

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE BILL 887*

Short Title: Open Spaces Preservation Incentives. (Public)

Sponsors: Representatives G. Allen, Hackney (Primary Sponsors); Alexander and Insko.

Referred to: Finance.

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TAX INCENTIVES TO PROMOTE PRESERVATION OF
OPEN SPACES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-275(7) reads as rewritten:

"(7) Real and personal property that is:

- a. Owned either by a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes or by a bona fide charitable organization, and either operated by such owning organization or leased to a governmental entity or to another such nonprofit corporation or charitable organization, and
- b. Appropriated exclusively for public parks and ~~drives, drives,~~ protected natural areas as defined in subdivision (12) of this section, or both."

SECTION 2. G.S. 105-275(12) reads as rewritten:

"(12) Real property owned by a nonprofit corporation or association exclusively held and used by its owner as a protected natural area for educational and scientific purposes or for conservation purposes in perpetuity, as a protected natural area. (For purposes of this subdivision, section, the term "protected natural area" means a nature reserve or park in which all types of wild nature, native flora and fauna, and biotic communities are preserved for observation and study.) conserved for the maintenance of ecological functions and appropriate use. Revenue may be generated from management activity if it is incidental to maintaining the primary conservation purpose or use and is reinvested in the stewardship of protected natural areas. A protected natural area may, in accordance with a detailed management plan, be actively managed to do any combination of the following:

- 1 a. Restore and maintain native conditions and species that were
- 2 previously converted or degraded.
- 3 b. Control invasive species.
- 4 c. Conserve native ecological systems in their existing conditions.
- 5 d. Maintain the area for appropriate conservation-related use.
- 6 e. Protect adjoining lands from wildfire, infestation, disease, or
- 7 other natural hazards."

8 **SECTION 3.** Article 12 of Chapter 105 of the General Statutes is amended
9 by adding a new section to read:

10 **"§ 105-277.14. Floodplains property.**

11 (a) Definitions. – The following definitions apply in this section:

- 12 (1) Base floodplain. – Defined in G.S. 143-215.52.
- 13 (2) Consistent use floodplain area. – An area within an identified base
- 14 floodplain that is used exclusively for one or more of the uses
- 15 authorized by G.S. 143-215.54(b).
- 16 (3) Identified base floodplain. – A base floodplain identified on a
- 17 floodplain map that is approved by or meets standards established by
- 18 the federal Emergency Management Agency.
- 19 (4) Present-use value. – The value of real property in its current use taking
- 20 into consideration its risk of flooding and the hazards that risk creates
- 21 for development and for environmental degradation if the property is
- 22 used inappropriately.

23 (b) Classification. – Consistent use floodplain areas are designated a special class
24 of property under Section 2(2) of Article V of the North Carolina Constitution and are
25 appraised, assessed, and taxed as provided in this section.

26 (c) Appraisal. – Consistent use floodplain areas must be appraised at their
27 present-use value. To establish eligibility for classification under this section, the owner
28 must file an application under G.S. 105-282.1(a)(2). Upon receipt of a properly
29 executed application, the assessor must appraise the property at its present-use value
30 and must determine the valuation upon which the property would have been taxed if it
31 were not classified under this section. If all or any part of the property is located within
32 the limits of an incorporated city or town, or is property annexed subject to G.S.
33 160A-37(f1) or G.S. 160A-49(f1), the assessor must furnish to the tax collector of the
34 city or town a copy of the property record showing both values. The assessor must also
35 notify the tax collector of any subsequent changes in the appraisals or in the eligibility
36 of the property for the benefit of this classification.

37 (d) Deferred Taxes. – The difference between the taxes due on the present-use
38 basis and the taxes that would have been payable in the absence of this classification,
39 together with any interest, penalties, or costs that may accrue on them, are a lien on the
40 real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes is
41 carried forward in the records of the taxing units as deferred taxes. The taxes become
42 due and payable when the property fails to meet any condition or requirement for
43 classification. Failure to have an application approved is grounds for disqualification.
44 The tax for the fiscal year that opens in the calendar year in which deferred taxes

1 become due is computed as if the property had not been classified for that year, and
2 taxes for the preceding three fiscal years that have been deferred are immediately
3 payable, together with interest as provided in G.S. 105-360 for unpaid taxes. Interest
4 accrues on the deferred taxes due as if they had been payable on the dates on which they
5 originally became due. If only a part of the classified property fails to meet a condition
6 or requirement for classification, the assessor must determine the amount of deferred
7 taxes applicable to that part and that amount becomes payable with interest as provided
8 in this subsection. Upon the payment of any taxes deferred in accordance with this
9 subsection for the three years immediately preceding a disqualification, all liens arising
10 under this subsection are extinguished. The deferred taxes for any given year may be
11 paid in that year without the classified property becoming ineligible for deferred status.

12 (e) Revaluation Years. – In revaluation years, as provided in G.S. 105-286, all
13 property entitled to classification under this section must be reappraised at its true value
14 in money and at its present-use value as of the effective date of the revaluation. The two
15 valuations continue in effect and provide the basis for deferred taxes until a change in
16 one or both of the appraisals is required by law.

17 (f) Floodplain Mapping. – On or before January 1, 2013, each county must have
18 in place countywide floodplain maps that are approved by or meet standards established
19 by the federal Emergency Management Agency.

20 (g) Use of Deferred Taxes. – A taxing unit that receives deferred taxes paid
21 pursuant to this section must credit the funds to a nonreverting trust account to be used
22 for nonstructural community flood hazard avoidance programs. If a flood-related
23 emergency is declared for an area within the jurisdiction of the taxing unit, up to
24 one-half of the balance in the account at the time of the declaration may be used for
25 flood hazard relief and repair and recovery programs. The taxing unit may use
26 investment earnings on the account for administrative costs related to the expenditure of
27 the funds in the account."

28 **SECTION 4.** G.S. 105-282.1(a)(2) reads as rewritten:

29 "(2) Single application required. – An owner of one or more of the
30 following properties eligible to be exempted or excluded from taxation
31 must file an application for exemption or exclusion to receive it. Once
32 the application has been approved, the owner does not need to file an
33 application in subsequent years unless new or additional property is
34 acquired or improvements are added or removed, necessitating a
35 change in the valuation of the property, or there is a change in the use
36 of the property or the qualifications or eligibility of the taxpayer
37 necessitating a review of the exemption or exclusion:

- 38 a. Property exempted from taxation under G.S. 105-278.3,
39 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8.
40 b. Special classes of property excluded from taxation under G.S.
41 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (35), (36),
42 (38), (39), or (41) or under G.S. 131A-21.

- 1 c. Special classes of property classified for taxation at a reduced
2 valuation under G.S. 105-277(h), 105-277.1, 105-277.10,
3 105-277.13, 105-277.14, or 105-278.
- 4 d. Property owned by a nonprofit homeowners' association but
5 where the value of the property is included in the appraisals of
6 property owned by members of the association under G.S.
7 105-277.8."

8 **SECTION 5.** G.S. 105-130.34 reads as written:

9 **"§ 105-130.34. Credit for certain real property donations.**

10 (a) Credit. – Any corporation that makes a qualified donation of an interest in
11 real property located in North Carolina during the taxable year that is useful for public
12 beach access or use, public access to public waters or trails, fish and wildlife
13 conservation, or other similar land conservation purposes is allowed a credit against the
14 tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of
15 the donated property interest. To be eligible for this credit, the interest in real property
16 must be donated in perpetuity to and accepted by the State, a local government, or a
17 body that is both organized to receive and administer lands for conservation purposes
18 and qualified to receive charitable contributions pursuant to G.S. 105-130.9. Lands
19 required to be dedicated pursuant to local governmental regulation or ordinance and
20 dedications made to increase building density levels permitted under a regulation or
21 ordinance are not eligible for this credit. ~~The credit allowed under this section may not~~
22 ~~exceed five hundred thousand dollars (\$500,000).~~ To support the credit allowed by this
23 section, the taxpayer must file with its income tax return, for the taxable year in which
24 the credit is claimed, a certification by the Department of Environment and Natural
25 Resources that the property donated is suitable for one or more of the valid public
26 benefits set forth in this subsection.

27 (b) Ceiling. – The credit allowed by this section may not exceed the amount of
28 tax imposed by this Part for the taxable year reduced by the sum of all credits allowed,
29 except payments of tax made by or on behalf of the taxpayer. In addition, the credit
30 allowed under this section may not exceed the applicable maximum amount, as follows:

31 (1) For taxable years beginning in 1999, 2000, 2001, and 2002, the
32 maximum amount is five hundred thousand dollars (\$500,000).

33 (2) For taxable years beginning in 2003, the maximum amount is five
34 hundred thousand dollars (\$500,000) plus or minus the index amount
35 determined as follows:

36 a. Multiply five hundred thousand dollars (\$500,000) by
37 seventy-five percent (75%) of the percentage by which the
38 consumer price index for all items increased or decreased
39 during the period from January 1, 2000, to December 31, 2002.

40 b. If this product is less than fifty thousand dollars (\$50,000), the
41 index amount is zero.

42 c. If this product is greater than fifty thousand dollars (\$50,000),
43 the index amount is fifty thousand dollars (\$50,000).

1 (3) For taxable years beginning in each calendar year after 2003, the
2 maximum amount is the maximum amount for the previous calendar
3 year, plus or minus an index amount determined as follows:

4 a. Multiply the maximum amount for the previous calendar year
5 by seventy-five percent (75%) of the percentage by which the
6 consumer price index for all items increased or decreased
7 during the period since the last adjustment in the maximum
8 amount under this section.

9 b. If this product is less than fifty thousand dollars (\$50,000), the
10 index amount is zero.

11 c. If this product is greater than fifty thousand dollars (\$50,000),
12 the index amount is fifty thousand dollars (\$50,000).

13 (c) Carryforward and Refund. – Any unused portion of this credit may be carried
14 forward for the next succeeding ~~five~~ two years. After a credit has been carried forward
15 for two years, the Secretary must refund to the taxpayer in the next succeeding year an
16 amount equal to fifty percent (50%) of the remaining unused amount of the credit.

17 (d) No Double Benefit. – That portion of a qualifying donation that is the basis
18 for a credit allowed under this section is not eligible for deduction as a charitable
19 contribution under G.S. 105-130.9."

20 **SECTION 6.(a)** G.S. 105-228.90(b) is amended by adding a new
21 subdivision to read:

22 "(1c) Consumer price index. – The United States Consumer Price Index for
23 All Urban Consumers, as published by the Bureau of Labor Statistics,
24 United States Department of Labor."

25 **SECTION 6.(b)** The Revisor of Statutes may renumber the definitions in
26 G.S. 105-228.90(b) to maintain alphabetical order.

27 **SECTION 7.** G.S. 105-151.12 reads as rewritten:

28 "**§ 105-151.12. Credit for certain real property donations.**

29 (a) Credit. – A person who makes a qualified donation of an interest in real
30 property located in North Carolina during the taxable year that is useful for (i) public
31 beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife
32 conservation, or (iv) other similar land conservation purposes is allowed a credit against
33 the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value
34 of the donated property interest. To be eligible for this credit, the interest in property
35 must be donated in perpetuity to and accepted by the State, a local government, or a
36 body that is both organized to receive and administer lands for conservation purposes
37 and qualified to receive charitable contributions under the Code. Lands required to be
38 dedicated pursuant to local governmental regulation or ordinance and dedications made
39 to increase building density levels permitted under a regulation or ordinance are not
40 eligible for this credit. ~~The credit allowed under this section may not exceed two~~
41 ~~hundred fifty thousand dollars (\$250,000).~~ To support the credit allowed by this section,
42 the taxpayer must file with the income tax return for the taxable year in which the credit
43 is claimed a certification by the Department of Environment and Natural Resources that

1 the property donated is suitable for one or more of the valid public benefits set forth in
2 this subsection.

3 (b) Ceiling. – The credit allowed by this section may not exceed the amount of
4 tax imposed by this Part for the taxable year reduced by the sum of all credits allowed,
5 except payments of tax made by or on behalf of the taxpayer. In addition, the credit
6 allowed under this section may not exceed the applicable maximum amount, as follows:

7 (1) For taxable years beginning in 1999, 2000, 2001, and 2002, the
8 maximum amount is two hundred fifty thousand dollars (\$250,000).

9 (2) For taxable years beginning in 2003, the maximum amount is two
10 hundred fifty thousand dollars (\$250,000) plus or minus the index
11 amount determined as follows:

12 a. Multiply two hundred fifty thousand dollars (\$250,000) by
13 seventy-five percent (75%) of the percentage by which the
14 consumer price index for all items increased or decreased
15 during the period from January 1, 2000, to December 31, 2002.

16 b. If this product is less than twenty-five thousand dollars
17 (\$25,000), the index amount is zero.

18 c. If this product is greater than twenty-five thousand dollars
19 (\$25,000), the index amount is twenty-five thousand dollars
20 (\$25,000).

21 (3) For taxable years beginning in each calendar year after 2003, the
22 maximum amount is the maximum amount for the previous calendar
23 year, plus or minus an index amount determined as follows:

24 a. Multiply the maximum amount for the previous calendar year
25 by seventy-five percent (75%) of the percentage by which the
26 consumer price index for all items increased or decreased
27 during the period since the last adjustment in the maximum
28 amount under this section.

29 b. If this product is less than twenty-five thousand dollars
30 (\$25,000), the index amount is zero.

31 c. If this product is greater than twenty-five thousand dollars
32 (\$25,000), the index amount is twenty-five thousand dollars
33 (\$25,000).

34 (b1) Carryforward and Refund. – Any unused portion of this credit may be carried
35 forward for the next succeeding ~~five~~ two years. After a credit has been carried forward
36 for two years, the Secretary must refund to the taxpayer in the next succeeding year an
37 amount equal to fifty percent (50%) of the remaining unused amount of the credit.

38 (c) Repealed by Session Laws 1998-212, s. 29A.13(b).

39 (d) Married Taxpayers. – In the case of property owned by a married couple, if
40 both spouses are required to file North Carolina income tax returns, the credit allowed
41 by this section may be claimed only if the spouses file a joint return. If only one spouse
42 is required to file a North Carolina income tax return, that spouse may claim the credit
43 allowed by this section on a separate return.

1 (e) Marshland. – In the case of marshland for which a claim has been filed
2 pursuant to G.S. 113-205, the offer of donation must be made before December 31,
3 2003 to qualify for the credit allowed by this section.

4 (f) **(Expires for taxable years ending on or after January 1, 2005)**
5 Partnerships. – Notwithstanding G.S. 105-269.15, the maximum dollar limit that applies
6 in determining the amount of the credit applicable to a partnership that qualifies for the
7 credit applies separately to each partner."

8 **SECTION 8.** G.S. 105-256(a) is amended by adding a new subdivision to
9 read:

10 "(a) Reports. – The Secretary shall prepare and publish the following:

11 (2a) The amount of credit allowed under G.S. 105-130.34 and G.S.
12 105-151.12 each year for which data are available, with the amount
13 refunded in excess of tax liability accounted for separately."

14 **SECTION 9.** Sections 1 through 4 of this act are effective for taxes imposed
15 for taxable years beginning on or after July 1, 2004. The amendments made by this act
16 to G.S. 105-130.34(c) and G.S. 105-151.12(b1) become effective for donations made on
17 or after January 1, 2004. The remainder of this act is effective when it becomes law.