

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**HOUSE BILL 1058\***

Short Title: Amend NC Constitution to Conserve Open Space. (Public)

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Sponsors: Representative Gibson.

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Referred to: Environment and Natural Resources, if favorable, Finance.

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April 10, 2001

A BILL TO BE ENTITLED

1  
2 AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION, IF APPROVED  
3 BY THE VOTERS IN THE 2002 GENERAL ELECTION, TO LEVY AN  
4 ADDITIONAL EXCISE TAX ON TRANSFERS OF REAL PROPERTY TO BE  
5 USED ONLY TO CONSERVE OPEN SPACE, FARMLAND, AND SURFACE  
6 WATERS; TO CREATE THE NORTH CAROLINA OPEN SPACE AND  
7 FARMLAND CONSERVATION TRUST FUND; AND TO INCREASE THE  
8 EXCISE TAX AND CREDIT THESE ADDITIONAL PROCEEDS TO THE  
9 NORTH CAROLINA OPEN SPACE AND FARMLAND CONSERVATION  
10 TRUST FUND.

11       Whereas, current programs aimed at the conservation of the State's natural  
12 areas are inadequate to address the present alteration and development of these natural  
13 areas, the loss of its farmlands and forests, the shrinking amount of open space in its  
14 urban areas, the pollution of its surface waters, and the degradation of its drinking water  
15 supplies; and

16       Whereas, open space is an unspoiled or natural area located in a rural,  
17 suburban, or urban area and includes natural areas of critical habitats, greenways,  
18 forestlands, parks, greens, parklands, gamelands, trailways, conservation lands, and  
19 cultural and historic sites; and

20       Whereas, additional conservation of open space, farmland, and surface waters  
21 is needed to complement economic growth and to meet our citizens' needs now and for  
22 generations far into the future; and

23       Whereas, the conservation of open space and farmland, the conservation of  
24 the State's surface waters, and the establishment of a network of riparian buffers and  
25 greenways will be beneficial to wildlife and marine fisheries habitats; Now, therefore,  
26 The General Assembly of North Carolina enacts:

27       **SECTION 1.** Article XIV of the North Carolina Constitution is amended by  
28 adding a new section to read:

1 **"Sec. 6. Conservation of open space, farmland, and surface waters.**

2 It is the policy of this State to conserve and protect its open space, farmland, and  
3 surface waters for the benefit of all its citizens and for future generations of North  
4 Carolinians. To accomplish these public purposes, the General Assembly shall enact a  
5 general law uniformly applicable in every county, city, and town, and other unit of local  
6 government, levying an additional excise tax, at the rate of one dollar (\$1.00) on each  
7 five hundred dollars (\$500.00) or fractional part thereof of the consideration or value of  
8 the interest or property conveyed, on each deed, instrument, or writing by which an  
9 interest in real property is conveyed to another person for transfers occurring on or after  
10 January 1, 2003. The net proceeds of this tax shall be credited to the North Carolina  
11 Open Space and Farmland Conservation Trust Fund and shall be used only to provide  
12 grants for the planning, acquisition, conservation, and administration of open space and  
13 farmland; grants to finance projects that specifically address water pollution problems  
14 and focus on upgrading surface waters, eliminating pollution, protecting and conserving  
15 unpolluted surface waters, including urban drinking water supplies, and establishing a  
16 network of riparian buffers and greenways; or any administrative or operating costs  
17 authorized by the General Assembly by general law related to the North Carolina Open  
18 Space and Farmland Conservation Trust Fund. All interest derived from the investment  
19 of moneys in the North Carolina Open Space and Farmland Conservation Trust Fund  
20 shall be credited to this Fund and shall be dedicated and shall be used only for the  
21 purposes authorized by this section. The General Assembly shall not, under any  
22 pretense whatever, borrow, appropriate, or use any proceeds credited to the North  
23 Carolina Open Space and Farmland Conservation Trust Fund for any purpose or in any  
24 manner other than as provided in this section. The General Assembly shall enact by  
25 general law the conditions and procedures under which grants from the North Carolina  
26 Open Space and Farmland Conservation Trust Fund may be made available."

27 **SECTION 2.** G.S. 113A-240 reads as rewritten:

28 **"§ 113A-240. Intent; Intent; purpose.**

29 (a) It is the intent of the General Assembly to continue to support and accelerate  
30 the State's programs of ~~land~~open space, farmland, and surface water conservation and  
31 protection, to find means to assure and increase funding for these programs, to support  
32 the long-term management of conservation ~~lands~~lands, open space, and farmland  
33 acquired by the State, and to improve the coordination, efficiency, and implementation  
34 of the various State and local land protection programs operating in North Carolina.

35 (b) It is the further intent of the General Assembly that the State's ~~lands~~open  
36 space, farmland, and surface waters should be protected in a manner that minimizes any  
37 adverse impacts on the ability of local governments to carry out their broad mandates.

38 (c) It is the purpose of this Article to prescribe the conditions and procedures by  
39 which grants for the planning, acquisition, conservation, and administration of open  
40 space and farmland and grants to finance projects that specifically address water  
41 pollution problems and focus on upgrading surface waters, eliminating pollution,  
42 protecting and conserving unpolluted surface waters, including urban drinking water  
43 supplies, and establishing a network of riparian buffers and greenways, may be made  
44 available and to authorize the payment of administrative or operating costs of the North

1 Carolina Open Space and Farmland Conservation Trust Fund in accordance with Article  
2 XIV, Sec. 6 of the North Carolina Constitution ('Conservation of open space, farmland,  
3 and surface waters') for the purposes provided in Article XIV, Sec. 6 of the North  
4 Carolina Constitution.

5 (d) In 2000, the General Assembly established the State's goal under G.S. 113A-  
6 241 to preserve one million acres. It is the intent of the General Assembly to take a  
7 critical step toward realizing that goal by establishing a dedicated funding source under  
8 Article XIV, Sec. 6 of the North Carolina Constitution and G.S. 105-228.30 for the  
9 conservation of open space, farmland, and surface waters."

10 **SECTION 3.** Article 17 of Chapter 113A of the General Statutes is amended  
11 by adding the following new sections to read:

12 **"§ 113A-242. Definitions.**

13 The following definitions apply in this Article:

- 14 (1) Fund. – The North Carolina Open Space and Farmland Conservation  
15 Trust Fund.
- 16 (2) Land. – Real property and any interest in, easement in, or restriction on  
17 real property.
- 18 (3) Open space. – An unspoiled or natural area located in a rural,  
19 suburban, or urban area. Open space includes natural areas of critical  
20 habitats, greenways, forestlands, parks, greens, parklands, gamelands,  
21 trailways, conservation lands, and cultural and historic sites.
- 22 (4) Trustees. – The Clean Water Management Trust Fund Board of  
23 Trustees established under G.S. 113-145.5.

24 **"§ 113A-243. North Carolina Open Space and Farmland Conservation Trust**  
25 **Fund: established.**

26 (a) Fund Established. – The North Carolina Open Space and Farmland  
27 Conservation Trust Fund is created in the State Treasurer's Office and consists of  
28 revenue credited to the Fund from the proceeds of the additional excise tax on transfers  
29 of real property levied under Article XIV, Sec. 6 of the North Carolina Constitution  
30 ('Conservation of open space, farmland, and surface waters') and G.S. 105-228.30. The  
31 Fund shall be distributed in accordance with subsection (c) of this section and this  
32 Article.

33 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the  
34 Fund separate and apart from all other moneys, funds, and accounts. Investment  
35 earnings credited to the assets of the Fund shall become part of the Fund. Any balance  
36 remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund  
37 for the next succeeding fiscal year. Payments from the Fund shall be made on the  
38 warrant of the Chair of the Trustees.

39 (c) Fund Purposes. – The Fund shall be used to finance projects to protect or  
40 preserve open space or farmland or to clean up or prevent surface water pollution in  
41 accordance with Article XIV, Sec. 6 of the North Carolina Constitution, as follows:

- 42 (1) To acquire land in fee simple or to acquire perpetual conservation  
43 easements or other interests in real property for the purpose of  
44 conserving open space or farmland.

- 1           (2) To coordinate with other public programs involved with the  
2 conservation of open space or farmland to gain the most public benefit  
3 while conserving open space or farmland.
- 4           (3) To facilitate planning that addresses the conservation of open space or  
5 farmland.
- 6           (4) To fund any project under G.S. 113-145.3(c), which projects clean up  
7 pollution of surface waters or protect and conserve surface waters.
- 8           (5) To fund the purchase of agricultural conservation easements under  
9 Article 61 of Chapter 106 of the General Statutes.
- 10          (6) To fund the operating expenses of the Trustees and its staff.

11          (d) Limit on Operating and Administrative Expenses. – No more than two  
12 percent (2%) of the annual balance of the Fund on July 1 or the sum of eight hundred  
13 fifty thousand dollars (\$850,000), whichever is less, may be used each fiscal year for  
14 administrative and operating expenses of the Trustees and its staff.

15 **§ 113A-244. North Carolina Open Space and Farmland Conservation Trust**  
16 **Fund: eligibility for grants; matching funds or property requirement.**

17          (a) Eligible Grant Applicants. – Any of the following are eligible to apply for a  
18 grant from the Fund for the purpose of protecting and preserving open space or  
19 farmland or protecting and enhancing water quality:

- 20           (1) A State agency.
- 21           (2) A local government or other political subdivision of the State or a  
22 combination of such entities.
- 23           (3) A nonprofit corporation whose primary purpose is the conservation,  
24 preservation, and restoration of our State's environmental and natural  
25 resources.

26          (b) Grant Matching Requirement. – The Trustees shall establish matching  
27 requirements for grants awarded under this Article. The Trustees may require a match of  
28 up to twenty percent (20%) of the amount of the grant awarded. This requirement may  
29 be satisfied by the donation of land to a public or private nonprofit conservation  
30 organization as approved by the Trustees. The Trustees may also waive the requirement  
31 to match a grant pursuant to guidelines adopted by the Trustees.

32 **§ 113A-245. North Carolina Open Space and Farmland Conservation Trust**  
33 **Fund; grants; administration of Fund; reporting requirements;**  
34 **authority to adopt rules.**

35          (a) Grants Awarded. – The Trustees shall allocate moneys from the Fund as  
36 grants. A grant may be awarded only for a project or activity that satisfies the criteria  
37 under this section and furthers the purposes of Article XIV, Sec. 6 of the North Carolina  
38 Constitution.

39          (b) Grant Criteria. – The Trustees shall develop criteria for awarding grants under  
40 this Article. The criteria developed shall include consideration of the following:

- 41           (1) The significant enhancement and conservation of open space or  
42 farmland in the State.
- 43           (2) The promotion of regional integrated ecological networks insofar as  
44 they affect open space or farmland.

1           (3) The conservation of open space or farmland with significant  
2           recreational or economic value and uses.

3           (4) All considerations under G.S. 113-145.6(b), which considerations  
4           pertain to the enhancement or conservation of surface waters.

5           (c) Additional Guidelines. – The Trustees may develop guidelines in addition to  
6           the grant criteria consistent with and as necessary to implement this Article.

7           (d) Trustees' Powers and Duties. – The Trustees shall have the same powers and  
8           duties with respect to the Fund that the Trustees have with respect to the Clean Water  
9           Management Trust Fund under Article 13A of Chapter 113 of the General Statutes.

10          (e) All Other Administrative Matters. – The Trustees shall administer the Fund in  
11          the same manner as the Trustees administer the Clean Water Management Trust Fund  
12          under Article 13A of Chapter 113 of the General Statutes. The Executive Director of the  
13          Trustees shall have the same role with respect to the Fund that the Executive Director  
14          has with respect to the Clean Water Management Trust Fund under Article 13A of  
15          Chapter 113 of the General Statutes.

16          (f) Report on Implementation. – No later than November 1, the Chair of the  
17          Trustees shall report annually to the Joint Legislative Commission on Governmental  
18          Operations, the Environmental Review Commission, and the Subcommittees on Natural  
19          and Economic Resources of the House of Representatives and Senate Appropriations  
20          Committees regarding the implementation of this Article. A written copy of the report  
21          shall also be sent to the Fiscal Research Division of the General Assembly by  
22          November 1 each year.

23          (g) Report on Grants Awarded. – No later than November 1 and quarterly  
24          thereafter, the Chair of the Trustees shall submit to the Joint Legislative Commission on  
25          Governmental Operations, the Environmental Review Commission, and the  
26          Subcommittees on Natural and Economic Resources of the House of Representatives  
27          and Senate Appropriations Committees a list of the projects awarded grants from the  
28          Fund that quarter. The list shall include for each project a description of the project, the  
29          amount of the grant awarded for the project, and the total cost of the project. A written  
30          copy of the list and other information regarding the projects shall also be sent to the  
31          Fiscal Research Division of the General Assembly.

32          (h) Rule-Making Authority. – The Trustees may adopt rules to implement this  
33          Article. Chapter 150B of the General Statutes applies to the adoption of rules by the  
34          Trustees."

35           **SECTION 4.** G.S. 113-145.5(b) reads as rewritten:

36           "(b) Membership. – The Clean Water Management Trust Fund Board of Trustees  
37 shall be composed of 18 members. Six members shall be appointed by the Governor, six  
38 by the General Assembly upon the recommendation of the President Pro Tempore of the  
39 Senate in accordance with G.S. 120-121, and six by the General Assembly upon the  
40 recommendation of the Speaker of the House of Representatives in accordance with  
41 G.S. 120-121. The office of Trustee is declared to be an office that may be held  
42 concurrently with any other executive or appointive office, under the authority of  
43 Article VI, Section 9, of the North Carolina Constitution.

44           Persons appointed shall be knowledgeable in one of the following areas:

- 1 (1) Acquisition and management of natural areas.
- 2 (2) Conservation and restoration of water quality.
- 3 (3) Wildlife and fisheries habitats and resources.
- 4 (4) Environmental management.
- 5 (5) Conservation of open space or farmland."

6 **SECTION 5.** G.S. 105-228.30 reads as rewritten:

7 "**§ 105-228.30. Imposition of excise tax; distribution of proceeds.**

8 (a) Levy. – An excise tax is levied on each instrument by which any interest in  
9 real property is conveyed to another person. The tax rate is ~~one dollar (\$1.00)~~ two  
10 dollars (\$2.00) on each five hundred dollars (\$500.00) or fractional part thereof of the  
11 consideration or value of the interest conveyed. The transferor must pay the tax to the  
12 register of deeds of the county in which the real estate is located before recording the  
13 instrument of conveyance. If the instrument transfers a parcel of real estate lying in two  
14 or more counties, however, the tax must be paid to the register of deeds of the county in  
15 which the greater part of the real estate with respect to value lies.

16 The excise tax on instruments imposed by this Article applies to timber deeds and  
17 contracts for the sale of standing timber to the same extent as if these deeds and  
18 contracts conveyed an interest in real property.

19 (b) Distribution. – The register of deeds of each county must remit the proceeds  
20 of the tax levied by this section to the county finance officer. The finance officer of each  
21 county must distribute the proceeds of the first one-dollar (\$1.00) tax as provided in  
22 subsection (c) of this section and must distribute the proceeds of the second one-dollar  
23 (\$1.00) tax as provided in subsection (d) of this section.

24 (c) First Dollar. – The finance officer of each county must credit one-half of the  
25 proceeds of the first one-dollar (\$1.00) tax to the county's general fund and remit the  
26 remaining one-half of the proceeds, less the county's allowance for administrative  
27 expenses, to the Department of Revenue on a quarterly basis. A county may retain two  
28 percent (2%) of the amount of tax proceeds allocated for remittance to the Department  
29 of Revenue as compensation for the county's cost in collecting and remitting the State's  
30 share of the tax. Of the funds remitted to it pursuant to this section, the Department of  
31 Revenue must credit seventy-five percent (75%) to the Parks and Recreation Trust Fund  
32 established under G.S. 113-44.15 and twenty-five percent (25%) to the Natural Heritage  
33 Trust Fund established under G.S. 113-77.7.

34 (d) Second Dollar. – The finance officer of each county must credit the entire  
35 gross proceeds of the second one-dollar (\$1.00) tax to the Department of Revenue on a  
36 quarterly basis. The Department of Revenue must credit these funds to the North  
37 Carolina Open Space and Farmland Conservation Trust Fund established under G.S.  
38 113A-243."

39 **SECTION 6.** The amendment set out in Section 1 of this act shall be  
40 submitted to the qualified voters of the State at the statewide general election to be held  
41 in 2002. The election shall be conducted under the laws then governing elections in the  
42 State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of  
43 the General Statutes. The question to be used in the voting systems and ballots shall be:

44 "[ ] FOR [ ] AGAINST

1 Constitutional amendment to conserve open space, farmland, and surface  
2 waters in this State by levying an additional excise tax on transfers of real property to be  
3 used only to provide grants for the planning, acquisition, conservation, and  
4 administration of open space and farmland or to finance projects that specifically  
5 address water pollution problems and focus on upgrading surface waters, eliminating  
6 pollution, protecting and conserving unpolluted surface waters, including urban  
7 drinking water supplies, and establishing a network of riparian buffers and greenways."

8 **SECTION 7.** If a majority of the votes cast on the question are in favor of  
9 the amendment set out in Section 1 of this act, the State Board of Elections shall certify  
10 the amendment to the Secretary of State. The amendment becomes effective upon this  
11 certification. The Secretary of State shall enroll the amendment so certified among the  
12 permanent records of that office.

13 **SECTION 8.** Sections 2, 3, 4, and 5 of this act become effective only if the  
14 constitutional amendment proposed by Section 1 of this act is approved as provided in  
15 Sections 6 and 7 of this act. If the constitutional amendment is approved, Sections 2, 3,  
16 4, and 5 of this act become effective January 1, 2003. Subject to Section 7 of this act,  
17 the remainder of this act is effective when it becomes law.