

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 634\*  
Committee Substitute Favorable 4/10/97

Short Title: Mtn. Island Lake Marine Commission.

(Local)

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Sponsors:

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Referred to:

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March 26, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH THE MOUNTAIN ISLAND LAKE MARINE  
3 COMMISSION.

4 The General Assembly of North Carolina enacts:

5 Section 1. For purposes of this act:

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

1 waterline on Mountain Island Lake. In addition, the shoreline area  
2 includes all islands within Mountain Island Lake and all peninsulas  
3 extending into the waters of Mountain Island Lake.

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

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10 rescinded by a subsequent joint resolution.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

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

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

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

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

39 Section 4. The joint resolution of the three counties shall state the terms  
40 relating to compensation to commissioners, if any, compensation of consultants and staff  
41 members employed by the Commission, and reimbursement of expenses incurred by  
42 commissioners, consultants, and employees. The Commission shall be governed by those  
43 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 are 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 provisions of  
15 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 joint  
19 resolution amending or repealing the joint resolution creating the Commission shall be  
20 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 certified single copy of  
28 any and all applicable joint resolutions to the chairman of the Commission; and  
29 (4) A newspaper of general circulation in the three counties.

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

42 Section 8. (a) Except as limited in subsection (b) of this section, by restrictions in any  
43 joint resolution, and by other supervening provisions of law, the Commission may make

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

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

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

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

26 (1) The Secretary of State;

27 (2) The clerks of Superior Court of Gaston, Lincoln, and Mecklenburg  
28 Counties; and

29 (3) The Executive Director of the Wildlife Commission.

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

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

1 prior notice was given and maintained and the burden lies upon the party asserting to the  
2 contrary to prove lack of adequate notice of any regulation.

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

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

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

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

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

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

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