

**GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015**  
**SESSION LAW 2015-246**  
**HOUSE BILL 44**

AN ACT TO REFORM VARIOUS PROVISIONS OF THE LAW RELATED TO LOCAL GOVERNMENT.

**RIPARIAN BUFFER REFORM**

**SECTION 13.1.(a)** Subsection (e1) of G.S. 143-214.23 is repealed.

**SECTION 13.1.(b)** Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

**"§ 143-214.23A. Limitations on local government riparian buffer requirements.**

(a) As used in this section:

- (1) "Local government ordinance" means any action by a local government carrying the effect of law approved before or after October 1, 2015, whether by ordinance, comprehensive plan, policy, resolution, or other measure.
- (2) "Protection of water quality" means nutrient removal, pollutant removal, stream bank protection, or protection of an endangered species as required by federal law.
- (3) "Riparian buffer area" means an area subject to a riparian buffer requirement.
- (4) "Riparian buffer requirement" means a landward setback from surface waters.

(b) Except as provided in this section, a local government may not enact, implement, or enforce a local government ordinance that establishes a riparian buffer requirement that exceeds riparian buffer requirements necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency.

(c) Subsection (b) of this section shall not apply to any local government ordinance that establishes a riparian buffer requirement enacted prior to August 1, 1997, if (i) the ordinance included findings that the requirement was imposed for purposes that include the protection of aesthetics, fish and wildlife habitat, and recreational use by maintaining water temperature, healthy tree canopy and understory, and the protection of the natural shoreline through minimization of erosion and potential chemical pollution in addition to the protection of water quality and the prevention of excess nutrient runoff, and (ii) the ordinance would permit small or temporary structures within 50 feet of the water body and docks and piers within and along the edge of the water body under certain circumstances.

(d) A local government may request from the Commission the authority to enact, implement, and enforce a local government ordinance that establishes a

riparian buffer requirement for the protection of water quality that exceeds riparian buffer requirements for the protection of water quality necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency. To do so, a local government shall submit to the Commission an application requesting this authority that includes the local government ordinance, including the riparian buffer requirement for the protection of water quality, scientific studies of the local environmental and physical conditions that support the necessity of the riparian buffer requirement for the protection of water quality, and any other information requested by the Commission. Within 90 days after the Commission receives a complete application, the Commission shall review the application and notify the local government whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a local government ordinance that establishes a riparian buffer requirement for the protection of water quality unless the Commission finds that the scientific evidence presented by the local government supports the necessity of the riparian buffer requirement for the protection of water quality.

- (e) Cities and counties shall not treat the land within a riparian buffer area as if the land is the property of the State or any of its subdivisions unless the land or an interest therein has been acquired by the State or its subdivisions by a conveyance or by eminent domain. Land within a riparian buffer area in which neither the State nor its subdivisions holds any property interest may be used by the property owner to satisfy any other development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements.
- (f) When riparian buffer requirements are included within a lot, cities and counties shall require that the riparian buffer area be shown on the recorded plat. Nothing in this subsection shall be construed to require that the riparian buffer area be surveyed. When riparian buffer requirements are placed outside of lots in portions of a subdivision that are designated as common areas or open space and neither the State nor its subdivisions holds any property interest in that riparian buffer area, the local government shall attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements.
- (g) The Commission may adopt rules to implement this section."

**SECTION 13.1.(c)** The definitions set out in G.S. 143-214.23A(a), as enacted by Section 13.1(b) of this act, shall apply to this section. Notwithstanding G.S. 143-214.23A(b), as enacted by Section 13.1(b) of this act, a local government ordinance that establishes a riparian buffer requirement for the protection of water quality that exceeds riparian buffer requirements necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency that is in effect on October 1, 2015, may remain in effect and enforceable until January 1, 2017. If the local government ordinance is authorized by the Environmental Management Commission pursuant to G.S. 143-214.23A(d), as enacted by Section 13.1(b) of this act, on or before January 1, 2017, the ordinance may continue to be in effect and enforceable. If the local government ordinance is not authorized by the Environmental Management Commission pursuant to G.S. 143-214.23A(d), as enacted by Section 13.1(b) of this act, on or before January 1, 2017, the ordinance shall no longer be in effect or enforceable.

**SECTION 13.1.(d)** This section becomes effective October 1, 2015.

**SECTION 13.2.(a)** The Environmental Management Commission, with the assistance of the Department of Environment and Natural Resources, shall examine ways to provide regulatory relief from the impacts of riparian buffer rules adopted to implement the State's Riparian Buffer Protection Program for parcels of land that were platted on or before the effective date of the applicable riparian buffer rule. The Commission shall specifically examine ways to fairly provide properties with relief where a change in use has occurred that would otherwise trigger the requirements of the riparian buffer rules. Such relief would be determined on a case-by-case basis and provide relief to successor owners. For purposes of this study, a change in use that would otherwise trigger the requirements of the riparian buffer rules shall not include either of the following circumstances:

- (1) Developing from a vacant condition to a use allowed by the current local regulations, unless the local regulations have been changed at the request of the property owner since the date the buffer rule was applied; the parcel was recorded prior to the effective date of the applicable buffer rule; and the allowable use is for any non-farming or nonagricultural purpose.
- (2) The property configuration has not been altered except as a result of either an eminent domain action or a recombination involving not more than three parcels, all of which were recorded before the effective date of the applicable buffer rule.

The Commission may also consider and recommend other circumstances that should not constitute a change in use that would otherwise trigger the requirements of the riparian buffer rules. No later than April 1, 2016, the Commission shall report the results of its study, including any recommendations, to the Environmental Review Commission.

**SECTION 13.2.(b)** This section becomes effective October 1, 2015.

**SECTION 13.3.(a)** As used in this section, "coastal wetlands" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides, whether or not the tidewaters reach the marshland areas through natural or artificial watercourses, provided this shall not include hurricane or tropical storm tides.

**SECTION 13.3.(b)** For purposes of implementing 15A NCAC 02B .0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers) and 15A NCAC 02B .0259 (Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers), Zone 1 of a protective riparian buffer for coastal wetlands shall begin at the most landward limit of the normal high water level or the normal water level, as appropriate.

**SECTION 13.3.(c)** The Environmental Management Commission shall adopt temporary rules to amend its rules consistent with this section.

**SECTION 13.3.(d)** This section becomes effective October 1, 2015.

**SECTION 13.4.(a)** The Environmental Management Commission shall amend its rules for the protection of existing riparian buffers to provide for the case-by-case modification of the requirement for maintaining woody vegetation in the riparian buffer area upon a showing by a landowner that alternative measures will provide equal or greater water quality protection.

**SECTION 13.4.(b)** The Environmental Management Commission shall adopt temporary rules to amend its rules consistent with this section.

**SECTION 13.4.(c)** This section becomes effective October 1, 2015.