

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 981*

Short Title: Clean Air Trust Fund.

(Public)

Sponsors: Senators Metcalf; and Queen.

Referred to: Agriculture/Environment/Natural Resources.

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE CLEAN AIR TRUST FUND AND TO
3 APPROPRIATE FUNDS TO IT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 113A of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 19.

8 "Clean Air Trust Fund.

9 "**§ 113A-271. Purpose.**

10 (a) The General Assembly finds and declares that clean air is critical to the health
11 of the citizens, economy, and environment of North Carolina. The General Assembly
12 recognizes that emissions of oxides of nitrogen (NOx), oxides of sulfur (SOx), fine
13 particulate matter, mercury, and hydrocarbons from stationary and mobile sources cause
14 unhealthy levels of ozone, fine particulate matter, acid deposition, nitrogen deposition,
15 mercury contamination, and other air pollutants.

16 (b) The General Assembly is committed to reducing air pollution to restore
17 mountain air quality, to provide healthy air to urban and rural citizens of the State, to
18 protect crops and forests, to reduce deposition of nitrogen into nutrient sensitive waters,
19 to reduce mercury contamination in fish and the environment, to enhance the travel and
20 tourism industry, and to maintain the high quality of life of the citizens of the State.

21 (c) The General Assembly finds that education, technical assistance, incentives,
22 and regulations are all needed to prevent and reduce emissions of air pollutants and to
23 protect the environment, public health, natural resources, and the economy.

24 (d) The General Assembly finds that cleaner fuels, alternative fuels, energy
25 efficiency, transit, smart growth, public education, and awareness will prevent and
26 reduce emissions of air pollutants.

27 (e) The General Assembly finds and declares that an incentive-based air quality
28 program is needed to assist local governments, State agencies, nonprofit conservation
29 organizations, and industry to help finance projects that prevent or reduce emissions of

1 oxides of nitrogen (NOx), oxides of sulfur (SOx), fine particulate matter, mercury,
2 hydrocarbons, and other air pollutants.

3 **"§ 113A-272. Definitions.**

4 As used in this Article:

5 (1) 'Board of Trustees' means the Clean Air Trust Fund Board of Trustees.

6 (2) 'Fund' means the Clean Air Trust Fund created pursuant to this Article.

7 **"§ 113A-273. Fund established.**

8 (a) Fund Established. – There is established a Clean Air Trust Fund in the State
9 Treasurer's Office that shall be used to finance projects to protect and restore air quality
10 and to prevent and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur
11 (SOx), fine particulate matter, mercury, hydrocarbons, and other air pollutants in
12 accordance with this Article.

13 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the
14 Fund separate and apart from all other moneys, funds, and accounts. Investment
15 earnings credited to the assets of the Fund shall become part of the Fund. Any balance
16 remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund
17 for the next succeeding fiscal year. Payments from the Fund shall be made on the
18 warrant of Board of Trustees or its designee.

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

21 (1) To convert public transit, school bus, State government, local
22 government, and private vehicle fleets to cleaner or alternative-fueled
23 vehicles.

24 (2) To increase efficient use of energy in State, local, and public school
25 buildings.

26 (3) To encourage private and public investments in alternative energy and
27 energy-efficient technology.

28 (4) To convert animal waste to alternative energy and other value-added
29 products.

30 (5) To educate and encourage the public to prevent and reduce air
31 pollution.

32 (6) To provide incentives to encourage pedestrian and transit oriented
33 smart growth.

34 (7) To plant trees in urban and rural areas.

35 (8) To acquire and protect forests and open space.

36 (9) To fund other projects to protect and restore air quality and to prevent
37 and reduce emissions of oxides of nitrogen (NOx), oxides of sulfur
38 (SOx), fine particulate matter, mercury, hydrocarbons, and other air
39 pollutants.

40 (10) To fund operating expenses of the Board of Trustees and its staff.

41 (d) Limit on Operating and Administrative Expenses. – No more than five
42 percent (5%) of the annual balance of the Fund on 1 July or a total sum of one million
43 two hundred fifty thousand dollars (\$1,250,000), whichever is greater, may be used each

1 fiscal year for administrative and operating expenses of the Board of Trustees and its
2 staff.

3 **"§ 113A-274. Eligibility for grants or loans; matching funds; limitations on use of**
4 **funds.**

5 (a) Eligible Applicants. – Any of the following are eligible to apply for a grant or
6 loan from the Fund for the purpose of protecting and restoring air quality and preventing
7 and reducing emissions of air pollution:

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 protection and
12 restoration of the environment and natural resources.

13 (b) Grant Matching Requirement. – The Board of Trustees may establish
14 matching requirements for grants awarded under this Article.

15 (c) Loans. – The Board of Trustees may provide loans to applicants.

16 (d) Grants and Loans Not Available to Satisfy Excess Emissions Offsets or
17 Conformity Requirements. – No grant or loan from the Fund shall be awarded to satisfy
18 excess emissions offsets allowed under 40 Code of Federal Regulations § 77.3 (1 July
19 2002 Edition) or transportation conformity requirements set out in 40 Code of Federal
20 Regulations Part 51 and Part 93 (1 July 2002 Edition).

21 (e) Grants and Loans Not Available to Achieve Compliance with State Emissions
22 Limits. – No grant or loan from the Fund shall be awarded to achieve compliance with
23 the limitation of emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) set out
24 in G.S. 143-215.107D.

25 **"§ 113A-275. Board of Trustees established; membership qualifications;**
26 **vacancies; meetings; and meeting facilities.**

27 (a) Board of Trustees Established. – There is established the Clean Air Trust
28 Fund Board of Trustees. The Board of Trustees shall be administratively located within
29 the Department of Environment and Natural Resources but shall be independent of the
30 Department.

31 (b) Membership. – The Board of Trustees shall be composed of nine members
32 appointed to four-year terms as follows:

33 (1) One member appointed by the Governor to a term that expires on 1
34 July of years that precede by one year those years that are evenly
35 divisible by four.

36 (2) One member appointed by the Governor to a term that expires on 1
37 July of years that are evenly divisible by four.

38 (3) One member appointed by the Governor to a term that expires on 1
39 July of years that follow by one year those years that are evenly
40 divisible by four.

41 (4) One member appointed by the President Pro Tempore of the Senate to
42 a term that expires on 1 July of years that follow by two years those
43 years that are evenly divisible by four.

1 (5) One member appointed by the President Pro Tempore of the Senate to
2 a term that expires on 1 July of years that precede by one year those
3 years that are evenly divisible by four.

4 (6) One member appointed by the President Pro Tempore of the Senate to
5 a term that expires on 1 July of years that are evenly divisible by four.

6 (7) One member appointed by the Speaker of the House of
7 Representatives to a term that expires on 1 July of years that follow by
8 one year those years that are evenly divisible by four.

9 (8) One member appointed by the Speaker of the House of
10 Representatives to a term that expires on 1 July of years that follow by
11 two years those years that are evenly divisible by four.

12 (9) One member appointed by the Speaker of the House of
13 Representatives to a term that expires on 1 July of years that precede
14 by one year those years that are evenly divisible by four.

15 (c) Qualifications. – The office of member of the Board of Trustees is declared to
16 be an office that may be held concurrently with any other executive or appointive office,
17 under the authority of Article VI, Section 9 of the North Carolina Constitution. Persons
18 appointed shall be knowledgeable in at least one of the following areas:

19 (1) Public health.

20 (2) Protection and restoration of air quality.

21 (3) Environmental management.

22 (4) Energy efficiency.

23 (5) Alternative energy.

24 (6) Motor vehicles and motor fuels.

25 (7) Power plants and industrial boilers.

26 (8) Environmental education.

27 (9) Local government.

28 (10) Transportation and land-use planning.

29 (d) Chair. – The Board of Trustees shall elect a Chair to serve a two-year term,
30 subject to reelection.

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

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

38 (g) Quorum. – A majority of the membership of the Board of Trustees constitutes
39 a quorum for the transaction of business.

40 (h) Per Diem and Expenses. – Members of the Board of Trustees shall receive
41 per diem and necessary travel and subsistence expenses in accordance with the
42 provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the members of
43 the Board of Trustees shall be paid from the Fund.

1 (i) Meeting Facilities. – The Secretary of Environment and Natural Resources
2 shall provide meeting facilities for the Board of Trustees and its staff as requested by
3 the Board of Trustees or the Executive Director.

4 (j) Technical Assistance. – The Secretary of Environment and Natural
5 Resources, the Secretary of the Department of Transportation, and the Secretary of the
6 Department of Administration shall provide technical assistance for the Board of
7 Trustees and its staff as requested by the Board of Trustees or the Executive Director of
8 the Fund.

9 **"§ 113A-276. Board of Trustees powers and duties.**

10 (a) Grants and Loans. – The Board of Trustees shall allocate moneys from the
11 Fund as grants or loans. A grant or loan may be awarded only for a project or activity
12 that prevents or reduces emissions of air pollution pursuant to this Article.

13 (b) Develop Grant and Loan Criteria. – The Board of Trustees shall develop
14 criteria for awarding grants and loans under this Article. The Board of Trustees shall
15 consider the following:

16 (1) Consistency with the State's statutory and regulatory programs for air
17 pollution control.

18 (2) Complementing regional and local plans to prevent and reduce air
19 pollution.

20 (3) Attainment and maintenance of State and federal ambient air quality
21 standards for ozone and fine particulate matter.

22 (4) Protection of public health.

23 (5) Protection and restoration of scenic views.

24 (6) Protection of areas with good air quality.

25 (7) Restoration of areas with poor air quality.

26 (8) Public education and awareness.

27 (9) Ability of applicants to pay.

28 (10) Capacity of applicants to develop and implement projects.

29 (11) Geographic distribution of funds.

30 (c) Develop Additional Guidelines. – The Board of Trustees may develop
31 guidelines in addition to the grant and loan criteria consistent with and as necessary to
32 implement this Article.

33 (d) Rule-making Authority. – The Board of Trustees may adopt rules to
34 implement this Article. Chapter 150B of the General Statutes applies to the adoption of
35 rules by the Board of Trustees.

36 **"§ 113A-277. Reporting requirement.**

37 The Chair of the Board of Trustees shall report no later than 1 October of each year
38 to the Joint Legislative Commission on Governmental Operations, the Environmental
39 Review Commission, the Subcommittee on Natural and Economic Resources of the
40 Senate Appropriations Committee, the Subcommittee on Natural and Economic
41 Resources of the House of Representatives Appropriations Committee, and the Fiscal
42 Research Division of the General Assembly regarding the implementation of this
43 Article. The report shall include a list of the projects awarded grants or loans from the
44 Fund for the previous 12-month period. The list shall include for each project a

1 description of the project, the amount of the grants or loans awarded for the project, and
2 the total cost of the project.

3 **"§ 113A-278. Executive Director and staff.**

4 (a) The Board of Trustees shall develop and adopt an annual budget.

5 (b) The Board of Trustees shall hire an Executive Director who has knowledge
6 and experience in the protection and restoration of air quality. The Executive Director
7 serves at the pleasure of the Board of Trustees. The Executive Director may hire
8 technical, administrative, and clerical staff and contractors, consistent with the budget
9 adopted by the Board of Trustees, as necessary to implement the provisions of this
10 Article.

11 (c) The Board of Trustees shall set the salary of the Executive Director. The
12 salary of the Executive Director and other staff shall be paid from the Fund.

13 (d) The Executive Director and staff shall receive necessary travel and
14 subsistence expenses in accordance with the provisions of G.S. 138-5. Expenses shall be
15 paid from the Fund.

16 **"§ 113A-279. Advisory Council.**

17 There is established the Clean Air Trust Fund Advisory Council. The Council shall
18 meet at least annually and shall advise the Board of Trustees with regard to criteria,
19 guidelines, and allocations made from the Fund and other issues as requested by the
20 Board of Trustees. The Council shall be composed of the following persons or their
21 designees:

22 (1) The Secretary of Environment and Natural Resources.

23 (2) The Secretary of Commerce.

24 (3) The Secretary of Transportation.

25 (4) The Secretary of Administration."

26 **SECTION 2.** In order to provide for a system of staggered four-year terms
27 for the members of the Clean Air Trust Fund Board of Trustees established by G.S.
28 113A-275, as enacted by Section 1 of this act, the following provisions shall apply:

29 (1) The term of the member initially appointed to serve in the position
30 established by G.S. 113A-275(b)(1) shall be four years and shall
31 expire on 1 July 2007.

32 (2) The term of the member initially appointed to serve in the position
33 established by G.S. 113A-275(b)(2) shall be five years and shall expire
34 on 1 July 2008.

35 (3) The term of the member initially appointed to serve in the position
36 established by G.S. 113A-275(b)(3) shall be two years and shall expire
37 on 1 July 2005.

38 (4) The term of the member initially appointed to serve in the position
39 established by G.S. 113A-275(b)(4) shall be three years and shall
40 expire on 1 July 2006.

41 (5) The term of the member initially appointed to serve in the position
42 established by G.S. 113A-275(b)(5) shall be four years and shall
43 expire on 1 July 2007.

1 (6) The term of the member initially appointed to serve in the position
2 established by G.S. 113A-275(b)(6) shall be five years and shall expire
3 on 1 July 2008.

4 (7) The term of the member initially appointed to serve in the position
5 established by G.S. 113A-275(b)(7) shall be two years and shall expire
6 on 1 July 2005.

7 (8) The term of the member initially appointed to serve in the position
8 established by G.S. 113A-275(b)(8) shall be three years and shall
9 expire on 1 July 2006.

10 (9) The term of the member initially appointed to serve in the position
11 established by G.S. 113A-275(b)(9) shall be four years and shall
12 expire on 1 July 2007.

13 **SECTION 3.** Article 13A of Chapter 113 of the General Statutes (G.S.
14 113-145.1 through G.S. 113-145.8) is recodified as Article 18 of Chapter 113A of the
15 General Statutes (G.S. 113A-251 through G.S. 113A-259). The Revisor of Statutes is
16 authorized to correct any reference in the General Statutes to the statutes that are
17 recodified by this section.

18 **SECTION 4.** The first report required by G.S. 113A-277, as enacted by
19 Section 1 of this act, shall be due no later than 1 October 2004.

20 **SECTION 5.** There is appropriated from the General Fund to the Clean Air
21 Trust Fund the sum of twenty million dollars (\$20,000,000) for the 2003-2004 fiscal
22 year and the sum of thirty million dollars (\$30,000,000) for the 2004-2005 fiscal year to
23 implement this Article. It is the intent of the General Assembly to provide the sum of
24 fifty million dollars (\$50,000,000) for the 2005-2006 fiscal year to implement this
25 Article. The funds in the Clean Air Trust Fund shall be used only in accordance with
26 Article 19 of Chapter 113A of the General Statutes.

27 **SECTION 6.** This act becomes effective 1 July 2003.