

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 634*

Short Title: Mtn. Island Lake Marine Commission.

(Local)

Sponsors: Representatives Dickson; and Rayfield.

Referred to: Local and Regional Government II.

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE MOUNTAIN ISLAND LAKE MARINE
COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. For purposes of this act:

- (1) " Board" means the board of commissioners of one of the three counties.
- (2) " Commission" means the Mountain Island Lake Marine Commission or its governing board, as the case may be.
- (3) " Commissioner" means a member of the governing board of the Mountain Island Lake Marine Commission.
- (4) " Three counties" means Gaston, Lincoln, and Mecklenburg Counties.
- (5) " Joint resolution" means a resolution or ordinance substantially identical in content adopted separately by the governing boards in each of the three counties.
- (6) " Mountain Island Lake" means the impounded body of water along the Catawba River in the three counties extending from the Cowans Ford Dam downstream to the Mountain Island Dam.
- (7) " Shoreline area" means, except as modified by a joint resolution, the area within the three counties lying within 1,000 feet of the mean high waterline on Mountain Island Lake. In addition, the shoreline area

1 includes all islands within Mountain Island Lake and all peninsulas
2 extending into the waters of Mountain Island Lake.

3 (8) " Wildlife Commission" means the North Carolina Wildlife Resources
4 Commission.

5 Section 2. The three counties may by joint resolution create the Mountain
6 Island Lake Marine Commission. Upon its creation the Commission has the powers,
7 duties, and responsibilities conferred upon it by joint resolution, subject to the provisions
8 of this act. The provisions of any joint resolution may be modified, amended, or
9 rescinded by a subsequent joint resolution. A county may unilaterally withdraw from
10 participation as provided by any joint resolution or the provisions of this act, once the
11 Commission has been created, and any county may unilaterally withdraw from the
12 Commission at the end of any budget period upon 90 days prior written notice. Upon the
13 effectuation of the withdrawal, the Commission is dissolved, and all property of the
14 Commission must be distributed to or divided among the three counties and any other
15 public agency or agencies serving the Mountain Island Lake area in a manner considered
16 equitable by the Commission by resolution adopted by it prior to dissolution.

17 Section 3. Upon its creation, the Commission shall have a governing board of
18 seven. Except as otherwise provided for the initial appointees, each commissioner shall
19 serve a three-year term. Upon creation of the Commission, the Boards of Commissioners
20 of Gaston County and Mecklenburg County shall appoint three commissioners each, and
21 the Board of Commissioners of Lincoln County shall appoint one commissioner. Of the
22 initial appointees:

- 23 (1) One commissioner appointed by Gaston County and one member
24 appointed by Mecklenburg County shall serve one-year terms;
- 25 (2) One commissioner appointed by Gaston County and one member
26 appointed by Mecklenburg County shall serve two-year terms; and
- 27 (3) One member appointed by Gaston County, one member appointed by
28 Mecklenburg County, and the member appointed by Lincoln County
29 shall serve three-year terms.

30 Any commissioner who has served two consecutive terms, including any initial
31 term of less than three years, may not be reappointed to a third consecutive term. Such a
32 member may, however, be appointed to serve again after the expiration of the term of the
33 member's successor.

34 On the death of a commissioner, resignation, incapacity, or inability to serve,
35 as determined by the board appointing that commissioner, or removal of the
36 commissioner for cause, as determined by the board appointing that commissioner, the
37 board affected may appoint another commissioner to fill the unexpired term.

38 Section 4. The joint resolution of the three counties shall state the terms
39 relating to compensation to commissioners, if any, compensation of consultants and staff
40 members employed by the Commission, and reimbursement of expenses incurred by
41 commissioners, consultants, and employees. The Commission shall be governed by those
42 budgetary and accounting procedures specified by joint resolution.

1 Section 5. Upon creation of the Commission, its governing board shall meet at
2 a time and place agreed upon by the boards of the three counties concerned. The
3 commissioners shall elect a chairman and officers as they choose. All officers shall serve
4 one-year terms. The governing board shall adopt rules and regulations as it deems
5 necessary, not inconsistent with the provisions of this act or of any joint resolution, for
6 the proper discharge of its duties and for the governance of the Commission. In order to
7 conduct business, a quorum must be present. The chairman may adopt those committees
8 as authorized by those rules and regulations. The Commission shall meet regularly at
9 times and places as specified in its rules and regulations or in any joint resolution.
10 However, meetings of the Commission must be held in all three counties on a rotating
11 basis so that an equal number of meetings is held in each county. Special meetings may
12 be called as specified in the rules and regulations. The provisions of the Open Meetings
13 Law, Article 33C of Chapter 143 of the General Statutes, shall apply.

14 Section 6. (a) Within the limits of funds available to it and subject to the
15 provisions of this act and of any joint resolution, the Commission may:

- 16 (1) Hire and fix the compensation of permanent and temporary employees
17 and staff as it may deem necessary in carrying out its duties;
- 18 (2) Contract with consultants for services it requires;
- 19 (3) Contract with the State of North Carolina or the federal government, or
20 any agency or department, or subdivision of them, for property or
21 services as may be provided to or by these agencies and carry out the
22 provisions of these contracts;
- 23 (4) Contract with persons, firms, and corporations generally as to all
24 matters over which it has a proper concern, and carry out the provisions
25 of contracts;
- 26 (5) Lease, rent, purchase, or otherwise obtain suitable quarters and office
27 space for its employees and staff, and lease, rent, purchase, or otherwise
28 obtain furniture, fixtures, vessels, vehicles, firearms, uniforms, and
29 other supplies and equipment necessary or desirable for carrying out the
30 duties imposed in or under the authority of this act; and
- 31 (6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate,
32 repair, and replace, either on its own or in cooperation with other public
33 or private agencies or individuals, any of the following: boat docks,
34 navigation aids, waterway markers, public information signs and
35 notices, and other items of real and personal property designed to
36 enhance public safety in Mountain Island Lake and its shoreline area, or
37 protection of property in the shoreline area subject however to Chapter
38 113 of the General Statutes and rules promulgated under that Chapter.

39 (b) The Commission may accept, receive, and disburse in furtherance of its
40 functions any funds, grants, services, or property made available by the federal
41 government or its agencies or subdivisions, by the State of North Carolina or its agencies
42 or subdivisions, or by private and civic sources.

1 (c) The governing boards of the three counties may appropriate funds to the
2 Commission out of surplus funds or funds derived from nontax sources. They may
3 appropriate funds out of tax revenues and may also levy annually taxes for the payments
4 of such appropriation as a special purpose, in addition to any allowed by the Constitution,
5 or as provided by G.S. 153A-149.

6 (d) The Commission shall be subject to those audit requirements as may be
7 specified in any joint resolution.

8 (e) In carrying out its duties and either in addition to or in lieu of exercising
9 various provisions of the above authorization, the Commission may, with the agreement
10 of the governing board of the county concerned, utilize personnel and property of or
11 assign responsibilities to any officer or employee of any of the three counties. Such
12 contribution in kind, if substantial, may with the agreement of the other two counties be
13 deemed to substitute in whole or in part for the financial contribution required of that
14 county in support of the Commission.

15 (f) Unless otherwise specified by joint resolution, each of the three counties
16 shall annually contribute an equal financial contribution to the Commission in an amount
17 appropriate to support the activities of the Commission in carrying out its duties.

18 Section 7. (a) A copy of the joint resolution creating the Commission and of any
19 joint resolution amending or repealing the joint resolution creating the Commission shall
20 be filed with the Executive Director of the Wildlife Commission. When the Executive
21 Director receives resolutions that are in substance identical from all three counties
22 concerned, the Executive Director shall within 10 days so certify and distribute a certified
23 single resolution text to the following:

24 (1) The Secretary of State;

25 (2) The clerk to the governing board of each of the three counties;

26 (3) The clerks of superior court of Lincoln, Mecklenburg, and Gaston
27 Counties. Upon request, the Executive Director also shall send a
28 certified single copy of any and all applicable joint resolutions to the
29 chairman of the Commission; and

30 (4) A newspaper of general circulation in the three counties.

31 (b) Unless a joint resolution specifies a later date, it shall take effect when the
32 Executive Director's certified text has been submitted to the Secretary of State for filing.
33 Certifications of the Executive Director under the seal of the Commission as to the text or
34 amended text of any joint resolution and of the date or dates of submission to the
35 Secretary of State shall be admissible in evidence in any court. Certifications by any
36 clerk of superior court of the text of any certified resolution filed with him by the
37 Executive Director is admissible in evidence and the Executive Director's submission of
38 the resolution for filing to the clerk shall constitute prima facie evidence that that
39 resolution was on the date of submission also submitted for filing with the Secretary of
40 State. Except for the certificate of a clerk as to receipt and date of submission, no
41 evidence may be admitted in court concerning the submission of the certified text of any
42 resolution by the Executive Director to any person other than the Secretary of State.

1 Section 8. (a) Except as limited in subsection (b) of this section, by restrictions in
2 any joint resolution, and by other supervening provisions of law, the Commission may
3 make regulations applicable to Mountain Island Lake and its shoreline area concerning all
4 matters relating to or affecting the use of Mountain Island Lake. These regulations may
5 not conflict with or supersede provisions of general or special acts or of regulations of
6 State agencies promulgated under the authority of general law. No regulations adopted
7 under this section may be adopted by the Commission except after public hearing, with
8 publication of notice of the hearing being given in a newspaper of general circulation in
9 the three counties at least 10 days before the hearing. In lieu of or in addition to passing
10 regulations supplementary to State law and regulations concerning the operation of
11 vessels on Mountain Island Lake, the Commission may, after public notice, request that
12 the Wildlife Commission pass local regulations on this subject in accordance with the
13 procedure established by appropriate State law.

14 (b) Violation of any regulation of the Commission commanding or prohibiting an
15 act shall be a Class 3 misdemeanor.

16 (c) The regulations promulgated under this section take effect upon passage or
17 upon dates as stipulated in the regulations, except that no regulation may be enforced
18 unless adequate notice of the regulation has been posted in or on Mountain Island Lake or
19 its shoreline area. Adequate notice as to a regulation affecting only a particular location
20 may be by a sign, uniform waterway marker, posted notice, or other effective method of
21 communicating the essential provisions of the regulation in the immediate vicinity of the
22 location in question. Where a regulation applies generally as to Mountain Island Lake or
23 its shoreline area, or both, there must be a posting of notices, signs, or markers
24 communicating the essential provisions in at least three different places throughout the
25 area, and it must be printed in a newspaper of general circulation in the three counties.

26 (d) A copy of each regulation promulgated under this section must be filed by the
27 Commission with the following persons:

28 (1) The Secretary of State;

29 (2) The clerks of superior court of Gaston, Lincoln, and Mecklenburg
30 Counties; and

31 (3) The Executive Director of the Wildlife Commission;

32 (e) Any official designated in subsection (d) above may issue certified copies
33 of regulations filed with him under the seal of his office. Those certified copies may be
34 received in evidence in any proceeding.

35 (f) Publication and filing of regulations promulgated under this section as
36 required above is for informational purposes and shall not be a prerequisite to their
37 validity if they in fact have been duly promulgated, the public has been notified as to the
38 substance of regulations, a copy of the text of all regulations is in fact available to any
39 person who may be affected, and no party to any proceeding has been prejudiced by any
40 defect that may exist with respect to publication and filing. Rules and regulations
41 promulgated by the Commission under the provisions of other sections of this act relating
42 to internal governance of the Commission need not be filed or published. Where posting
43 of any sign, notice, or marker or the making of other communication is essential to the

1 validity of a regulation duly promulgated, it shall be presumed in any proceeding that
2 prior notice was given and maintained and the burden lies upon the party asserting to the
3 contrary to prove lack of adequate notice of any regulation.

4 Section 9. (a) Where a joint resolution so provides, all law enforcement officers, or
5 those officers as may be designated in the joint resolution, with territorial jurisdiction as
6 to any part of Mountain Island Lake or its shoreline area shall, within the limitations of
7 their subject matter jurisdiction, have the authority of peace officers in enforcing the laws
8 over all of Mountain Island Lake and its shoreline area.

9 (b) Where a joint resolution provides it, the Commission may hire special officers
10 to patrol and enforce the laws on Mountain Island Lake and its shoreline area. These
11 special officers have and exercise all the powers of peace officers generally within the
12 area in question and shall take the oaths and be subject to all provisions of law relating to
13 law enforcement officers.

14 (c) Unless a joint resolution provides otherwise, all courts in the three counties
15 within the limits of their subject matter jurisdiction shall have concurrent jurisdiction as
16 to all criminal offenses arising within the boundaries of Mountain Island Lake and its
17 shoreline area.

18 (d) Where a law enforcement officer with jurisdiction over any part of Mountain
19 Island Lake or its shoreline area is performing duties relating to the enforcement of the
20 laws on Mountain Island Lake or in its shoreline area, the officer has the extraterritorial
21 jurisdiction necessary to perform his duties. These duties include investigation of crimes
22 an officer reasonably believes have been, or are about to be, committed within the area in
23 question. This includes traversing by reasonable routes from one portion of that area to
24 another although across territory not within the boundaries of Mountain Island Lake and
25 its shoreline area; conducting prisoners in custody to court or detention facilities as
26 authorized by law, although this may involve going outside the area in question;
27 execution of process connected with any criminal offense alleged to have been committed
28 within the boundaries in question, except that such process may not be executed by virtue
29 of this provision beyond the boundaries of the three counties. This also includes
30 continuing pursuit of and arresting any violator or suspected violator as to which grounds
31 for arrest arose within the area in question.

32 (e) Where law enforcement officers are given additional territorial jurisdiction
33 under the provisions of this section, this shall be deemed an extension of the duties of the
34 office held, and no officer shall take any additional oath or title of office.

35 Section 10. This act applies only to Gaston, Lincoln, and Mecklenburg
36 Counties.

37 Section 11. This act is effective when it becomes law.