

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 381
PROPOSED COMMITTEE SUBSTITUTE S381-PCS15314-BR-3

Short Title: Reconstitute & Clarify Environmental Boards.

(Public)

Sponsors:

Referred to:

March 28, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO RECONSTITUTE THE CLEAN WATER MANAGEMENT TRUST FUND
3 BOARD OF TRUSTEES AND THE PARKS AND RECREATION AUTHORITY WHICH
4 WAS HELD TO HAVE UNCONSTITUTIONALLY APPOINTED MEMBERSHIP
5 PURSUANT TO MCCRORY V. BERGER AND COOPER V. BERGER AND TO
6 CLARIFY THE POWERS AND DUTIES OF THE CLEAN WATER MANAGEMENT
7 TRUST FUND.

8 The General Assembly of North Carolina enacts:

9
10 **CLEAN WATER MANAGEMENT TRUST FUND CLARIFICATIONS**

11 **SECTION 1.(a).** Part 41 of Article 2 of Chapter 143B of the General Statutes reads
12 as rewritten:

13 "Part 41. Clean Water Management Trust Fund.

14 **"§ 143B-135.230. Purpose.**

15 It is the intent of the General Assembly that moneys from the Fund created under this Part
16 shall be used to help finance projects that enhance or restore degraded surface waters; protect
17 and conserve surface waters, including drinking supplies, and contribute toward a network of
18 riparian buffers and greenways for environmental, educational, and recreational benefits; provide
19 buffers around military bases to protect the military mission; acquire land that represents the
20 ecological diversity of North Carolina; and acquire land that contributes to the development of a
21 balanced State program of historic properties.

22 **"§ 143B-135.232. Definitions.**

23 The following definitions apply in this Part:

- 24 (1) ~~Council.—The advisory council for the Clean Water Management Trust Fund.~~
25 (2) Fund. – The Clean Water Management Trust Fund created pursuant to this
26 Part.
27 (3) Land. – Real property and any interest in, easement in, or restriction on real
28 property.
29 (4) Local government unit. – Defined in G.S. 159G-20.
30 (5) Trustees. – The trustees of the Clean Water Management Trust Fund.

31 **"§ 143B-135.234. Clean Water Management Trust Fund.**

32 (a) Fund Established. – The Clean Water Management Trust Fund is established as a
33 special revenue fund to be administered by the Department of Natural and Cultural Resources.
34 The Clean Water Management Trust Fund shall also be known as the "Land and Water Fund."
35 The Fund receives revenue from the following sources and may receive revenue from other
36 sources:



* S 3 8 1 - P C S 1 5 3 1 4 - B R - 3 *

- 1 (1) Annual appropriations.
- 2 (2) Special registration plates under G.S. 20-81.12.
- 3 (3) Other special registration plates under G.S. 20-79.7.
- 4 (4) Hazard mitigation funds from the Federal Emergency Management Agency
- 5 and other agencies.
- 6 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund
- 7 separate and apart from all other moneys, funds, and accounts. Any balance remaining in the
- 8 Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding
- 9 fiscal year. Payments from the Fund shall be made on the warrant of the Chair of the Board of
- 10 Trustees.
- 11 (c) Fund Purposes. – Moneys from the Fund are appropriated annually to finance projects
- 12 to clean up or prevent surface water pollution and for land preservation in accordance with this
- 13 Part. Revenue in the Fund may be used for any of the following purposes:
- 14 (1) To acquire land for riparian buffers for the purposes of providing
- 15 environmental protection for surface waters ~~and urban~~ drinking water supplies
- 16 and establishing a network of riparian greenways for environmental,
- 17 educational, and recreational uses.
- 18 (2) To acquire conservation easements or other interests in real property for the
- 19 purpose of protecting and conserving surface waters and enhancing drinking
- 20 water supplies, including the development of water supply reservoirs.
- 21 (3) To coordinate with other public programs involved with lands adjoining water
- 22 bodies to gain the most public benefit while protecting and improving water
- 23 quality.
- 24 (4) To restore previously degraded lands to reestablish their ability to protect
- 25 water quality.
- 26 (5) To facilitate planning that targets reductions in surface water pollution.
- 27 (6) To finance innovative efforts, including pilot projects, to improve stormwater
- 28 management, to reduce pollutants entering the State's waterways, to improve
- 29 water quality, and to research alternative solutions to the State's water quality
- 30 problems.
- 31 (7) ~~To provide buffers around military bases or for State matching funds for the~~
- 32 ~~Readiness and Environmental Protection Initiative, a federal funding initiative~~
- 33 ~~that provides funds for military buffers.~~ To prevent encroachment, provide
- 34 buffers, and preserve natural habitats around military installations or military
- 35 training areas, or for State matching funds of federal initiatives that provide
- 36 funds to prevent encroachment, provide buffers, and preserve natural habitats
- 37 around military installations or military training areas. For the purposes of this
- 38 subdivision, "encroachment" shall mean the use of land, air, and water that is
- 39 incompatible with the military mission, such as urban and suburban sprawl,
- 40 around military installations or military training areas.
- 41 (8) To acquire land that represents the ecological diversity of North Carolina,
- 42 including natural features such as riverine, montane, coastal, and geologic
- 43 systems and other natural areas to ensure their preservation and conservation
- 44 for recreational, scientific, educational, cultural, and aesthetic purposes.
- 45 (9) To acquire land that contributes to the development of a balanced State
- 46 program of historic properties.
- 47 (10), (11) Repealed by Session Laws 2015-241, s. 14.4, effective July 1, 2015.
- 48 (12) To protect and restore floodplains and wetlands for the purpose of storing
- 49 water, reducing flooding, improving water quality, providing wildlife and
- 50 aquatic habitat, and providing recreational opportunities.
- 51 (d) Repealed by Session Laws 2015-241, s. 14.4, effective July 1, 2015.

"§ 143B-135.236. North Carolina Conservation Easement Endowment Fund.

(a) The North Carolina Conservation Easement Endowment Fund is established as a special fund in the Office of the State Treasurer. The principal of the Endowment Fund shall consist of a portion of grant funds transferred by the Trustees to the Endowment Fund from the Clean Water Management Trust Fund for stewardship activities related to projects for conservation easements funded from the Clean Water Management Trust Fund. The principal of the Endowment Fund may also consist of any proceeds of any gifts, grants, or contributions to the State that are specifically designated for inclusion in the Endowment Fund and any investment income that is not used in accordance with subsection (b) of this section. The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the endowment investment income only upon the written direction of the Chair of the Board of Trustees. No expenditure or disbursement shall be made from the principal of the Endowment Fund.

(b) The Trustees may authorize the disbursement of the endowment investment income only for activities related to stewardship of conservation easements owned by the State.

"§ 143B-135.238. Grant requirements.

(a) Eligible Applicants. – Any of the following are eligible to apply for a grant from the Fund for the purpose of protecting and enhancing water quality:

(1) A State agency.

(2) A local government unit.

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

(b) Criteria. – The criteria developed by the Trustees under G.S. 143B-135.242 apply to grants made under this Part.

(c) Matching Requirement. – The Board of Trustees shall establish matching requirements for grants awarded under this Part. This requirement may be satisfied by the donation of land to a public or private nonprofit conservation organization as approved by the Board of Trustees. The Board of Trustees may also waive the requirement to match a grant pursuant to guidelines adopted by the Board of Trustees.

(d) Restriction. – No grant shall be awarded under this Part to satisfy compensatory mitigation requirements under 33 USC § 1344 or G.S. 143-214.11.

(e) Withdrawal. – An award of a grant under this Part is withdrawn if the grant recipient fails to enter into a construction contract for the project within one year after the date of the award, unless the Trustees find that the applicant has good cause for the failure. If the Trustees find good cause for a recipient's failure, the Trustees must set a date by which the recipient must take action or forfeit the grant.

"§ 143B-135.240. Clean Water Management Trust Fund: Board of Trustees established; membership qualifications; vacancies; meetings and meeting facilities.

(a) Board of Trustees Established. – There is established the Clean Water Management Trust Fund Board of Trustees. The Clean Water Management Trust Fund Board of Trustees shall be administratively located within the Department of Natural and Cultural Resources.

(b) Membership. – The Clean Water Management Trust Fund Board of Trustees shall be composed of nine members appointed to three-year terms as follows:

(1) ~~One member~~ Two members appointed by the Governor to ~~a term~~ terms that ~~expires~~ expire on July 1 of years that precede by one year those years that are evenly divisible by three.

- 1 (2) ~~One member~~ Two members appointed by the Governor to ~~a term~~ terms that
2 ~~expires~~ expire on July 1 of years that follow by one year those years that are
3 evenly divisible by three.
- 4 (3) One member appointed by the Governor to a term that expires on July 1 of
5 years that are evenly divisible by three.
- 6 (4) One member appointed by the General Assembly upon the recommendation
7 of the President Pro Tempore of the Senate to a term that expires on July 1 of
8 years that precede by one year those years that are evenly divisible by three.
- 9 ~~(5)~~ ~~One member appointed by the General Assembly upon the recommendation~~
10 ~~of the President Pro Tempore of the Senate to a term that expires on July 1 of~~
11 ~~years that follow by one year those years that are evenly divisible by three.~~
- 12 ~~(6)~~(5) One member appointed by the General Assembly upon the recommendation
13 of the President Pro Tempore of the Senate to a term that expires on July 1 of
14 years that are evenly divisible by three.
- 15 ~~(7)~~ ~~One member appointed by the General Assembly upon the recommendation~~
16 ~~of the Speaker of the House of Representatives to a term that expires on July~~
17 ~~1 of years that precede by one year those years that are evenly divisible by~~
18 ~~three.~~
- 19 ~~(8)~~(6) One member appointed by the General Assembly upon the recommendation
20 of the Speaker of the House of Representatives to a term that expires on July
21 1 of years that follow by one year those years that are evenly divisible by three.
- 22 ~~(9)~~(7) One member appointed by the General Assembly upon the recommendation
23 of the Speaker of the House of Representatives to a term that expires on July
24 1 of years that are evenly divisible by three.

25 The initial terms of members appointed pursuant to subdivisions (2) and (6) of this subsection
26 shall expire July 1, 2020. The initial terms of members appointed pursuant to subdivisions (1)
27 and (4) of this subsection shall expire July 1, 2021. The initial terms of members appointed
28 pursuant to subdivisions (3), (5), and (7) of this subsection shall expire July 1, 2022.

29 (c) Qualifications. – The office of Trustee is declared to be an office that may be held
30 concurrently with any other executive or appointive office, under the authority of Article VI,
31 Section 9, of the North Carolina Constitution. When appointing members of the Authority, the
32 Governor, the President Pro Tempore of the Senate, and the Speaker of the House of
33 Representatives shall give consideration to adequate representation from the various regions of
34 the State and shall give consideration to the appointment of members who are knowledgeable in
35 any of the following areas:

- 36 (1) Acquisition and management of natural areas.
37 (2) Conservation and restoration of water quality.
38 (3) Wildlife and fisheries habitats and resources.
39 (4) Environmental management.
40 (5) Historic preservation.

41 (d) Limitation on Length of Service. – No member of the Board of Trustees shall serve
42 more than two consecutive three-year terms or a total of 10 years.

43 (e) Chair. – The Governor shall appoint one member to serve as Chair of the Board of
44 Trustees.

45 ~~(e1)~~ Removal. – Members of the Board of Trustees may be removed pursuant to
46 G.S. 143B-16.

47 (f) Vacancies. – An appointment to fill a vacancy on the Board of Trustees created by
48 the resignation, removal, disability, or death of a member shall be for the balance of the unexpired
49 term. Vacancies in appointments made by the General Assembly shall be filled as provided in
50 G.S. 120-122.

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

3 (h) Quorum. – A majority of the membership of the Board of Trustees constitutes a
4 quorum for the transaction of business.

5 (i) Per Diem and Expenses. – Each member of the Board of Trustees shall receive per
6 diem and necessary travel and subsistence expenses in accordance with the provisions of
7 G.S. 120-3.1, 138-5, and 138-6, as applicable. Per diem, subsistence, and travel expenses of the
8 Trustees shall be paid from the Fund.

9 **"§ 143B-135.242. Clean Water Management Trust Fund Board of Trustees: powers and**
10 **duties.**

11 (a) Allocate Grant Funds. – The Trustees shall allocate moneys from the Fund as grants.
12 A grant may be awarded only for a project or activity that satisfies the criteria and furthers the
13 purposes of this Part.

14 (b) Develop Grant Criteria. – The Trustees shall develop criteria for awarding grants
15 under this Part. The criteria developed shall include consideration of the following:

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

17 (2) The objectives of the various basinwide management plans for the State's river
18 basins and watersheds.

19 (2a) The objectives of basinwide integrated water management plans developed
20 and adopted at the regional level.

21 (3) The promotion of regional integrated ecological networks insofar as they
22 affect water quality.

23 (4) The specific areas targeted as being environmentally sensitive.

24 (5) The geographic distribution of funds as appropriate.

25 (6) The preservation of water resources with significant recreational or economic
26 value and uses.

27 (7) The development of a network of riparian buffer-greenways bordering and
28 connecting the State's waterways that will serve environmental, educational,
29 and recreational uses.

30 (8) Water supply availability and the public's need for resources adequate to meet
31 demand for essential water uses. Criteria developed pursuant to this
32 subdivision may include ~~consideration of the likelihood of a proposed water~~
33 ~~supply project ultimately being permitted and built.~~ the value of preserving
34 capacity by preventing sedimentation and nutrient pollution.

35 (9) The protection or preservation of land with outstanding natural or cultural
36 heritage values.

37 (10) The protection or preservation of land that contains a relatively undisturbed
38 and outstanding example of a native North Carolina ecological community
39 that is now uncommon; contains a major river or tributary, watershed,
40 wetland, significant littoral, estuarine, or aquatic site, or important geologic
41 feature; or represents a type of landscape, natural feature, or natural area that
42 is not currently in the State's inventory of parks and natural areas.

43 (11) The protection or preservation of a site or structure that is of such historical
44 significance as to be essential to the development of a balanced State program
45 of historic properties.

46 (12) The rate and likelihood of land-use change and development, where such data
47 is available.

48 (13) Priority shall be given to projects that are part of a comprehensive, long-term
49 land-use plan by a State agency, local government unit, or a nonprofit
50 corporation whose primary purpose is the conservation, preservation, or
51 restoration of the State's cultural, environmental, or natural resources.

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

3 (d) Acquisition of Land. – The Trustees may acquire land by purchase, negotiation, gift,
4 or devise. Any acquisition of land by the Trustees must be reviewed and approved by the Council
5 of State and the deed for the land subject to approval of the Attorney General before the
6 acquisition can become effective. In determining whether to acquire land as permitted by this
7 Part, the Trustees shall consider whether the acquisition furthers the purposes of this Part and
8 ~~may also consider recommendations from the Council.~~ Part. Nothing in this section shall allow
9 the Trustees to acquire land under the right of eminent domain.

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

12 (f) Land Management. – The Trustees may designate managers or managing agencies of
13 the lands acquired under this Part.

14 (g) Rule-making Authority. – The Trustees may adopt rules to implement this Part.
15 Chapter 150B of the General Statutes applies to the adoption of rules by the Trustees.

16 **"§ 143B-135.244. Clean Water Management Trust Fund: reporting requirement.**

17 The Chair of the Board of Trustees shall report no later than December 1 each year to the
18 Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the
19 Environmental Review Commission, the Subcommittees of the House of Representatives and
20 Senate Appropriations Committees with jurisdiction over natural and economic resources, and
21 the Fiscal Research Division of the General Assembly regarding the implementation of this Part.
22 The report shall include a list of the projects awarded grants from the Fund for the previous
23 12-month period. The list shall include for each project a description of the project, the amount
24 of the grant awarded for the project, and the total cost of the project.

25 **"§ 143B-135.246. Clean Water Management Trust Fund: Executive Director and staff.**

26 The Secretary of Natural and Cultural Resources shall select and appoint a competent person
27 in accordance with this section as Executive Director of the Clean Water Management Trust
28 Fund Board of Trustees. The Executive Director shall be charged with the supervision of all
29 activities under the jurisdiction of the Trustees and shall serve as the chief administrative officer
30 of the Trustees. Subject to the approval of the Secretary of Natural and Cultural Resources, the
31 Executive Director may employ such clerical and other assistants as may be deemed necessary.

32 The person selected as Executive Director shall have had training and experience in
33 conservation, protection, and management of surface water resources. The salary of the
34 Executive Director shall be fixed by the Secretary of Natural and Cultural Resources, and the
35 Executive Director shall be allowed travel and subsistence expenses in accordance with
36 G.S. 138-6. The Executive Director's salary and expenses shall be paid from the Fund. The term
37 of office of the Executive Director shall be at the pleasure of the Secretary of Natural and Cultural
38 Resources.

39 ~~These employees shall be exempt from the North Carolina Human Resources Act, as
40 provided in G.S. 126-5(c1).~~

41 ~~**"§ 143B-135.248. Clean Water Management Trust Fund: Advisory Council.**~~

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

- 45 (1) ~~Commissioner of Agriculture.~~
- 46 (2) ~~Chair of the Wildlife Resources Commission.~~
- 47 (3) ~~Secretary of Environmental Quality.~~
- 48 (4) ~~Secretary of the Department of Commerce.~~
- 49 (5) ~~Secretary of Natural and Cultural Resources."~~

50 **SECTION 1.(b).** G.S. 126-5(c1)(21) is repealed.

51 **SECTION 1.(c).** G.S. 20-79.7(b) reads as rewritten:

1 "(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and
2 Cultural Attraction Plate Account are established within the Highway Fund. The Division must
3 credit the additional fee imposed for the special registration plates listed in subsection (a) of this
4 section among the Special Registration Plate Account (SRPA), the Collegiate and Cultural
5 Attraction Plate Account (CCAPA), the Clean Water Management Trust Fund (CWMTF), which
6 is established under ~~G.S. 113A-253~~, ~~G.S. 143B-135.234~~, and the Parks and Recreation Trust
7 Fund, which is established under ~~G.S. 113-44.15~~, ~~G.S. 143B-135.56~~ as follows:

8 "

9 **SECTION 1.(d).** Chapter 159I of the General Statutes is repealed.

10 **SECTION 1.(e).** The Chair of the Board of Trustees shall report to the Joint
11 Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the
12 Environmental Review Commission, the Subcommittees of the House of Representatives and
13 Senate Appropriations Committees with jurisdiction over natural and economic resources, and
14 the Fiscal Research Division of the General Assembly regarding the implementation of Section
15 1.(a) of this act no later than July 1, 2020.

16 17 **NORTH CAROLINA PARKS AND RECREATION AUTHORITY RECONSTITUTION**

18 **SECTION 2.** G.S. 143B-135.202 reads as rewritten:

19 "**§ 143B-135.202. North Carolina Parks and Recreation Authority; members; selection;**
20 **compensation; meetings.**

21 (a) Membership. – The North Carolina Parks and Recreation Authority shall consist of
22 nine members. The members shall include persons who are knowledgeable about park and
23 recreation issues in North Carolina or with expertise in finance. In making appointments, each
24 appointing authority shall specify under which subdivision of this subsection the person is
25 appointed. Members shall be appointed as follows:

26 (1) One member appointed by the Governor.

27 (2) One member appointed by the Governor.

28 (3) One member appointed by the Governor.

29 (4) One member appointed by the ~~General Assembly upon the recommendation~~
30 ~~of the Speaker of the House of Representatives, as provided in G.S.~~
31 ~~120-121.~~ Governor.

32 (5) One member appointed by the ~~General Assembly upon the recommendation~~
33 ~~of the Speaker of the House of Representatives, as provided in G.S.~~
34 ~~120-121.~~ Governor.

35 (6) One member appointed by the General Assembly upon the recommendation
36 of the Speaker of the House of Representatives, as provided in G.S. 120-121.

37 (7) One member appointed by the General Assembly upon the recommendation
38 of the ~~President Pro Tempore of the Senate, Speaker of the House of~~
39 Representatives, as provided in G.S. 120-121.

40 (8) One member appointed by the General Assembly upon the recommendation
41 of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

42 (9) One member appointed by the General Assembly upon the recommendation
43 of the President Pro Tempore of the Senate, as provided in G.S. 120-121.

44 (b) Terms. – Members shall serve staggered terms of office of three years. Members shall
45 serve no more than two consecutive three-year terms. After serving two consecutive three-year
46 terms, a member is not eligible for appointment to the Authority for at least one year after the
47 expiration date of that member's most recent term. Upon the expiration of a three-year term, a
48 member may continue to serve until a successor is appointed and duly qualified as provided by
49 G.S. 128-7. The terms of members appointed under ~~subdivision subdivisions~~ (1), (5), or (8)-(6),
50 and (8) of subsection (a) of this section shall expire on July 1 of years that are evenly divisible
51 by ~~three.~~ three, with the initial appointments expiring July 1, 2022. The terms of members

1 appointed under ~~subdivision~~ subdivisions (2), (4), or (7)-(3), and (4) of subsection (a) of this
2 section shall expire on July 1 of years that follow by one year those years that are evenly divisible
3 by ~~three-three~~, with the initial appointments expiring July 1, 2020. The terms of members
4 appointed under ~~subdivision (3), (6), or subdivisions (5), (7), and (9)~~ of subsection (a) of this
5 section shall expire on July 1 of years that precede by one year those years that are evenly
6 divisible by ~~three-three~~, with the initial appointments expiring July 1, 2021.

7 (c) Chair. – The Governor shall appoint one member of the North Carolina Parks and
8 Recreation Authority to serve as Chair.

9 (d) Vacancies. – A vacancy on the North Carolina Parks and Recreation Authority shall
10 be filled by the appointing authority responsible for making the appointment to that position as
11 provided in subsection (a) of this section. An appointment to fill a vacancy shall be for the
12 unexpired balance of the term.

13 (e) Removal. – The Governor may remove, as provided in Article 10 of Chapter 143C of
14 the General Statutes any member of the North Carolina Parks and Recreation Authority appointed
15 by the Governor for misfeasance, malfeasance, or nonfeasance. The General Assembly may
16 remove any member of the North Carolina Parks and Recreation Authority appointed by the
17 General Assembly for misfeasance, malfeasance, or nonfeasance.

18 (f) Compensation. – The members of the North Carolina Parks and Recreation Authority
19 shall receive per diem and necessary travel and subsistence expenses according to the provisions
20 of G.S. 138-5.

21 (g) Meetings. – The North Carolina Parks and Recreation Authority shall meet at least
22 quarterly at a time and place designated by the Chair.

23 (h) Quorum. – A majority of the North Carolina Parks and Recreation Authority shall
24 constitute a quorum for the transaction of business.

25 (i) Staff. – All clerical and other services required by the North Carolina Parks and
26 Recreation Authority shall be provided by the Secretary of Natural and Cultural Resources."
27

28 EFFECTIVE DATE

29 **SECTION 3.** This act becomes effective July 1, 2019. All rules, regulations, and
30 decisions made by the predecessor boards and authorities reconstituted in this act shall remain in
31 full force and effect until and unless duly modified by the successor entities.