

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-438
HOUSE BILL 859**

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

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

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

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

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

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

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

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

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

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

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

Now, therefore,

The General Assembly of North Carolina enacts:

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

- (1) For nitrogen in the Neuse River Basin, twenty-eight dollars and thirty-five cents (\$28.35) per pound of nitrogen, calculated in

accordance with the method used as of 1 January 2006 for determining pounds of nitrogen per acre.

- (2) For nitrogen in the Tar-Pamlico River Basin, twenty-one dollars and sixty-seven cents (\$21.67) per pound of nitrogen, calculated in accordance with the method used as of 1 January 2006 for determining pounds of nitrogen per acre.
- (3) For phosphorous in the Tar-Pamlico River Basin, twenty-eight dollars and sixty-two cents (\$28.62) per tenth of a pound of phosphorous.

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

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

SECTION 4. Nutrient offset payments may be used to partially offset the nitrogen loading requirements specified in 15A NCAC 2B .0234 and 2B .0235 for the Neuse River Basin and to partially offset the nitrogen and phosphorous loading requirements specified in 15A NCAC 2B .0258 for the Tar-Pamlico River Basin by payment into the Riparian Buffer Restoration Fund administered by the Department of Environment and Natural Resources. In addition, partial offset credits to meet the requirements of 15A NCAC 2B .0234, 2B .0235, and 2B .0258 may also be obtained through nutrient offset projects provided by organizations and parties not affiliated with the Department. All nutrient offset projects authorized under this section shall be consistent with rules adopted by the Environmental Management Commission for implementation of nutrient management strategies in the Neuse River Basin and the Tar-Pamlico River Basin and shall be located within the same eight digit Cataloging Unit, designated by the United States Geological Survey, in which the associated nutrient loading takes place.

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

In the General Assembly read three times and ratified this the 1st day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:12 a.m. this 23rd day of August, 2007