

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1049

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/27/99

Finance Committee Substitute #2 Adopted 5/20/99

Short Title: Neuse River Buffer Amends.

(Public)

Sponsors:

Referred to:

April 15, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND AND CODIFY THE LAW THAT PROVIDES FOR
3 COMPENSATORY MITIGATION AS AN ALTERNATIVE TO THE
4 MAINTENANCE OF RIPARIAN BUFFERS AND THAT AUTHORIZES THE
5 ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE
6 RESPONSIBILITY FOR THE IMPLEMENTATION AND ENFORCEMENT OF
7 THE STATE'S RIPARIAN BUFFER PROTECTION REQUIREMENTS TO
8 LOCAL GOVERNMENTS, AS RECOMMENDED BY THE NEUSE RIVER
9 BUFFER RULES STAKEHOLDER ADVISORY COMMITTEE AND
10 REQUESTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION.

Whereas, in 1996 the General Assembly established a goal to reduce the average annual load of nitrogen delivered from point and nonpoint sources to the Neuse River Estuary by a minimum of thirty percent (30%) of the average load for the period 1991 through 1995 by the year 2001 and directed the Environmental Management Commission to develop and adopt a plan to achieve this goal; and

Whereas, in 1997 the General Assembly directed the Environmental Management Commission to develop and implement a basinwide water quality plan for each of the State's 17 major river basins; and

Whereas, in 1997, in response to these legislative mandates, the Environmental Management Commission adopted a Neuse River Nutrient Sensitive Waters Management Strategy as temporary and permanent rules and adopted revisions to these rules in 1998; and

Whereas, in 1998 the General Assembly enacted legislation to disapprove 15A NCAC 2B.0233 (Neuse River Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation) as a permanent rule while continuing this rule in effect as a temporary rule with certain modifications until the Environmental Management Commission adopted a revised temporary and permanent rule; and

Whereas, the 1998 legislation established a Stakeholder Advisory Committee to assist the Environmental Management Commission with the development of (i) a revised temporary rule, (ii) rules and recommended legislation to provide for compensatory mitigation as an alternative to the maintenance of riparian buffers, and (iii) rules and recommended legislation to authorize the Environmental Management Commission to delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements to local governments; and

Whereas, the Stakeholder Advisory Committee, after many hours of work, submitted a report and recommendations to the Environmental Management Commission; and

Whereas, that report included recommended legislation pertaining to compensatory mitigation and delegation to local governments; and

Whereas, at its meeting on 8 April 1999, the Environmental Management Commission accepted these recommendations and forwarded them to the Environmental Review Commission; Now, therefore,

1 The General Assembly of North Carolina enacts:

2 Section 1. Part 1 of Article 21 of Chapter 143 of the General Statutes is
3 amended by adding two new sections to read:

4 "**§ 143-214.20. Riparian Buffer Protection Program: Alternatives to maintaining**
5 **riparian buffers; compensatory mitigation fees.**

6 (a) The Commission shall establish a program to provide alternatives for persons
7 who would otherwise be required to maintain riparian buffers and who can demonstrate
8 that they have attempted to avoid and minimize the loss of the riparian buffer and that
9 there is no practical alternative to the loss of the buffer. This program is intended to
10 allow these persons to perform compensatory mitigation in lieu of complying with laws
11 and rules that require that riparian buffers be protected and maintained. Alternatives shall
12 include, but are not limited to:

13 (1) Payment of a compensatory mitigation fee into the Riparian Buffer
14 Restoration Fund.

15 (2) Donation of real property or of an interest in real property to the
16 Department, another State agency, a unit of local government, or a
17 private nonprofit conservation organization if both the donee
18 organization and the donated real property or interest in real property
19 are approved by the Department. The Department may approve a donee

1 organization only if the donee agrees to maintain the real property or
2 interest in real property as a riparian buffer. The Department may
3 approve a donation of real property or an interest in real property only if
4 the real property or interest in real property either:

5 a. Is a riparian buffer that will provide protection of water quality
6 that is equivalent to or greater than that provided by the riparian
7 buffer that is lost in the same river basin as the riparian buffer
8 that is lost; or

9 b. Will be used to restore, create, enhance, or maintain a riparian
10 buffer that will provide protection of water quality that is
11 equivalent to or greater than that provided by the riparian buffer
12 that is lost in the same river basin as the riparian buffer that is
13 lost.

14 (3) Restoration or enhancement of an existing riparian buffer that is not
15 otherwise required to be protected, or creation of a new riparian buffer,
16 that will provide protection of water quality that is equivalent to or
17 greater than that provided by the riparian buffer that is lost in the same
18 river basin as the riparian buffer that is lost and that is approved by the
19 Department.

20 (4) Construction of an alternative measure that reduces nutrient loading as
21 well or better than the riparian buffer that is lost in the same river basin
22 as the riparian buffer that is lost and that is approved by the Department.

23 (b) Compensatory mitigation is available for loss of a riparian buffer along an
24 intermittent stream, a perennial stream, or a perennial waterbody.

25 (c) The Commission shall establish a standard schedule of compensatory
26 mitigation fees. The compensatory mitigation fee schedule shall be based on the area of
27 the riparian buffer that is permitted to be lost and the cost to provide equivalent or greater
28 protection of water quality in the same river basin as that provided by the riparian buffer
29 this is lost by:

30 (1) Restoration or enhancement of existing riparian buffers.

31 (2) Acquisition of land for and creation of new riparian buffers.

32 (3) Maintenance and monitoring of restored, enhanced, or created riparian
33 buffers over time.

34 (4) Construction of alternative measures that reduce nutrient loading.

35 (d) The Commission may adopt rules to implement this section.

36 "**§ 143-215.23. Riparian Buffer Protection Program: Delegation of riparian buffer**
37 **protection requirements to local governments.**

38 (a) The Commission may delegate responsibility for the implementation and
39 enforcement of the State's riparian buffer protection requirements to units of local
40 government that have the power to regulate land use. A delegation under this section
41 shall not affect the jurisdiction of the Commission over State agencies and units of local
42 government. Any unit of local government that has the power to regulate land use may
43 request that responsibility for the implementation and enforcement of the State's riparian

1 buffer protection requirements be delegated to the unit of local government. To this end,
2 units of local government may adopt ordinances and regulations necessary to establish
3 and enforce the State's riparian buffer protection requirements.

4 (b) Within 90 days after the Commission receives a complete application
5 requesting delegation of responsibility for the implementation and enforcement of the
6 State's riparian buffer protection requirement, the Commission shall review the
7 application and notify the unit of local government that submitted the application whether
8 the application has been approved, approved with modifications, or disapproved. The
9 Commission shall not approve a delegation unless the Commission finds that local
10 implementation and enforcement of the State's riparian buffer protection requirements
11 will equal implementation and enforcement by the State.

12 (c) If the Commission determines that a unit of local government is failing to
13 implement or enforce the State's riparian buffer protection requirements, the Commission
14 shall notify the unit of local government in writing and shall specify the deficiencies in
15 implementation and enforcement. If the local government has not corrected the
16 deficiencies within 90 days after the unit of local government receives the notification,
17 the Commission shall rescind delegation and shall implement and enforce the State's
18 riparian buffer protection program. If the unit of local government indicates that it is
19 willing and able to resume implementation and enforcement of the State's riparian buffer
20 protection requirements, the unit of local government may reapply for delegation under
21 this section.

22 (d) The Department shall provide technical assistance to units of local government
23 in the development, implementation, and enforcement of the State's riparian buffer
24 protection requirements.

25 (e) The Department shall provide a stream identification training program to train
26 individuals to determine the existence of surface water for purposes of rules adopted by
27 the Commission for the protection and maintenance of riparian buffers. The Department
28 may charge a fee to cover the full cost of the training program. No fee shall be charged
29 to an employee of the State who attends the training program in connection with the
30 employee's official duties.

31 (f) The Commission may adopt rules to implement this section."

32 Section 2. G.S. 143-214.21 reads as rewritten:

33 **"§ 143-214.21. Riparian Buffer Protection Program: Riparian Buffer Restoration**
34 **Fund.**

35 The Riparian Buffer Restoration Fund is established as a nonreverting fund within the
36 Department. The Fund shall be treated as a special trust fund and shall be credited with
37 interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Riparian
38 Buffer Restoration Fund shall provide a repository for monetary contributions to promote
39 projects for the restoration, enhancement, or creation of riparian buffers or to construct
40 approved alternative measures that reduce nutrient loading as well or better than the
41 riparian buffer that is lost and for compensatory mitigation fees paid to the Department.
42 The Fund shall be administered by the Division of Water Quality within the Department.
43 ~~Monies~~ ~~[Moneys]~~ ~~Moneys~~ shall be expended from the Fund only for those purposes

1 directly related to the restoration, acquisition, creation, enhancement, and maintenance of
2 riparian buffers or to construct approved alternative measures that reduce nutrient loading
3 as well or better than the riparian buffer that is lost to offset the benefits to water quality,
4 including the removal of nutrients, lost through the loss of buffers. Compensatory
5 mitigation fees paid into the Fund in connection with the loss of riparian buffers in a river
6 basin and the interest earned on those fees may be used only for projects in that river
7 basin."

8 Section 3. The catch line to G.S. 143-214.22 reads as rewritten:

9 "**§ 143-214.22. Riparian Buffer Protection Program: Department may accept**
10 **donations of real property.**"

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