

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 900  
Committee Substitute Favorable 4/23/97

Short Title: Nitrogen Limit/Clean Water Fund Mod.

(Public)

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Sponsors:

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Referred to:

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April 8, 1997

A BILL TO BE ENTITLED

1 AN ACT TO IMPROVE THE WATER QUALITY OF THE SURFACE WATERS OF  
2 THIS STATE BY FURTHER LIMITING THE AMOUNT OF NITROGEN THAT  
3 CERTAIN LARGE FACILITIES DISCHARGE TO NUTRIENT SENSITIVE  
4 WATERS WHERE NITROGEN IS A NUTRIENT OF CONCERN, TO  
5 AUTHORIZE THE USE OF UP TO TWENTY-FIVE PERCENT OF THE FUNDS  
6 IN THE CLEAN WATER MANAGEMENT TRUST FUND FOR A PORTION OF  
7 THE COSTS TO LOCAL GOVERNMENTS OF MODIFYING EXISTING  
8 FACILITIES TO ACHIEVE FURTHER REDUCTIONS OF NITROGEN, AND TO  
9 AUTHORIZE THE USE OF THE CLEAN WATER MANAGEMENT TRUST  
10 FUND FOR LOANS.  
11

12 The General Assembly of North Carolina enacts:

13 Section 1. G.S. 143-215.1 is amended by adding two new subsections to read:

14 "(c1) Any person who is required to obtain an individual wastewater permit under  
15 this section for a facility discharging to the surface waters of the State that have been  
16 classified as nutrient sensitive waters under rules adopted by the Commission where the  
17 Commission has determined that nitrogen is a nutrient of concern shall not discharge  
18 more than an average annual mass load of total nitrogen than would result from a  
19 discharge of the permitted flow having a total nitrogen concentration of six milligrams of  
20 nitrogen per liter (6.0 mg/l). Permitted flow shall be determined as of 1 July 1997. If the

1 Commission determines that the assimilative capacity for nitrogen of a nutrient sensitive  
2 water body has been over-allocated, the Commission shall establish a maximum mass  
3 load for total nitrogen. The maximum mass load of total nitrogen for all wastewater  
4 discharges into a nutrient sensitive water body shall not exceed that required to meet the  
5 wastewater discharge allocation or the annual mass load for nitrogen based on the  
6 permitted flow and six milligrams of nitrogen per liter (6.0 mg/l) total nitrogen  
7 concentration, whichever is less. The maximum average annual mass load of total  
8 nitrogen established under this subsection applies only to:

9 (1) Facilities that were placed into operation prior to 1 July 1997 or for  
10 which an authorization to construct was issued prior to 1 July 1997 and  
11 that have a design capacity to discharge 500,000 gallons per day or  
12 more.

13 (2) Facilities for which an authorization to construct is issued on or after 1  
14 July 1997.

15 (c2) A person to which subsection (c1) of this section applies may meet the limits  
16 established under that subsection either individually or on the basis of a cooperative  
17 agreement with other persons who hold individual wastewater permits if the cooperative  
18 agreement is approved by the Commission. A person to which subsection (c1) of this  
19 section applies whose agreement to accept wastewater from another wastewater treatment  
20 facility that discharges into the same nutrient sensitive water body and that results in the  
21 elimination of the discharge from that wastewater treatment facility shall be allowed to  
22 increase the average annual mass load that person discharges by the average annual mass  
23 load of total nitrogen of the wastewater treatment that is eliminated. If the wastewater  
24 treatment facility that is eliminated has a permitted flow of less than 500,000 gallons per  
25 day, the average annual mass load of total nitrogen shall be calculated from the most  
26 recent available data. A person to whom this subsection applies shall comply with  
27 nitrogen discharge monitoring requirements established by the Commission. This  
28 average annual flow shall be assigned to the wastewater discharge allocation of the  
29 wastewater treatment facility that accepts the wastewater."

30 Section 2. G.S. 143-215.6A(a) is amended by adding a new subdivision to  
31 read:

32 "(10) Violates G.S. 143-215.1(c1) or a rule adopted pursuant to G.S. 143-  
33 215.1(c1)."

34 Section 3. G.S. 113-145.3 reads as rewritten:

35 **"§ 113-145.3. Clean Water Management Trust Fund: established.**

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

39 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the  
40 Fund separate and apart from all other moneys, funds, and accounts. Investment earnings  
41 credited to the assets of the Fund shall become part of the Fund. Any balance remaining  
42 in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next

1 succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chair  
2 of the Board of Trustees.

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

5 (1) To acquire land for riparian buffers for the purposes of providing  
6 environmental protection for surface waters and urban drinking water  
7 supplies and establishing a network of riparian greenways for  
8 environmental, educational, and recreational uses.

9 (2) To acquire conservation easements or other interests in real property for  
10 the purpose of protecting and conserving surface waters and urban  
11 drinking water supplies.

12 (3) To coordinate with other public programs involved with lands adjoining  
13 water bodies to gain the most public benefit while protecting and  
14 improving water quality.

15 (4) To restore previously degraded lands to reestablish their ability to  
16 protect water quality.

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

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

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

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

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

33 (10) To modify an existing permitted wastewater treatment facility that is  
34 owned or operated by a unit of local government and that is subject to  
35 G.S. 143-215.1(c1), if the facility has complied with G.S. 143-215.1(c1)  
36 and the project will enable the facility to achieve a nitrogen reduction  
37 greater than that required by G.S. 143-215.1(c1).

38 ~~(d) Limit on Operating and Administrative Expenses.~~ Limitations on Uses of Fund. –  
39 No more than two percent (2%) of the annual balance of the Fund on July 1 or a total sum  
40 of eight hundred fifty thousand dollars (\$850,000), whichever is less, may be used each  
41 fiscal year for administrative and operating expenses of the Board of Trustees and its  
42 staff. No more than twenty-five percent (25%) of the amount credited to the Fund during

1 the year ending 30 June shall be used as provided by subdivision (10) of subsection (c) of  
2 this section.

3 Section 4. G.S. 113-145.4 reads as rewritten:

4 "**§ 113-145.4. Clean Water Management Trust Fund: eligibility for ~~grants; loans or~~  
5 grants; grant matching funds or property requirement. funds; loan limit.**

6 (a) Eligible ~~Grant~~-Applicants. – Any of the following are eligible to apply for a  
7 loan or grant from the Fund for the purpose of protecting and enhancing water quality:

8 (1) A State agency.

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

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

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

21 (b1) Loan Limit. – The Board of Trustees shall establish requirements regarding  
22 limits on loans provided under this Article. The Board of Trustees may require that the  
23 maximum principal amount of a loan not exceed eighty percent (80%) of the nonfederal  
24 share of the costs of any eligible project or activity. This requirement may be satisfied by  
25 the donation of land to a public or private nonprofit conservation organization as  
26 approved by the Board of Trustees. The Board of Trustees may also waive the  
27 requirement to limit loans pursuant to guidelines adopted by the Board of Trustees.

28 (c) ~~Grants~~-Loans or Grants Not Available to Satisfy Compensatory Mitigation  
29 Requirements. – No loan and no grant shall be awarded-provided under this ~~article~~-Article  
30 to satisfy compensatory mitigation requirements under 33 ~~USC~~-U.S.C. § 1344 or  
31 G.S.143-214.11."

32 Section 5. G.S. 113-145.6 reads as rewritten:

33 "**§ 113-145.6. Clean Water Management Trust Fund Board of Trustees: powers and  
34 duties.**

35 (a) Allocate Loan and Grant Funds. – The Trustees shall allocate moneys from the  
36 Fund as loans or grants. A loan or grant may be awarded-provided only for a project or  
37 activity that satisfies the criteria and furthers the purposes of this Article.

38 (b) Develop ~~Grant~~-Criteria. – The Trustees shall develop criteria for ~~awarding~~  
39 providing loans and grants under this Article. The criteria developed shall include  
40 consideration of the following:

41 (1) The significant enhancement and conservation of water quality in the  
42 State.

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

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

15 (d) Acquisition of Land. – The Trustees may acquire land by purchase,  
16 negotiation, gift, or devise. Any acquisition of land by the Trustees must be reviewed and  
17 approved by the Council of State and the deed for the land subject to approval of the  
18 Attorney General before the acquisition can become effective. In determining whether to  
19 acquire land as permitted by this Article, the Trustees shall consider whether the  
20 acquisition furthers the purposes of this Article and may also consider recommendations  
21 from the Council. Nothing in this section shall allow the Trustees to acquire land under  
22 the right of eminent domain.

23 (e) Exchange of Land. – The Trustees may exchange any land they acquire in  
24 carrying out the powers conferred on the Trustees by this Article.

25 (f) Land Management. – The Trustees may designate managers or managing  
26 agencies of the lands acquired under this Article.

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

30 (h) Rule-making Authority. – The Trustees may adopt rules to implement this  
31 Article. Chapter 150B of the General Statutes applies to the adoption of rules by the  
32 Trustees.

33 (i) The Chair of the Board of Trustees of the Clean Water Management Trust  
34 Fund shall report to the Environmental Review Commission beginning November 1,  
35 1996, and annually thereafter on implementation of this section. A written copy of the  
36 report shall also be sent to the Fiscal Research Division of the General Assembly  
37 beginning November 1, 1996, and annually thereafter on implementation of this section."

38 Section 6. By 1 November 1997, the Environmental Management Commission  
39 shall develop a schedule of dates between 1 November 1997, and 1 January 2005, by  
40 which existing facilities must comply with G.S. 143-215.1(c1), as enacted by Section 1 of  
41 this act. The schedule of compliance dates shall follow as closely as possible the dates on  
42 which permits for existing facilities must be renewed. New facilities and expansions of  
43 existing facilities for which an application for a permit is received by the Department of

1 Environment, Health, and Natural Resources on behalf of the Environmental  
2 Management Commission prior to the date this act becomes effective shall be treated as  
3 existing facilities.

4           Section 7. This act is effective when it becomes law.