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SESSION 1993

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SENATE BILL 1121
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Short Title: Soil Conservation Law Changes.

(Public)

Sponsors: Senators Cochrane, Tally, and Sherron.

Referred to: Finance.

May 11, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CORRECTIONS AND TO REMOVE OBSOLETE
3 SECTIONS OF THE SOIL CONSERVATION DISTRICT LAW.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 139-3 reads as rewritten:

6 **"§ 139-3. Definitions.**

7 Wherever used or referred to in this Chapter, unless a different meaning clearly
8 appears from the context:

- 9 (1) 'Agency of this State' includes the government of this State and any
10 subdivision, agency, or instrumentality, corporate or otherwise, of the
11 government of the State.
- 12 (2) 'A qualified voter' includes any person qualified to vote in elections by
13 the people under the Constitution of this State.
- 14 (3) 'Environmental Management Commission' or 'State Environmental
15 Management Commission' means the Environmental Management
16 Commission of the State of North Carolina, or the board, body or
17 commission succeeding to its principal functions, or in whom shall be
18 vested by law the powers herein granted to the said Environmental
19 Management Commission.
- 20 (4) 'Commission' or 'Soil and Water Conservation Commission' means the
21 agency created in G.S. 139-4.

- 1 (5) 'District' or 'soil and water conservation district' means a
2 governmental subdivision of this State, and a public body corporate
3 and politic, organized in accordance with the provisions of this
4 Chapter, for the purposes, with the powers, and subject to the
5 restrictions hereinafter set forth.
- 6 (6) 'Due notice' means notice given by posting the same at the courthouse
7 door and at three other public places in the county, including those
8 where it may be customary to post notices concerning county or
9 municipal affairs generally, not less than 10 days before the date of the
10 event of which notice is being given. At any hearing held pursuant to
11 such a notice at the time and place designated in such a notice,
12 adjournment may be made from time to time without the necessity of
13 renewing such notice for such adjourned dates.
- 14 (7) 'Government' or 'governmental' includes the government of this State,
15 the government of the United States, and any subdivision, agency, or
16 instrumentality, corporate or otherwise, of either of them.
- 17 (8) The terms 'land occupier' or 'occupier of land,' and 'landowner' or
18 'owner of land' include any person, firm or corporation who shall hold
19 title to or shall have contracted to purchase any lands lying within a
20 soil and water conservation district ~~or a watershed improvement district~~
21 organized under the provisions of this Chapter.
- 22 (9) 'Nominating petition' means a petition filed under the provisions of
23 G.S. 139-6 to nominate candidates for the office of supervisor of a soil
24 and water conservation district.
- 25 ~~(10) 'Notice' as used in Article 2 of this Chapter shall mean notice~~
26 ~~published at least once a week for two consecutive weeks in at least~~
27 ~~one newspaper of general circulation published in each county wherein~~
28 ~~any part of a watershed improvement district lies or if in any instance~~
29 ~~there is no such newspaper then, in lieu thereof, in a newspaper of~~
30 ~~general circulation in such county.~~
- 31 (11) 'Petition' means a petition filed under the provisions of Article 1 of this
32 Chapter for the creation of a soil and water conservation district, ~~or a~~
33 ~~petition filed under the provisions of Article 2 of this Chapter for the~~
34 ~~creation of a watershed improvement district.~~
- 35 (12) 'State' means the State of North Carolina.
- 36 (13) 'Supervisor' means one of the members of the governing body of a
37 district, elected or appointed in accordance with the provisions of this
38 Chapter.
- 39 ~~(14) 'Trustees' means residents within a watershed improvement district~~
40 ~~who are appointed or elected to carry on the business of a watershed~~
41 ~~improvement district, organized under the provisions of Article 2 of~~
42 ~~this Chapter.~~
- 43 (15) 'United States' or 'agencies of the United States' includes the United
44 States of America, the Soil Conservation Service of the United States

- 1 Department of Agriculture, and any other agency or instrumentality,
 2 corporate or otherwise, of the United States of America.
- 3 (16) ~~'Watershed improvement district' means a governmental subdivision of~~
 4 ~~this State, and a public body corporate and politic, organized in~~
 5 ~~accordance with the provisions of Article 2 of this Chapter, for the~~
 6 ~~purposes, with the powers, and subject to the restrictions therein set~~
 7 ~~forth.~~
- 8 (17) A 'watershed improvement project' means a project of watershed
 9 improvement (whether involving flood prevention, drainage
 10 improvement, water supply, soil and water conservation, recreation
 11 facilities, fish and wildlife habitat, or other related purposes, singly or
 12 in combination) which is undertaken:
- 13 a. ~~By a watershed improvement district under the provisions of~~
 14 ~~Article 2 of Chapter 139 of the General Statutes of North~~
 15 ~~Carolina or any local act granting similar powers.~~
- 16 b. By a soil and water conservation district under the provisions of
 17 Article 1 of Chapter 139 of the General Statutes or any local act
 18 granting similar powers.
- 19 c. By a drainage district under the provisions of Chapter 156 of
 20 the General Statutes or any local act granting similar powers.
- 21 d. By a county that is carrying out a county watershed
 22 improvement program under the provisions of Article 3 of
 23 Chapter 139 of the General Statutes or any local act granting
 24 similar powers.
- 25 e. By any combination of the foregoing, acting as joint sponsors of
 26 a watershed improvement program.
- 27 f. By any watershed, drainage or flood control project planned or
 28 carried out by the Soil Conservation Service, Tennessee Valley
 29 Authority or the Army Corps of Engineers.
- 30 (18) A 'watershed improvement work' means a single feature or facility or
 31 portion of a watershed improvement project, such as a water retarding
 32 or impoundment structure for one or more authorized watershed
 33 purposes or a section of improved stream channel or the land treatment
 34 measures associated with a water retarding structure."
- 35 Sec. 2. G.S. 139-16 is repealed.
- 36 Sec. 3. G.S. 139-17 is repealed.
- 37 Sec. 4. G.S. 139-18 is repealed.
- 38 Sec. 5. G.S. 139-19 is repealed.
- 39 Sec. 5.1. G.S. 139-19.1 is repealed.
- 40 Sec. 6. G.S. 139-20 is repealed.
- 41 Sec. 7. G.S. 139-21 is repealed.
- 42 Sec. 8. G.S. 139-22 is repealed.
- 43 Sec. 9. G.S. 139-23 is repealed.
- 44 Sec. 10. G.S. 139-24 is repealed.

- 1 Sec. 11. G.S. 139-25 is repealed.
2 Sec. 12. G.S. 139-26 is repealed.
3 Sec. 13. G.S. 139-27 is repealed.
4 Sec. 13.1. G.S. 139-27.1 is repealed.
5 Sec. 14. G.S. 139-28 is repealed.
6 Sec. 15. G.S. 139-29 is repealed.
7 Sec. 16. G.S. 139-30 is repealed.
8 Sec. 17. G.S. 139-32 is repealed.
9 Sec. 18. G.S. 139-33 is repealed.
10 Sec. 19. G.S. 139-34 is repealed.
11 Sec. 20. G.S. 139-35 is repealed.
12 Sec. 21. G.S. 139-36 is repealed.
13 Sec. 22. G.S. 139-37 is recodified as G.S. 139-48.
14 Sec. 23. G.S. 139-37.1 is recodified as G.S. 139-49.
15 Sec. 24. G.S. 139-38 is repealed.
16 Sec. 25. G.S. 139-41 reads as rewritten:

17 **"§ 139-41. Powers of county commissioners.**

18 (a) If the majority of the qualified voters voting in such election favor the levying
19 of such tax, then and in that event, the board of county commissioners shall have all
20 powers of soil and water conservation districts as set forth in subdivisions (1), (2), (3),
21 (4), (5), (6), (7), (8) and (10) of G.S. 139-8 (subject to the limitations set forth in
22 subdivision (12) of such section) concerning flood prevention, development of water
23 resources, floodwater and sediment damages, and conservation, utilization and disposal
24 of water. It is the intention of the General Assembly that such powers shall normally be
25 exercised within all or parts of one or more single watersheds, or of two or more
26 watersheds tributary to one of the major drainage basins of the State, but exceptions to
27 this policy may be permitted in appropriate cases; provided, however, it is not the
28 intention of the General Assembly to authorize hereby the diversion of water from one
29 stream or watershed to another.

30 (b) The board of county commissioners may itself exercise such powers or, for
31 that purpose, may create a watershed improvement commission to be composed of three
32 members appointed by the board. The terms of office of the members of the
33 commission shall be six years, with the exception of the first two years of existence of
34 the commission, in which one member shall be appointed to serve for a period of two
35 years, one for a period of four years, and one for a period of six years; thereafter all
36 members shall be appointed for six years, and shall serve until their successors have
37 been appointed and qualified. Vacancies in the membership of the commission
38 occurring otherwise than by expiration of term shall be filled by appointment to the
39 unexpired term by the board of county commissioners. The commission shall hold its
40 first meeting within 30 days after its appointment as provided for in this Article, and the
41 beginning date of all terms of office of commissioners shall be the date on which the
42 commission holds its first meeting. ~~The provisions of G.S. 139-22 and 139-23 concerning~~
43 ~~the organization and compensation of the elected board of trustees of a watershed improvement~~
44 ~~district, and concerning the powers and duties of such trustees respecting personnel, surety~~

1 ~~bonds and audits, shall apply to the commission.~~ The commission at its first meeting shall
2 select a chair, vice-chair, and secretary-treasurer to serve two-year terms. All acts done
3 by the commission shall be entered in a book of minutes to be kept by the secretary-
4 treasurer. A majority of the membership of the commission shall constitute a quorum.
5 The commission shall meet in regular session at least quarterly and may meet specially
6 upon the call of the chair or any members, and upon at least three-day notice of the
7 time, place, and purpose of the meeting. The commission shall provide the board of
8 county commissioners 30 days prior to July 1 a proposed budget for the fiscal year
9 commencing on July 1 and shall provide the board of county commissioners an audit by
10 a certified public accountant within 60 days after the expiration of the fiscal year ending
11 on June 30.

12 (c) The board of county commissioners may create a single watershed
13 improvement commission for the entire county or may create separate commissions for
14 individual projects or watersheds.

15 (d) The board of county commissioners, as an alternative to itself exercising the
16 powers set forth in subsection (a) of this section or to creating a watershed improvement
17 commission for that purpose, may by resolution designate the soil and water
18 conservation district having jurisdiction in the county to exercise authority for the board
19 of county commissioners in carrying out the county watershed improvement program.
20 ~~The provisions of G.S. 139-22 and 139-23 concerning the organization and compensation of~~
21 ~~the elected board of trustees of a watershed improvement district, and concerning the power~~
22 ~~and duties of such trustees respecting personnel, surety bonds and audits, shall apply to any soil~~
23 ~~and water conservation district so designated.~~ The soil and water conservation district shall
24 provide the board of county commissioners 30 days prior to July 1 a proposed budget
25 for the fiscal year commencing on July 1 and shall provide the board of county
26 commissioners an audit by a certified public accountant within 60 days after the
27 expiration of the fiscal year ending on June 30.

28 (e) Repealed by Session Laws 1981, c. 326, s. 5.

29 (f) Any industry or private water user, the State of North Carolina, the United
30 States or any of its agencies, any municipality, any other county, or any other political
31 subdivision may participate in county watershed improvement programs hereunder in
32 the same manner and to the same extent as provided by G.S. 139-37 with respect to
33 participation in watershed improvement district programs.

34 (g) The board of county commissioners may provide for county watershed
35 improvement programs and any or all other related activities (such as water supply
36 systems, sewerage systems, water resources programs, beach erosion control programs,
37 and conservation programs) to be coordinated, to be jointly undertaken by two or more
38 local agencies, or to be assigned to a single county agency designated by such name and
39 organized in such manner as the board deems appropriate.

40 (h) A Watershed Improvement Commission created pursuant to subsection (b) of
41 this section or a soil and water conservation district designated pursuant to subsection
42 (d) of this section may employ such officers, agents, consultants, and other employees
43 as they may require; shall determine their qualifications, duties, and compensation; shall
44 provide for the execution of surety bonds for the secretary-treasurer and such other

1 officers, agents, and employees as shall be entrusted with funds or property, and shall
2 provide for making and publication of an annual audit of the accounts of receipts and
3 disbursements of the watershed improvement program.

4 (i) District supervisors and watershed improvement commissioners shall receive
5 a per diem allowance of seven dollars (\$7.00) and necessary expenses while engaged in
6 the discharge of official duties pursuant to subsections (b) and (d) of this section.
7 Claims for per diem and expenses for any duty except attendance upon a meeting shall
8 be paid only after approval of the commission or the Board of Supervisors
9 respectively."

10 Sec. 26. G.S. 139-42 reads as rewritten:

11 **"§ 139-42. Article intended as supplementary.**

12 This Article is intended to provide an alternative method of financing and operating
13 watershed improvement programs, supplementary to ~~the method set forth in Article 2 of~~
14 ~~this Chapter.~~ any other method authorized by law."

15 Sec. 27. G.S. 139-43 is repealed.

16 Sec. 28. G.S. 139-44(b) reads as rewritten:

17 "(b) The Soil and Water Conservation Commission shall certify copies of its
18 findings to the applicant ~~district [county],~~ county, the Environmental Management
19 Commission and the clerk of the superior court of the county or counties wherein any
20 part of the ~~district [county]~~ project lies for recordation in the special proceedings
21 thereof."

22 Sec. 29. G.S. 139-44(f) reads as rewritten:

23 "(f) All provisions of local acts inconsistent herewith limiting condemnation
24 powers of ~~watershed improvement districts or of counties~~ for county watershed
25 improvement programs are hereby repealed."

26 Sec. 30. G.S. 139-46 reads as rewritten:

27 **"§ 139-46. Recreational and related aspects of watershed improvement programs.**

28 (a) Local watershed sponsors may install and maintain recreational facilities and
29 services in connection with watershed improvement works or projects, and may provide
30 areas (including structures) for the conservation and replacement of fish and wildlife
31 habitat. For any of these purposes said sponsors may appropriate and expend funds, may
32 levy taxes and assessments, and may issue bonds and notes, to the same extent as in the
33 case of other authorized watershed activities. Such recreational facilities and services
34 may include but are not limited to any or all of the water-related recreational facilities
35 provided for in subsection (b) of this section, and parking areas, ingress and egress
36 roads, hiking or nature trails, picnic areas and campsites. No application for watershed
37 planning under Public Law 566 (83rd Congress, United States), as amended, may be
38 approved by the Soil and Water Conservation Commission until after receipt and
39 consideration of recommendations from the appropriate fish and wildlife agency
40 concerning replacement of fish and wildlife habitat in mitigation of anticipated
41 damages: Provided that this requirement for consideration of fish and wildlife
42 recommendations shall not apply if such recommendations are not received by the Soil
43 and Water Conservation Commission within 30 days after the Soil and Water
44 Conservation Commission requests such recommendations. Within the meaning of this

1 provision the 'appropriate fish and wildlife agency' means the North Carolina Wildlife
2 Resources Commission as to matters within its jurisdiction, and the North Carolina
3 Department of Environment, Health, and Natural Resources as to matters within its
4 jurisdiction, or both such agencies as to matters within their concurrent jurisdiction.

5 (b) It is hereby declared that the provisions of this Chapter authorizing works of
6 improvement, structures, plans, surveys and investigations for the development of water
7 resources were intended to include water-related recreational facilities, including but not
8 limited to boat launching areas and facilities, bathhouses, campsites and picnic areas
9 adjacent to the water, and other basic facilities for water recreational areas. All
10 expenditures heretofore incurred by any local watershed sponsor for such water-related
11 recreational facilities are hereby validated and confirmed. The proceeds of any tax
12 heretofore approved by the voters of a county for a county watershed improvement
13 program, or authorized by special or local act for a county watershed improvement
14 program, may be expended for such water-related recreational facilities, if the board of
15 county commissioners after a public hearing determines that the proceeds should be so
16 expended. Notice of such hearing shall be published ~~as provided for notices under Article~~
17 ~~2 of this Chapter.~~ at least once a week for two consecutive weeks in at least one
18 newspaper of general circulation published in the county, in lieu thereof, in a newspaper
19 of general circulation in the county. No action based on the alleged invalidity of the
20 expenditures herein confirmed or of the use of tax proceeds herein authorized shall lie
21 after January 1, 1968, to enjoin or contest any such expenditure or any such use of tax
22 proceeds.

23 (c) Within the meaning of this section 'local watershed sponsors' include
24 ~~watershed improvement districts,~~ soil and water conservation districts, drainage districts,
25 municipalities, and counties undertaking county watershed programs under Article 3 of
26 this Chapter or any local act granting similar powers."

27 Sec. 31. G.S. 139-47 is repealed.

28 Sec. 32. G.S. 139-37, as recodified as G.S. 139-48 by Section 22 of this act,
29 reads as rewritten:

30 "**§ 139-48. Participation by cities, counties, industries and others.**

31 (a) Any industry, or private water user, the State of North Carolina, the United
32 States or any of its agencies, any county, municipality or any other political subdivision
33 may participate in watershed improvement ~~district~~-works or projects upon mutually
34 agreeable terms relating to such matters as the construction, financing, maintenance and
35 operation thereof.

36 (b) Any county or municipality may contribute funds toward the construction,
37 maintenance and operation of watershed improvement ~~district~~-works or projects, to the
38 extent that such works or projects:

- 39 (1) Provide a source (respectively) of county or municipal water supply;
40 or protect an existing source of such supply, enhance its quality or
41 increase its dependable capacity or quantity; or
- 42 (2) Protect against or alleviate the effects of flood-water or sediment
43 damages affecting, or provide drainage benefits for, (respectively)
44 county or municipally owned property or the property (respectively) of

1 county or municipal inhabitants located outside the boundaries of such
2 ~~district works or projects~~ but within the respective boundaries of such
3 county or municipality.

4 Each county and city may fund appropriations for the purposes of this section by
5 levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the
6 allocation of other revenues whose use is not otherwise restricted by law."

7 Sec. 33. (a) G.S. 139-37.1(c), as recodified as G.S. 139-49(c) by Section 23 of
8 this act, reads as rewritten:

9 "(c) Such bonds or other obligations of counties shall be issued pursuant to the
10 ~~County Finance Act, as amended;~~ Local Government Finance Act, Chapter 159 of the
11 General Statutes; Provided, the amount thereof shall constitute ~~an item to be included in~~
12 ~~the sum in item (8) of G.S. 153-84 of the said act in arriving at the net debt for other than~~
13 ~~school purposes in item (9) of said section;~~ a deduction from the gross debt under G.S. 159-
14 55(a)(2); Provided, further, the provisions of G.S. ~~153-80, 153-82 and 153-103 of said act~~
15 159-65(2) shall not apply to such bonds. ~~Such bonds or obligations shall mature at such~~
16 ~~time or times, not exceeding 40 years from their date, and may be subject to redemption with or~~
17 ~~without premium as the governing body may by resolution determine, with the approval of the~~
18 ~~Local Government Commission."~~

19 (b) G.S. 139-37.1(d), as recodified as G.S. 139-49(d) by Section 23 of this act,
20 reads as rewritten:

21 "(d) Such bonds or other obligations of municipalities shall be issued pursuant to
22 the ~~Municipal Finance Act, 1921, as amended,~~ Local Government Finance Act, Chapter
23 159 of the General Statutes, and the amount thereof shall constitute a deduction from
24 the gross debt under ~~subsection (a)(2) of G.S. 160-383 of said act;~~ G.S. 159-55(a)(2);
25 Provided, the provisions of G.S. ~~160-382 and 160-391 shall not apply to such bonds and such~~
26 bonds may not be consolidated with bonds authorized by another ordinance as provided
27 in G.S. ~~160-380 of said act;~~ 159-65(2). ~~Such bonds or obligations shall mature at such time or~~
28 ~~times, not exceeding 40 years from their date, and may be subject to redemption with or~~
29 ~~without premiums as the governing body may determine, with the approval of the Local~~
30 ~~Government Commission."~~

31 Sec. 34. This act is effective upon ratification.