

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 1120

Short Title: No Net Loss of Wetlands.

(Public)

Sponsors: Representatives Ethridge; Colton, Flaherty, Fletcher, Gottovi, Hackney, Hightower, Kahl, Luebke, McGee, Stamey, and Withrow.

Referred to: Environment.

April 24, 1991

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE NORTH CAROLINA ENVIRONMENTAL
2 PROTECTION LAWS TO PROVIDE ENHANCED PROTECTION FOR
3 WETLANDS.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 143-211 reads as rewritten:

7 "**§ 143-211. Declaration of public policy.**

8 It is hereby declared to be the public policy of this State to provide for the
9 conservation of its water and air resources. Furthermore, it is the intent of the General
10 Assembly, within the context of this Article and Articles 21A and 21B of this Chapter,
11 to achieve and to maintain for the citizens of the State a total environment of superior
12 quality. Recognizing that the water and air resources of the State belong to the people,
13 the General Assembly affirms the State's ultimate responsibility for the preservation and
14 development of these resources in the best interest of all its citizens and declares the
15 prudent utilization of these resources to be essential to the general welfare. It is the
16 purpose of this Article to create an agency which shall administer a program of water
17 and air pollution control and water resource management. It is the intent of the General
18 Assembly, through the duties and powers defined herein, to confer such authority upon
19 the Department of Environment, Health, and Natural Resources as shall be necessary to
20 administer a complete program of water and air conservation, pollution abatement and
21 control and to achieve a coordinated effort of pollution abatement and control with other
22 jurisdictions. Standards of water and air purity shall be designed to protect human
23 health, to prevent injury to plant and animal life, to prevent damage to public and

1 private property, to insure the continued enjoyment of the natural attractions of the
2 State, to encourage the expansion of employment opportunities, to provide a permanent
3 foundation for healthy industrial development and to secure for the people of North
4 Carolina, now and in the future, the beneficial uses of these great natural resources. The
5 General Assembly recognizes that North Carolina's wetlands are a valuable and
6 productive State resource. It is the intent of the General Assembly that the
7 Environmental Management Commission and the Department of Environment, Health,
8 and Natural Resources exercise their powers and duties under this Article to protect and
9 manage wetlands so as to promote the State's goal of no net loss of wetlands, as defined
10 by acreage and ecological function. It is the intent of the General Assembly that the
11 powers and duties of the Environmental Management Commission and the Department
12 of Environment, Health, and Natural Resources be construed so as to enable the
13 Department and the Commission to qualify to administer federally mandated programs
14 of environmental management and to qualify to accept and administer funds from the
15 federal government for such programs."

16 Sec. 2. G.S. 143-212 reads as rewritten:

17 **"§ 143-212. Definitions applicable to Article.**

18 The following definitions apply to this Article:

- 19 (1) 'Area of the State' means a municipality, a county, a portion of a
20 county or a municipality, or other substantial geographic area of the
21 State designated by the Commission.
- 22 (2) 'Commission' means the North Carolina Environmental Management
23 Commission.
- 24 (3) 'Department' means the Department of Environment, Health, and
25 Natural Resources.
- 26 (4) 'Person' includes individuals, firms, partnerships, associations,
27 institutions, corporations, municipalities and other political
28 subdivisions, and governmental agencies.
- 29 (5) 'Secretary' means the Secretary of the Department of Environment,
30 Health, and Natural Resources.
- 31 (6) 'Waters' means any stream, river, brook, swamp, wetland, lake, sound,
32 tidal estuary, bay, creek, reservoir, waterway, or other body or
33 accumulation of water, whether surface or underground, public or
34 private, or natural or artificial, that is contained in, flows through, or
35 borders upon any portion of this State, including any portion of the
36 Atlantic Ocean over which the State has jurisdiction.
- 37 (7) 'Wetland' means those areas that have a predominance of hydric soils
38 and are inundated or saturated by surface or ground water at a
39 frequency and duration sufficient to support, and under normal
40 circumstances do support, a prevalence of vegetation typically adapted
41 for life in saturated soil conditions."

42 Sec. 3. Article 21 of Chapter 143 of the General Statutes is amended by
43 adding a new section to read:

1 **"§ 143-214.1A. Wetlands, State Wetland Conservation Plan, wetlands**
2 **classifications, standards, duties of the Commission.**

3 (a) In addition to powers and duties assigned in G.S. 143-214.1, the Commission
4 is directed and empowered to adopt and implement a State Wetlands Conservation Plan
5 to meet the State goal of no net loss of wetland ecological functions. The Commission
6 shall provide a copy of the plan to the General Assembly by April 15, 1992, and report
7 annually to the legislature on progress in plan implementation.

8 (b) The Commission shall develop and adopt rules implementing the plan
9 pursuant to existing State water quality laws and section 401 of the federal Clean Water
10 Act. All rules adopted by the Commission pursuant to this section shall be adopted in
11 accordance with the provisions of Chapter 150B of the General Statutes."

12 Sec. 4. G.S. 113A-113 is rewritten to read:

13 **"§ 113A-113. Areas of environmental concern; in general.**

14 (a) The Coastal Resources Commission shall by rule designate geographic areas
15 of the coastal area as areas of environmental concern and specify the boundaries thereof,
16 in the manner provided in this Part.

17 (b) The Commission may designate as areas of environmental concern any one or
18 more of the following, singly or in combination:

19 (1) ~~Coastal wetlands, Wetlands,~~ as defined in ~~G.S. 113-229(n)(3)~~ G.S. 143-
20 212(7), and contiguous areas necessary to protect those wetlands;

21 (2) Estuarine waters, that is, all the water of the Atlantic Ocean within the
22 boundary of North Carolina and all the waters of the bays, sounds,
23 rivers, and tributaries thereto seaward of the dividing line between
24 coastal fishing waters and inland fishing waters, as set forth in the
25 most recent official published agreement adopted by the Wildlife
26 Resources Commission and the Department of Environment, Health,
27 and Natural Resources;

28 (3) Renewable resource areas where uncontrolled or incompatible
29 development which results in the loss or reduction of continued long-
30 range productivity could jeopardize future water, food or fiber
31 requirements of more than local concern, which may include:

32 a. Watersheds or aquifers that are present sources of public water
33 supply, as identified by the Department or the Environmental
34 Management Commission, or that are classified for water-
35 supply use pursuant to G.S. 143-214.1;

36 b. Capacity use areas that have been declared by the
37 Environmental Management Commission pursuant to G.S. 143-
38 215.13(c) and areas wherein said Environmental Management
39 Commission (pursuant to G.S. 143-215.3(d) or 143-215.3(a)(8))
40 has determined that a generalized condition of water depletion
41 or water or air pollution exists;

42 c. Prime forestry land (sites capable of producing 85 cubic feet per
43 acre-year, or more, of marketable timber), as identified by the
44 Department.

- 1 (4) Fragile or historic areas, and other areas containing environmental or
2 natural resources of more than local significance, where uncontrolled
3 or incompatible development could result in major or irreversible
4 damage to important historic, cultural, scientific or scenic values or
5 natural systems, which may include:
- 6 a. Existing national or State parks or forests, wilderness areas, the
7 State Nature and Historic Preserve, or public recreation areas;
8 existing sites that have been acquired for any of the same, as
9 identified by the Secretary; and proposed sites for any of the
10 same, as identified by the Secretary, provided that the proposed
11 site has been formally designated for acquisition by the
12 governmental agency having jurisdiction;
 - 13 b. Present sections of the natural and scenic rivers system;
 - 14 c. Stream segments that have been classified for scientific or
15 research uses by the Environmental Management Commission,
16 or that are proposed to be so classified in a proceeding that is
17 pending before said Environmental Management Commission
18 pursuant to G.S. 143-214.1 at the time of the designation of the
19 area of environmental concern;
 - 20 d. Existing wildlife refuges, preserves or management areas, and
21 proposed sites for the same, as identified by the Wildlife
22 Resources Commission, provided that the proposed site has
23 been formally designated for acquisition (as hereinafter defined)
24 or for inclusion in a cooperative agreement by the governmental
25 agency having jurisdiction;
 - 26 e. Complex natural areas surrounded by modified landscapes that
27 do not drastically alter the landscape, such as virgin forest
28 stands within a commercially managed forest, or bogs in an
29 urban complex;
 - 30 f. Areas that sustain remnant species or aberrations in the
31 landscape produced by natural forces, such as rare and
32 endangered botanical or animal species;
 - 33 g. Areas containing unique geological formations, as identified by
34 the State Geologist; and
 - 35 h. Historic places that are listed, or have been approved for listing
36 by the North Carolina Historical Commission, in the National
37 Register of Historic Places pursuant to the National Historic
38 Preservation Act of 1966; historical, archaeological, and other
39 places and properties owned, managed or assisted by the State
40 of North Carolina pursuant to Chapter 121; and properties or
41 areas that are or may be designated by the Secretary of the
42 Interior as registered natural landmarks or as national historic
43 landmarks;

- 1 (5) Areas such as waterways and lands under or flowed by tidal waters or
2 navigable waters, to which the public may have rights of access or
3 public trust rights, and areas which the State of North Carolina may be
4 authorized to preserve, conserve, or protect under Article XIV, Sec. 5
5 of the North Carolina Constitution;
- 6 (6) Natural-hazard areas where uncontrolled or incompatible development
7 could unreasonably endanger life or property, and other areas
8 especially vulnerable to erosion, flooding, or other adverse effects of
9 sand, wind and water, which may include:
- 10 a. Sand dunes along the Outer Banks;
- 11 b. Ocean and estuarine beaches and the shoreline of estuarine and
12 public trust waters;
- 13 c. Floodways and floodplains;
- 14 d. Areas where geologic and soil conditions are such that there is a
15 substantial possibility of excessive erosion or seismic activity,
16 as identified by the State Geologist;
- 17 e. Areas with a significant potential for air inversions, as
18 identified by the Environmental Management Commission.
- 19 (7) Areas which are or may be impacted by key facilities.
- 20 (8) Outstanding Resource Waters as designated by the Environmental
21 Management Commission and such contiguous land as the Coastal
22 Resources Commission reasonably deems necessary for the purpose of
23 maintaining the exceptional water quality and outstanding resource
24 values identified in the designation.
- 25 (9) Primary Nursery Areas as designated by the Marine Fisheries
26 Commission and such contiguous land as the Coastal Resources
27 Commission reasonably deems necessary to protect the resource
28 values identified in the designation including, but not limited to, those
29 values contributing to the continued productivity of estuarine and
30 marine fisheries and thereby promoting the public health, safety and
31 welfare.

32 (c) In those instances where subsection (b) of this section refers to locations
33 identified by a specified agency, said agency is hereby authorized to make the indicated
34 identification from time to time and is directed to transmit the identification to the
35 Commission; provided, however, that no designation of an area of environmental
36 concern based solely on an agency identification of a proposed location may remain
37 effective for longer than three years unless, in the case of paragraphs (4)a and d of
38 subsection (b) of this section, the proposed site has been at least seventy-five percent
39 (75%) acquired. Within the meaning of this section, 'formal designation for acquisition'
40 means designation in a formal resolution adopted by the governing body of the agency
41 having jurisdiction (or by its chief executive, if it has no governing body), together with
42 a direction in said resolution that the initial step in the land acquisition process be taken
43 (as by filing an application with the Department of Administration to acquire property
44 pursuant to G.S. 146-23).

- 1 (d) Additional grounds for designation of areas of environmental concern are
2 prohibited unless enacted into law by an act of the General Assembly."
3 Sec. 5. This act is effective upon ratification.