

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 260*
Committee Substitute Favorable 4/8/97

Short Title: Conservation Easements/Tax Credit.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A CONSERVATION EASEMENTS PROGRAM THAT
3 USES CONSERVATION TAX CREDITS FOR THE PROTECTION OF NATURAL
4 RESOURCES AND THAT FURTHERS APPROPRIATE PUBLIC USE OF
5 NATURAL RESOURCES, TO CREATE THE FACILITATION AND
6 ASSISTANCE GRANT FUND TO SUPPORT COOPERATIVE CONSERVATION
7 EFFORTS, AND TO INCREASE THE CAP ON THE INCOME TAX CREDIT FOR
8 REAL PROPERTY DONATED FOR CONSERVATION PURPOSES, AS
9 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

10 The General Assembly of North Carolina enacts:

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

13 **“ARTICLE 16.**

14 **“CONSERVATION EASEMENTS PROGRAM.**

15 **“§ 113A-230. Legislative findings; intent.**

16 The General Assembly finds that past efforts to protect natural resources and to
17 provide for the appropriate public use of natural resources through the provision of
18 income tax credits for the donation of real property interests is fiscally prudent but too
19 limited to meet increasing needs. The General Assembly finds that a statewide network

1 of protected riparian buffers and greenways can best be accomplished through a
2 conservation easements program that entails the cooperative effort of all levels of
3 government, nonprofit organizations, and individuals. It is clear that a more
4 comprehensive approach is required to accomplish riparian buffers and greenways, as
5 well as this program's other conservation purposes, than was previously envisioned and
6 set in place. Other public conservation and use programs, such as natural area protection,
7 beach access, trail systems, historic landscape protection, and agricultural preservation,
8 also can benefit from increased attention and improved conservation tools. Recognizing
9 that flexibility is essential to the success of this effort, the conservation easements
10 program utilizes a broad range of nonregulatory approaches and involves all interested
11 parties in its activities. Because public understanding and acceptance is crucial to a
12 nonregulatory program, activities include education about the purpose of and methods for
13 conservation, as well as opportunities to use such knowledge through involvement in
14 efforts to conserve ecological systems. Potential exists to accomplish multiple public
15 purposes on conserved lands, and every reasonable effort should be made to
16 accommodate compatible uses without diminishing their natural resource value. In those
17 cases where potential conservation lands have been previously degraded, partnerships
18 should be sought to restore these lands so that they again will serve a viable role in the
19 ecological system. The General Assembly intends to extend the ability of the Department
20 of Environment, Health, and Natural Resources to achieve these purposes and to
21 strengthen the capability of private nonprofit land trusts to participate in land and water
22 conservation.

23 **"§ 113A-231. Duties of the Department.**

24 The Department of Environment, Health, and Natural Resources shall develop a
25 nonregulatory program that uses conservation tax credits as a prominent tool to
26 accomplish conservation purposes, including the maintenance of ecological systems. The
27 Secretary of Environment, Health, and Natural Resources shall:

- 28 (1) Adopt a plan guiding efforts to educate involved parties, focus on
29 attainable conservation objectives, and achieve ecological benefits for
30 the State.
- 31 (2) Set goals for education and communication designed to reach the
32 broadest and most involved audience so that the conservation tax credit
33 may develop into a significant tool for environmental protection and for
34 furthering appropriate public use of natural resources.
- 35 (3) Adopt guidelines, criteria, and rules for program operation to ensure
36 maximum effectiveness and long-term efficiency.
- 37 (4) Award grants and execute contracts and other agreements as necessary
38 to conduct the nonregulatory program and achieve its goals.
- 39 (5) Facilitate acquisition through donation and facilitate the holding and the
40 transferring of interests in land necessary to establish a network of
41 riparian buffers and greenways, as well as natural areas and other
42 conservation benefits.

- 1 (6) Facilitate acceptance of donations that are eligible for tax credits under
2 G.S. 105-130.34 or G.S. 105-151.12 or that constitute a charitable
3 deduction under federal or State law.
- 4 (7) Cooperate with federal, State, or local government agencies, nonprofit
5 organizations, corporations, and individuals.
- 6 (8) Involve professional associations, business leagues, community groups,
7 and other volunteer groups in program activities.
- 8 (9) Facilitate public education regarding the function and importance of
9 ecological systems and the methods available for their protection.
- 10 (10) Coordinate with other programs involved with the conservation of lands
11 and waters to gain the most public benefit while protecting the
12 environment.
- 13 (11) Pursue cooperative efforts to restore previously degraded lands brought
14 under the public trust to reestablish their ecological function.

15 **"§ 113A-232. Facilitation and Assistance Grant Fund.**

16 (a) Fund Created. – The Facilitation and Assistance Grant Fund is created. The
17 Fund shall be administered by the Department of Environment, Health, and Natural
18 Resources to stipulate use of the conservation easements for other conservation purposes,
19 to improve the capacity of private nonprofit land trusts to successfully accomplish
20 conservation projects, to better equip real estate related professionals to pursue
21 opportunities for conservation, to increase citizen participation in land and water
22 conservation, and to provide an opportunity to leverage private and other public monies
23 for conservation easements.

24 (b) Fund Sources. – The Facilitation and Assistance Grant Fund shall consist of
25 any monies appropriated to it by the General Assembly and any monies received from
26 public or private sources. Unexpended monies in the Fund that were appropriated from
27 the General Fund by the General Assembly shall revert at the end of the biennium unless
28 the General Assembly otherwise provides. Unexpended monies in the Fund from other
29 sources shall not revert and shall remain available until such time as they are expended
30 consistent with this Article.

31 (c) Administration of Fund. – The Secretary of Environment, Health, and Natural
32 Resources shall adopt rules that set forth the process for awarding grants and
33 administering the Facilitation and Assistance Grant Fund, using the best available
34 information to focus grants activity on those areas, approaches, and techniques that are
35 likely to provide the optimum positive effect on environmental protection. The Secretary
36 may contract for administrative services to assist in administering the program under this
37 Article.

38 (d) Eligibility. – In order to be the subject of a grant under this Article, lands must
39 possess or have a high potential to possess ecological value, must be reasonably
40 restorable, and must qualify for tax credits under G.S. 105-151.12 and G.S. 105-130.34.
41 To be eligible to receive a grant under this Article, a grantee must be a private nonprofit
42 land trust organization that is organized to receive and administer lands for conservation
43 purposes and that is qualified to receive charitable contributions under the Code. For the

1 purposes of this subsection, the term 'Code' has the same meaning as defined in G.S.
2 105-228.90.

3 **"§ 113A-233. Uses of the Facilitation and Assistance Grant Fund.**

4 (a) The Facilitation and Assistance Grant Fund shall be used to pay costs
5 reasonably necessary to administer the grants program. After these administrative costs
6 are paid, the Fund may be used for:

7 (1) Reimbursement for total or partial transaction costs for donations from
8 individuals or corporations satisfying either of the following:

9 a. Insufficient financial ability to pay all costs or insufficient
10 taxable income to allow these costs to be included in the donated
11 value.

12 b. Insufficient tax burdens to allow these costs to be offset by the
13 value of tax credits under G.S. 105-130.34 or G.S. 105-151.12 or
14 by charitable deductions.

15 (2) Management support, including initial baseline inventory and planning.

16 (3) Monitoring compliance with conservation easements; the related use of
17 riparian buffers, natural areas, and greenways; and the presence of
18 ecological integrity.

19 (4) Education, including information materials intended for landowners and
20 education for staff and volunteers.

21 (5) Direct stewardship and stewardship as provided in subsection (b) of this
22 section.

23 (6) Transaction costs, including legal expenses, closing and title costs, and
24 unusual direct costs, such as overnight travel.

25 (7) Administrative costs for short-term growth or for building capacity.

26 (b) The Secretary may allocate up to ten percent (10%) of available funds after
27 reasonably necessary administrative costs have been paid to a protected endowment
28 account, the interest from which shall be available to accomplish the ongoing activities
29 provided in subdivisions (3) and (5) of subsection (a) of this section.

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

31 **"§ 113A-234. Administration of grants.**

32 (a) The Department of Environment, Health, and Natural Resources may
33 administer the grants under this Article or may contract for selected activities under this
34 Article. If administrative services are contracted, the Department shall establish guidance
35 and criteria for its operation and contract with a statewide nonprofit land trust service
36 organization.

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

40 (1) Application and award frequency.

41 (2) Organizational capability of the grantees.

42 (3) Viability of the donor.

43 (4) Location of the natural resources.

- 1 (5) Ecological and conservation value.
- 2 (6) Legal parameters of protective instruments.
- 3 (7) Procedural considerations.
- 4 (8) Management policies.
- 5 (9) Stewardship expectations.
- 6 (10) Requirements for matching funds.

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

10 **"§ 113A-235. Conservation easements.**

11 Ecological systems and appropriate public use of these systems may be protected
12 through conservation easements, including conservation agreements under Article 4 of
13 Chapter 121 of the General Statutes, the Conservation and Historic Preservation
14 Agreements Act. A conservation easement or conservation agreement secured with
15 assistance from the Facilitation and Assistance Grant Fund shall provide that all rights
16 under the easement or conservation agreement may be transferred to the Department of
17 Environment, Health and Natural Resources. As a condition of receiving funds under
18 this Article, the holder of the conservation easement or conservation agreement shall
19 grant to the Department of Environment, Health, and Natural Resources, as trustee for the
20 State, a first right of refusal to acquire all rights in the conservation easement or
21 conservation agreement under such terms and conditions as agreed to between the holder
22 of the conservation easement or conservation agreement and the Department of
23 Environment, Health and Natural Resources. Any holder of a conservation easement or
24 conservation agreement secured under this Article shall assume responsibility for the
25 management of the protected interests created by the easement. The Department of
26 Environment, Health, and Natural Resources shall work cooperatively with State and
27 local agencies and qualified nonprofit organizations to monitor compliance with
28 conservation easements and conservation agreements and to ensure the continued
29 viability of the protected ecosystems."

30 Section 2. G.S. 105-130.34 reads as rewritten:

31 **"§ 105-130.34. Credit for certain real property donations.**

32 (a) Any corporation that makes a qualified donation of an interest in real property
33 located in North Carolina during the taxable year that is useful for public beach access or
34 use, public access to public waters or trails, fish and wildlife conservation, or other
35 similar land conservation purposes, ~~shall be~~ is allowed a credit against the ~~taxes~~ tax
36 imposed by this Division equal to twenty-five percent (25%) of the fair market value of
37 the donated property interest. To be eligible for this credit, the interest in real property
38 must be donated to and accepted by either the State, ~~local government~~ a local government,
39 or a body that is both organized to receive and administer lands for conservation purposes
40 and ~~is~~ qualified to receive charitable contributions pursuant to G.S. ~~105-130.9~~; provided,
41 ~~however, that lands~~ 105-130.9. Lands required to be dedicated pursuant to local
42 governmental regulation or ordinance and dedications made to increase building density
43 levels permitted under ~~such regulations or ordinances~~ shall not be the regulation or ordinance

1 are not eligible for this credit. The credit allowed under this section may not exceed
2 ~~twenty-five thousand dollars (\$25,000).~~ two hundred fifty thousand dollars (\$250,000). To
3 support the credit allowed by this section, the taxpayer shall file with its income tax
4 return for the taxable year in which the credit is claimed, a certification by the
5 Department of Environment, Health, and Natural Resources that the property donated is
6 suitable for one or more of the valid public benefits set forth in this subsection.

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

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

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

17 Section 3. G.S. 105-151.12 reads as rewritten:

18 **"§ 105-151.12. Credit for certain real property donations.**

19 (a) A person who makes a qualified donation of ~~interests~~ an interest in real
20 property located in North Carolina during the taxable year that is useful for (i) public
21 beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife
22 conservation, or (iv) other similar land conservation purposes, ~~shall be~~ is allowed as a
23 credit against the tax imposed by this Division an amount equal to twenty-five percent
24 (25%) of the fair market value of the donated property interest. To be eligible for this
25 credit, the interest in property must be donated to and accepted by either the State, a local
26 government, or a body that is both organized to receive and administer lands for
27 conservation purposes and ~~is~~ qualified to receive charitable contributions under the ~~Code;~~
28 ~~provided, however, that lands~~ Code. Lands required to be dedicated pursuant to local
29 governmental regulation or ordinance and dedications made to increase building density
30 levels permitted under ~~such~~ the regulations or ordinances are not eligible for this credit.
31 The credit allowed under this section may not exceed ~~twenty-five thousand dollars~~
32 ~~(\$25,000).~~ one hundred thousand dollars (\$100,000). To support the credit allowed by
33 this section, the taxpayer shall file with the income tax return for the taxable year in
34 which the credit is claimed a certification by the Department of Environment, Health, and
35 Natural Resources that the property donated is suitable for one or more of the valid public
36 benefits set forth by this subsection.

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

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

42 (c) In order to claim the credit allowed under this section, the taxpayer must add
43 the fair market value of the donated property interest, up to a maximum of ~~one hundred~~

1 ~~thousand dollars (\$100,000),~~ four hundred thousand dollars (\$400,000), to taxable income
2 as provided in G.S. 105-134.6(c).

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

8 (e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-
9 205, the offer of donation must be made before December 31, 1998, to qualify for the
10 credit allowed by this section."

11 Section 4. G.S. 105-134.6(c)(5) reads as rewritten:

12 "(5) The fair market value, up to a maximum of ~~one hundred thousand dollars~~
13 ~~(\$100,000),~~ four hundred thousand dollars (\$400,000), of the donated
14 property interest for which the taxpayer claims a credit for the taxable
15 year under G.S. 105-151.12 and the market price of the gleaned crop for
16 which the taxpayer claims a credit for the taxable year under G.S. 105-
17 151.14."

18 Section 5. G.S. 105-287(a) reads as rewritten:

19 "(a) In a year in which a general reappraisal or horizontal adjustment of real
20 property in the county is not made, the assessor shall increase or decrease the appraised
21 value of real property, as determined under G.S. 105-286, ~~to~~ to accomplish any one or
22 more of the following:

23 (1) Correct a clerical or mathematical ~~error;~~ error.

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

27 (2a) Recognize changes in value resulting from agreements made pursuant to
28 Article 4 of Chapter 121 of the General Statutes, the Conservation and
29 Historic Preservation Agreements Act.

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

32 Section 6. G.S. 105-317(a) reads as rewritten:

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

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

- 1 (2) In determining the true value of a building or other improvement, to
2 consider at least its location; type of construction; age; replacement
3 cost; cost; adaptability for residence, commercial, industrial, or other
4 uses; past income; probable future income; and any other factors that
5 may affect its value.
6 (3) To appraise partially completed buildings in accordance with the degree
7 of completion on January 1."
8 Section 7. Sections 2 through 4 of this act are effective for taxable years
9 beginning on or after 1 January 1997. The remaining sections of this act become
10 effective 1 July 1997.