

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-168
SENATE BILL 1299

AN ACT TO AMEND THE LAWS REGARDING THE WITHDRAWAL AND
TRANSFER OF SURFACE WATERS AND THE STATE WATER SUPPLY
PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-211 reads as rewritten:

"§ 143-211. Declaration of public policy.

(a) It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article and Articles 21A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare.

(b) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto.

(c) It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Environment and Natural Resources as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. It is the intent of the General Assembly that the powers and duties of the Environmental Management Commission and the Department of Environment and Natural Resources be construed so as to enable the Department and the Commission to

qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs."

Section 2. G.S. 143-215.8B(a) reads as rewritten:

"(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all of the following:

- (1) All activities across a river basin and all point sources and nonpoint sources of pollutants, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, atmospheric deposition, and animal operations.
- (2) All transfers into and from a river basin that are required to be registered under G.S 143-215.22H."

Section 3. G.S. 143-215.22H reads as rewritten:

"§ 143-215.22H. Registration of water withdrawals and transfers required.

(a) Any person who withdraws ~~1,000,000~~100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers ~~1,000,000~~100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

- (1) The maximum daily amount of the water withdrawal or transfer expressed in ~~millions~~thousands of gallons per day.
 - (1a) The monthly average withdrawal or transfer expressed in ~~millions~~thousands of gallons per day.
- (2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.
- (3) The monthly average discharge expressed in ~~millions~~thousands of gallons per day.

(b) Any person initiating a new water withdrawal or transfer of ~~1,000,000~~100,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than six months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer.

(b1) Subsections (a) and (b) of this section shall not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products.

(c) A unit of local government that has completed a local water supply plan that meets the requirements of G.S. 143-355(l) and that has periodically revised and updated its plan as required by the Department has satisfied the requirements of this section and

is not required to separately register a water withdrawal or transfer or to update a registration under this section.

(d) Any person who is required to register a water withdrawal or transfer under this section shall update the registration by providing the Commission with a current version of the information required by subsection (a) of this section at five-year intervals following the initial registration. A person who submits information to update a registration of a water withdrawal or transfer is not required to pay an additional registration fee under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), but is subject to the late registration fee established under this section in the event that updated information is not submitted as required by this subsection.

(e) Any person who is required to register a water transfer or withdrawal under this section and fails to do so shall pay, in addition to the registration fee required under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a late registration fee of five dollars (\$5.00) per day for each day the registration is late up to a maximum of five hundred dollars (\$500.00). A person who is required to update a registration under this section and fails to do so shall pay a fee of five dollars (\$5.00) per day for each day the updated information is late up to a maximum of five hundred dollars (\$500.00). A late registration fee shall not be charged to a farmer who submits a registration that pertains to farming operations."

Section 4. G.S. 143-215.22I reads as rewritten:

"§ 143-215.22I. Regulation of surface water transfers.

(a) No person, without first securing a certificate from the Commission, may:

- (1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.
- (2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2,000,000 gallons or more per day.
- (3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993.

(c) An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include the following:

- (1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.
- (2) A description of the proposed uses of the water to be transferred.
- (3) The water conservation measures to be used by the applicant to assure efficient use of the water and avoidance of waste.

- (4) Any other information deemed necessary by the Commission for review of the proposed water transfer.
- (d) Upon receipt of the petition, the Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice of the hearing as follows:
- (1) By publishing notice in the North Carolina Register.
 - (2) By publishing notice in a newspaper of general circulation in the area of the river basin downstream from the point of withdrawal.
 - (3) By giving notice by first-class mail to each of the following:
 - a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.
 - b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.
 - c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.
 - d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.
 - e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.
- (e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.
- (f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:
- (1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.
 - (2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation. Local water supply plans that affect the source major river basin shall be used to evaluate the projected future municipal water needs in the source major river basin.

- (2a) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the application for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan that has been submitted to the Department in accordance with G.S. 143-355(1).
- (3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.
- (4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.
- (5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.
- (6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.
- (7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(f1) An environmental assessment as defined by G.S. 113A-9(1) shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes. The applicant who petitions the Commission for a certificate under this section shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes.

(g) A certificate shall be granted for a water transfer if the applicant establishes and the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that: (i) the benefits of the proposed transfer outweigh the detriments of the proposed transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree. The conditions necessary to ensure that the detriments are and continue to be mitigated to a reasonable degree shall be attached to the certificate in accordance with subsection (h) of this section.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall include a drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions. The certificate shall indicate the maximum

amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

(i) In cases where an applicant requests approval to increase a transfer that existed on July 1, 1993, the Commission shall have authority to approve or disapprove only the amount of the increase. If the Commission approves the increase, however, the certificate shall be issued for the amount of the existing transfer plus the requested increase. Certificates for transfers approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part.

(j) In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health requires a transfer of water, the Secretary of the Department of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary of the Department of Environment and Natural Resources shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However, the Secretary of the Department of Environment and Natural Resources shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions in approving a temporary transfer under this subsection. If the Secretary of the Department of Environment and Natural Resources approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary of the Department of Environment and Natural Resources based on demonstrated need as set forth in this subsection.

(k) The substantive restrictions and conditions upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government.

(l) When any transfer for which a certificate was issued under this section equals eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S. 143-355(l). When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(m) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto."

Section 5. G.S. 143-355(l) reads as rewritten:

"(l) Each unit of local government that provides public water ~~services~~ service or that plans to provide public water service shall, either individually or together with other

units of local government, prepare a local water supply plan and submit it to the Department. The Department shall provide technical assistance with the preparation of plans to units of local government upon request and to the extent that the Department has resources available to provide assistance. At a minimum, local units of government shall include in local water supply plans all information that is readily available to them. ~~However this subsection shall be construed to require the preparation of local water supply plans only to the extent that technical assistance is made available to units of local government from the Department.~~ Plans shall include present and projected population, industrial development, ~~and~~ water use within the service area, present and future water supplies, an estimate of the technical assistance that may be needed at the local level to address projected water needs, and any other related information as the Department may require in the preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by the unit(s) of local government."

Section 6. Article 1 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-8.1. Surface water transfers.

An environmental assessment shall be prepared for any transfer for which a petition is filed in accordance with G.S. 143-215.22I. The determination of whether an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of this Article."

Section 7. By 1 January 1999, each unit of local government that provides public water service or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department in compliance with G.S. 143-355(l). By 1 January 2000, the Department of Environment and Natural Resources shall develop a State water supply plan in compliance with G.S. 143-355(m). The Department shall identify in the plan any area in the State that appears to face existing or future water shortages, conflicts among water users, or depletion of water resources and shall review the plan at least every five years thereafter to determine whether any other areas are facing these problems within a 10-year period from the date of review.

Section 8. Section 3 of this act becomes effective 1 March 2000. Any person who is required to register a water withdrawal or transfer as a result of the amendments to G.S. 143-215.22H made by Section 3 of this act shall provide the information required by G.S. 143-215.22H(a) on the basis of water withdrawn or transferred during the 1999 calendar year. All other sections of this act become effective 1 October 1998 and apply to any application for a certificate submitted pursuant to G.S. 143-215.22I, as amended by Section 4 of this act, on or after that date.

In the General Assembly read three times and ratified this the 23rd day of September, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:02 a.m. this 2nd day of October, 1998