolving an existing waste treatment problem; and (iii) the repair is not
6 for the purpose of expanding the system to accommodate future
7 anticipated growth of a community. Priority shall be given to
8 economically distressed units of local government.

9 (6) To repair and eliminate failing septic tank systems, to eliminate illegal
10 drainage connections, and to expand waste treatment systems if the
11 system is being expanded as a remedy to eliminate failing septic tank
12 systems or illegal drainage connections. Priority shall be given to
13 economically distressed units of local government.

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

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

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

17 (d) Two Percent Limit on Operating and Administrative Expenses. – No more than
18 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 for the purpose of protecting and enhancing water quality:

24 (1) A State agency.

25 (2) A local government or other political subdivision of the State or a
26 combination of such entities.

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

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

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

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

1 (b) Membership. – The Clean Water Management Trust Fund Board of Trustees
2 shall be composed of 18 members. Six members shall be appointed by the Governor, six
3 by the General Assembly upon the recommendation of the President Pro Tempore of the
4 Senate in accordance with G.S. 120-121, and six by the General Assembly upon the
5 recommendation of the Speaker of the House of Representatives in accordance with G.S.
6 120-121. The office of Trustee is declared to be an office that may be held concurrently
7 with any other executive or appointive office, under the authority of Article VI, Section
8 9, of the North Carolina Constitution.

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

10 (1) Acquisition and management of natural areas.

11 (2) Conservation and restoration of water quality.

12 (3) Wildlife and fisheries habitats and resources.

13 (4) Environmental management.

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

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

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

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

35 (g) Meeting Facilities. – The Secretary of the Department of Environment, Health,
36 and Natural Resources shall provide meeting facilities for the Board of Trustees and its
37 staff as requested by the Chair.

38 **"§ 113-145.6. Clean Water Management Trust Fund Board of Trustees: powers**
39 **and duties.**

40 (a) Allocate Grant Funds. – The Trustees shall allocate moneys from the Fund as
41 grants. A grant may be awarded only for a project or activity that satisfies the criteria and
42 further the purposes of this Article.

1 (b) Develop Grant Criteria. – The Trustees shall develop criteria for awarding
2 grants under this Article. The criteria developed shall include consideration of the
3 following:

- 4 (1) The significant enhancement and conservation of water quality in the
5 State.
- 6 (2) The objectives of the basinwide management plans for the State's river
7 basins and watersheds.
- 8 (3) The promotion of regional integrated ecological networks insofar as
9 they affect water quality.
- 10 (4) The specific areas targeted as being environmentally sensitive.
- 11 (5) The geographic distribution of funds as appropriate.
- 12 (6) The preservation of water resources with significant recreational or
13 economic value and uses.
- 14 (7) The development of a network of riparian buffer-greenways bordering
15 and connecting the State's waterways that will serve environmental,
16 educational, and recreational uses.

17 (c) Develop Additional Guidelines. – The Trustees may develop guidelines in
18 addition to the grant criteria consistent with and as necessary to implement this Article.

19 **"§ 113-145.7. Clean Water Management Trust Fund: Executive Director and staff.**

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

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

35 **"§ 113-145.8. Clean Water Management Trust Fund: Advisory Council.**

36 There is established the Clean Water Management Trust Fund Advisory Council. The
37 Council shall advise the Trustees with regard to allocations made from the Fund, and
38 other issues as requested by the Trustees. The Council shall be composed of the
39 following or its designees:

- 40 (1) Commissioner of Agriculture.
- 41 (2) Chair of the Wildlife Resources Commission.
- 42 (3) Secretary of the Department of Environment, Health, and Natural
43 Resources.

1 (4) Secretary of the Department of Commerce."

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

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

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

6 **"§ 143-15.3B. The Clean Water Management Trust Fund.**

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

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

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

18 **"§ 105-130.34. Credit for certain real property donations.**

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

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

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

1 (d) The fair market value, or any portion thereof, of 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 allowed as a credit
4 pursuant to this section shall not be eligible as a charitable contribution."

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

6 **"§ 105-151.12. Credit for certain real property donations.**

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

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

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

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

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

38 (e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-
39 205, the offer of donation must be made before December 31, 1998, to qualify for the
40 credit allowed by this section."

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

42 "(5) The fair market value, ~~up to a maximum of one hundred thousand dollars~~
43 ~~(\$100,000),~~value of the donated property interest for which the taxpayer

1 claims a credit for the taxable year under G.S. 105-151.12 and the
2 market price of the gleaned crop for which the taxpayer claims a credit
3 for the taxable year under G.S. 105-151.14."

4 Sec. 7. The Chair of the Board of Trustees of the Clean Water Management
5 Trust Fund shall report to the Environmental Review Commission beginning November
6 1, 1996, and annually thereafter on implementation of this act.

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