

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 859*
Senate Agriculture/Environment and Natural Resources Committee Substitute
Adopted 7/26/07

Short Title: Nutrient Offset Program Transition.

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH TRANSITIONAL NUTRIENT OFFSET PAYMENTS
3 AND TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL
4 RESOURCES TO DEVELOP AND IMPLEMENT A PLAN TO TRANSITION
5 THE NORTH CAROLINA ECOSYSTEM ENHANCEMENT PROGRAM
6 NUTRIENT OFFSET PROGRAM FROM A FEE-BASED PROGRAM TO A
7 PROGRAM BASED ON THE ACTUAL COSTS OF PROVIDING NUTRIENT
8 CREDITS.

9 Whereas, the General Assembly established the Riparian Buffer Protection
10 Program (G.S. 143-214.20) to provide alternatives for persons who would otherwise be
11 required to maintain riparian buffers; and

12 Whereas, the General Assembly directed the Environmental Management
13 Commission to establish a compensatory mitigation fee to be paid into the Riparian
14 Buffer Restoration Fund; and

15 Whereas, the Environmental Management Commission adopted a revised
16 schedule of compensatory mitigation fees for nutrient loading offsets on 12 January
17 2006 in accordance with the Administrative Procedure Act; and

18 Whereas, the General Assembly enacted S.L. 2006-215, as amended by S.L.
19 2006-218 and S.L. 2006-255, which established a temporary per pound factor and
20 method of calculation for nutrient offset fees in lieu of the fee schedule adopted by the
21 Environmental Management Commission and directed the Environmental Review
22 Commission to study issues related to the nutrient offset payment program; and

23 Whereas, the Environmental Review Commission entered into a contract with
24 Research Triangle Institute, International (RTI), to provide consultant services for a
25 study of the costs associated with providing nutrient controls that are adequate to offset
26 point source and nonpoint source discharges of nitrogen and other nutrients; and

27 Whereas, the Environmental Review Commission received the final report
28 from RTI on 11 June 2007; and

1 Whereas, the final report from RTI recommended a nutrient offset payment
2 factor for nitrogen in the Neuse River Basin of \$25.77 per pound of nitrogen; and

3 Whereas, the final report from RTI recommended a nutrient offset payment
4 factor for nitrogen in the Tar-Pamlico River Basin of \$19.70 per pound of nitrogen; and

5 Whereas, the final report from RTI recommended a nutrient offset payment
6 factor for phosphorous in the Tar-Pamlico River Basin of \$26.02 per tenth of a pound of
7 phosphorus; and

8 Whereas, the final report from RTI recommended that a 10% fee be added to
9 the nutrient offset payments to cover the costs of program administration;

10 Now, therefore,

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** The per pound factors for nutrient offset payments are
13 established as follows:

14 (1) For nitrogen in the Neuse River Basin, twenty-eight dollars and
15 thirty-five cents (\$28.35) per pound of nitrogen, calculated in
16 accordance with the method used as of 1 January 2006 for determining
17 pounds of nitrogen per acre.

18 (2) For nitrogen in the Tar-Pamlico River Basin, twenty-one dollars and
19 sixty-seven cents (\$21.67) per pound of nitrogen, calculated in
20 accordance with the method used as of 1 January 2006 for determining
21 pounds of nitrogen per acre.

22 (3) For phosphorous in the Tar-Pamlico River Basin, twenty-eight dollars
23 and sixty-two cents (\$28.62) per tenth of a pound of phosphorous.

24 **SECTION 2.** No later than 1 September 2009, the Department of
25 Environment and Natural Resources shall develop and implement a plan to transition
26 the North Carolina Ecosystem Enhancement Program nutrient offset program from a
27 fee-based program to a program based on the actual costs of providing nutrient credits.
28 The new program shall use the least cost alternative for providing nutrient offset credits
29 consistent with rules adopted by the Environmental Management Commission for
30 implementation of nutrient management strategies in the Neuse River Basin and the
31 Tar-Pamlico River Basin.

32 **SECTION 3.** The Department of Environment and Natural Resources shall
33 report on its progress in developing and implementing a new fee structure for the
34 nutrient offset program to the Environmental Review Commission on 1 September 2008
35 and 1 March 2009.

36 **SECTION 4.** Nutrient offset payments may be used to partially offset the
37 nitrogen loading requirements specified in 15A NCAC 2B .0234 and 2B .0235 for the
38 Neuse River Basin and to partially offset the nitrogen and phosphorous loading
39 requirements specified in 15A NCAC 2B .0258 for the Tar-Pamlico River Basin by
40 payment into the Riparian Buffer Restoration Fund administered by the Department of
41 Environment and Natural Resources. In addition, partial offset credits to meet the
42 requirements of 15A NCAC 2B .0234, 2B .0235, and 2B .0258 may also be obtained
43 through nutrient offset projects provided by organizations and parties not affiliated with
44 the Department. All nutrient offset projects authorized under this section shall be

1 consistent with rules adopted by the Environmental Management Commission for
2 implementation of nutrient management strategies in the Neuse River Basin and the
3 Tar-Pamlico River Basin and shall be located within the same eight digit Cataloging
4 Unit, designated by the United States Geological Survey, in which the associated
5 nutrient loading takes place.

6 **SECTION 5.** This act becomes effective 1 September 2007 and applies to all
7 nutrient offset payments, including those set out in 15A NCAC 2B .0240, as adopted by
8 the Environmental Management Commission on 12 January 2006. The fee schedule set
9 out in Section 1 of this act expires 1 September 2009.