

## Part 41. Clean Water Management Trust Fund.

### **§ 143B-135.230. Purpose.**

It is the intent of the General Assembly that moneys from the Fund created under this Part shall be used to help finance projects that enhance or restore degraded surface waters; protect and conserve surface waters, including drinking supplies, and contribute toward a network of riparian buffers and greenways for environmental, educational, and recreational benefits; provide buffers around military bases to protect the military mission; acquire land that represents the ecological diversity of North Carolina; and acquire land that contributes to the development of a balanced State program of historic properties. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 2003-340, s. 1.3; 2007-549, s. 1; 2011-374, s. 2.1; 2014-100, s. 14.8(a); 2015-241, s. 14.30(k1).)

### **§ 143B-135.232. Definitions.**

The following definitions apply in this Part:

- (1) Council. - The advisory council for the Clean Water Management Trust Fund.
- (2) Fund. - The Clean Water Management Trust Fund created pursuant to this Part.
- (3) Land. - Real property and any interest in, easement in, or restriction on real property.
- (4) Local government unit. - Defined in G.S. 159G-20.
- (5) Trustees. - The trustees of the Clean Water Management Trust Fund. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 2003-340, s. 1.3; 2005-454, s. 4; 2006-252, s. 2.13; 2014-100, s. 14.8(b); 2015-241, ss. 14.30(k1), (r1).)

### **§ 143B-135.234. Clean Water Management Trust Fund.**

(a) Fund Established. - The Clean Water Management Trust Fund is established as a special revenue fund to be administered by the Department of Natural and Cultural Resources. The Fund receives revenue from the following sources and may receive revenue from other sources:

- (1) Annual appropriations.
- (2) Special registration plates under G.S. 20-81.12.
- (3) Other special registration plates under G.S. 20-79.7.

(b) Fund Earnings, Assets, and Balances. - The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chair of the Board of Trustees.

(c) Fund Purposes. - Moneys from the Fund are appropriated annually to finance projects to clean up or prevent surface water pollution and for land preservation in accordance with this Part. Revenue in the Fund may be used for any of the following purposes:

- (1) To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses.
- (2) To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and enhancing drinking water supplies, including the development of water supply reservoirs.
- (3) To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality.
- (4) To restore previously degraded lands to reestablish their ability to protect water quality.
- (5) To facilitate planning that targets reductions in surface water pollution.
- (6) To finance innovative efforts, including pilot projects, to improve stormwater management, to reduce pollutants entering the State's waterways, to improve water quality, and to research alternative solutions to the State's water quality problems.
- (7) To provide buffers around military bases or for State matching funds for the Readiness and Environmental Protection Initiative, a federal funding initiative that provides funds for military buffers.
- (8) To acquire land that represents the ecological diversity of North Carolina, including natural features such as riverine, montane, coastal, and geologic systems and other natural areas to ensure their preservation and conservation for recreational, scientific, educational, cultural, and aesthetic purposes.
- (9) To acquire land that contributes to the development of a balanced State program of historic properties.
- (10), (11) Repealed by Session Laws 2015-241, s. 14.4, effective July 1, 2015.

(d) Repealed by Session Laws 2015-241, s. 14.4, effective July 1, 2015. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 2001-424, s. 32.17; 2003-340, s. 1.3; 2004-179, s. 4.4; 2005-454, s. 5; 2007-549, s. 2; 2011-145, s. 13.26(b); 2011-374, s. 2.2; 2013-360, s. 14.3(d); 2014-100, ss. 14.13A(b), 14.21(b); 2015-241, ss. 14.4, 14.30(k1), (r1), (w); 2017-197, s. 4.12.)

**§ 143B-135.236. North Carolina Conservation Easement Endowment Fund.**

(a) The North Carolina Conservation Easement Endowment Fund is established as a special fund in the Office of the State Treasurer. The principal of the Endowment Fund shall consist of a portion of grant funds transferred by the Trustees to the Endowment Fund from the Clean Water Management Trust Fund for stewardship activities related to projects for conservation easements funded from the Clean Water Management Trust Fund. The principal of the Endowment Fund may also consist of any proceeds of any gifts, grants, or contributions to the State that are specifically designated for inclusion in the Endowment Fund and any investment income that is not used in accordance with subsection (b) of this section. The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the endowment investment income only upon the written direction of the Chair of the Board of Trustees. No expenditure or disbursement shall be made from the principal of the Endowment Fund.

(b) The Trustees may authorize the disbursement of the endowment investment income only for activities related to stewardship of conservation easements owned by the State. (2008-107, s. 12.9(a); 2015-241, s. 14.30(k1).)

**§ 143B-135.238. Grant requirements.**

(a) Eligible Applicants. - Any of the following are eligible to apply for a grant from the Fund for the purpose of protecting and enhancing water quality:

- (1) A State agency.
- (2) A local government unit.
- (3) A nonprofit corporation whose primary purpose is the conservation, preservation, or restoration of our State's cultural, environmental, or natural resources.

(b) Criteria. - The criteria developed by the Trustees under G.S. 143B-135.242 apply to grants made under this Part.

(c) Matching Requirement. - The Board of Trustees shall establish matching requirements for grants awarded under this Part. This requirement may be satisfied by the donation of land to a public or private nonprofit conservation organization as approved by the Board of Trustees. The Board of Trustees may also waive the requirement to match a grant pursuant to guidelines adopted by the Board of Trustees.

(d) Restriction. - No grant shall be awarded under this Part to satisfy compensatory mitigation requirements under 33 USC § 1344 or G.S. 143-214.11.

(e) Withdrawal. - An award of a grant under this Part is withdrawn if the grant recipient fails to enter into a construction contract for the project within one year after the date of the award, unless the Trustees find that the applicant has good cause for the failure. If the Trustees find good cause for a recipient's failure, the Trustees must set a

date by which the recipient must take action or forfeit the grant. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 2003-340, s. 1.3; 2005-454, s. 6; 2006-178, s. 1; 2007-185, s. 1; 2014-100, s. 14.8(c); 2015-241, ss. 14.30(k1), (r1).)

**§ 143B-135.240. Clean Water Management Trust Fund: Board of Trustees established; membership qualifications; vacancies; meetings and meeting facilities.**

(a) Board of Trustees Established. - There is established the Clean Water Management Trust Fund Board of Trustees. The Clean Water Management Trust Fund Board of Trustees shall be administratively located within the Department of Natural and Cultural Resources.

(b) Membership. - The Clean Water Management Trust Fund Board of Trustees shall be composed of nine members appointed to three-year terms as follows:

- (1) One member appointed by the Governor to a term that expires on July 1 of years that precede by one year those years that are evenly divisible by three.
- (2) One member appointed by the Governor to a term that expires on July 1 of years that follow by one year those years that are evenly divisible by three.
- (3) One member appointed by the Governor to a term that expires on July 1 of years that are evenly divisible by three.
- (4) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on July 1 of years that precede by one year those years that are evenly divisible by three.
- (5) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on July 1 of years that follow by one year those years that are evenly divisible by three.
- (6) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on July 1 of years that are evenly divisible by three.
- (7) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on July 1 of years that precede by one year those years that are evenly divisible by three.
- (8) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on July 1 of years that follow by one year those years that are evenly divisible by three.

(9) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on July 1 of years that are evenly divisible by three.

(c) Qualifications. - The office of Trustee is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9, of the North Carolina Constitution. When appointing members of the Authority, the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall give consideration to adequate representation from the various regions of the State and shall give consideration to the appointment of members who are knowledgeable in any of the following areas:

- (1) Acquisition and management of natural areas.
- (2) Conservation and restoration of water quality.
- (3) Wildlife and fisheries habitats and resources.
- (4) Environmental management.
- (5) Historic preservation.

(d) Limitation on Length of Service. - No member of the Board of Trustees shall serve more than two consecutive three-year terms or a total of 10 years.

(e) Chair. - The Governor shall appoint one member to serve as Chair of the Board of Trustees.

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

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

(h) Quorum. - A majority of the membership of the Board of Trustees constitutes a quorum for the transaction of business.

(i) Per Diem and Expenses. - Each member of the Board of Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. Per diem, subsistence, and travel expenses of the Trustees shall be paid from the Fund. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 1997-443, s. 11A.119(a); 2001-474, s. 10; 2003-340, s. 1.3; 2003-422, s. 1; 2006-178, s. 2; 2013-360, s. 14.3(e); 2014-100, s. 14.8(d); 2015-241, ss. 14.30(k1), (r1), (u).)

**§ 143B-135.242. Clean Water Management Trust Fund Board of Trustees: powers and duties.**

(a) Allocate Grant Funds. - The Trustees shall allocate moneys from the Fund as grants. A grant may be awarded only for a project or activity that satisfies the criteria and furthers the purposes of this Part.

(b) Develop Grant Criteria. - The Trustees shall develop criteria for awarding grants under this Part. The criteria developed shall include consideration of the following:

- (1) The significant enhancement and conservation of water quality in the State.
- (2) The objectives of the various basinwide management plans for the State's river basins and watersheds.
- (3) The promotion of regional integrated ecological networks insofar as they affect water quality.
- (4) The specific areas targeted as being environmentally sensitive.
- (5) The geographic distribution of funds as appropriate.
- (6) The preservation of water resources with significant recreational or economic value and uses.
- (7) The development of a network of riparian buffer-greenways bordering and connecting the State's waterways that will serve environmental, educational, and recreational uses.
- (8) Water supply availability and the public's need for resources adequate to meet demand for essential water uses. Criteria developed pursuant to this subdivision may include consideration of the likelihood of a proposed water supply project ultimately being permitted and built.
- (9) The protection or preservation of land with outstanding natural or cultural heritage values.
- (10) The protection or preservation of land that contains a relatively undisturbed and outstanding example of a native North Carolina ecological community that is now uncommon; contains a major river or tributary, watershed, wetland, significant littoral, estuarine, or aquatic site, or important geologic feature; or represents a type of landscape, natural feature, or natural area that is not currently in the State's inventory of parks and natural areas.
- (11) The protection or preservation of a site or structure that is of such historical significance as to be essential to the development of a balanced State program of historic properties.

(c) Develop Additional Guidelines. - The Trustees may develop guidelines in addition to the grant criteria consistent with and as necessary to implement this Part.

(d) Acquisition of Land. - The Trustees may acquire land by purchase, negotiation, gift, or devise. Any acquisition of land by the Trustees must be reviewed and approved by the Council of State and the deed for the land subject to approval of the Attorney General before the acquisition can become effective. In determining whether to acquire land as permitted by this Part, the Trustees shall consider whether the acquisition furthers the purposes of this Part and may also consider

recommendations from the Council. Nothing in this section shall allow the Trustees to acquire land under the right of eminent domain.

(e) Exchange of Land. - The Trustees may exchange any land they acquire in carrying out the powers conferred on the Trustees by this Part.

(f) Land Management. - The Trustees may designate managers or managing agencies of the lands acquired under this Part.

(g) Rule-making Authority. - The Trustees may adopt rules to implement this Part. Chapter 150B of the General Statutes applies to the adoption of rules by the Trustees. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a), (c); 1999-237, s. 15.11; 2003-340, s. 1.3; 2004-179, s. 4.5; 2011-374, s. 2.4; 2013-360, s. 14.3(f); 2013-414, s. 58(b); 2014-3, s. 14.14(f); 2014-100, s. 14.8(e); 2015-241, ss. 14.30(k1), (r1).)

#### **§ 143B-135.244. Clean Water Management Trust Fund: reporting requirement.**

The Chair of the Board of Trustees shall report no later than December 1 each year to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Environmental Review Commission, the Subcommittees of the House of Representatives and Senate Appropriations Committees with jurisdiction over natural and economic resources, and the Fiscal Research Division of the General Assembly regarding the implementation of this Part. The report shall include a list of the projects awarded grants from the Fund for the previous 12-month period. The list shall include for each project a description of the project, the amount of the grant awarded for the project, and the total cost of the project. (1997-443, s. 7.10; 2002-148, s. 3; 2003-340, s. 1.3; 2015-241, s. 14.30(k1), (r1); 2017-57, s. 14.1(dd).)

#### **§ 143B-135.246. Clean Water Management Trust Fund: Executive Director and staff.**

The Secretary of Natural and Cultural Resources shall select and appoint a competent person in accordance with this section as Executive Director of the Clean Water Management Trust Fund Board of Trustees. The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Trustees and shall serve as the chief administrative officer of the Trustees. Subject to the approval of the Secretary of Natural and Cultural Resources, the Executive Director may employ such clerical and other assistants as may be deemed necessary.

The person selected as Executive Director shall have had training and experience in conservation, protection, and management of surface water resources. The salary of the Executive Director shall be fixed by the Secretary of Natural and Cultural Resources, and the Executive Director shall be allowed travel and subsistence expenses in accordance with G.S. 138-6. The Executive Director's salary and expenses shall be paid from the Fund. The term of office of the Executive Director shall be at the pleasure of the Secretary of Natural and Cultural Resources.

These employees shall be exempt from the North Carolina Human Resources Act, as provided in G.S. 126-5(c1). (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 2001-424, s. 32.16(b); 2003-340, s. 1.3; 2013-360, s. 14.3(g); 2013-382, s. 9.1(c); 2015-241, ss. 14.30(k1), (r1), (v).)

**§ 143B-135.248. Clean Water Management Trust Fund: Advisory Council.**

There is established the Clean Water Management Trust Fund Advisory Council. The Council shall advise the Trustees with regard to allocations made from the Fund, and other issues as requested by the Trustees. The Council shall be composed of the following or its designees:

- (1) Commissioner of Agriculture.
- (2) Chair of the Wildlife Resources Commission.
- (3) Secretary of Environmental Quality.
- (4) Secretary of the Department of Commerce.
- (5) Secretary of Natural and Cultural Resources. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 1997-443, s. 11A.119(a); 2001-474, s. 11; 2003-340, s. 1.3; 2014-100, s. 14.8(f); 2015-241, ss. 14.30(k1), (r1), (v), (x).)