

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 1381

Short Title: Local Water Quality Plans.

(Public)

Sponsors: Representative Culpepper.

Referred to: Environment and Natural Resources.

April 26, 2001

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE CERTAIN LOCAL GOVERNMENTS UPSTREAM OF THE
2 COASTAL AREA TO DEVELOP AND IMPLEMENT WATER QUALITY
3 MANAGEMENT PLANS, TO INCLUDE THE DEVELOPMENT OF WATER
4 QUALITY MANAGEMENT PLANS AS A PURPOSE FOR WHICH CLEAN
5 WATER MANAGEMENT TRUST FUND GRANTS MAY BE AWARDED, AND
6 TO APPROPRIATE FUNDS TO IMPLEMENT THIS ACT.
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8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** Chapter 113A of the General Statutes is amended by adding
10 the following:

"Article 18.

"Local Water Quality Management Plans.

11 **"§ 113A-250. Cooperative State-local water quality management program.**

12 This Article establishes a cooperative program of water quality management among
13 local governments in the coastal area, local governments in the eight coastal river
14 basins, and State government. Local governments shall initiate water quality
15 management planning efforts. State government shall act primarily in a supportive
16 capacity, except where local governments do not elect to exercise their initiative.
17 Enforcement shall be a concurrent State-local responsibility.

18 **"§ 113A-251. Legislative findings and goals.**

19 The General Assembly finds that the goals stated in G.S. 113A-102 regarding the
20 State's coastal area continue to be a top priority for North Carolina. Progress has been
21 made in achieving those goals in the counties covered by the Coastal Area Management
22 Act; however, many of the pressures on the State's coastal area are the result of
23 increasing industrial growth and population in the counties located upstream in the eight
24 coastal river basins. The growth in the upstream counties and municipalities places a
25 strain on the water resources that flow into the coastal area and threatens the water
26 quality of the coastal area. The General Assembly further finds that the majority of the
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1 burden of cleaning up the pollution resulting from growth upstream and restoring the
2 water to acceptable water quality standards falls unfairly on the State's coastal area. The
3 General Assembly therefore finds that a cooperative effort between coastal and
4 upstream areas is needed to enable the coastal area to achieve the State-mandated goals
5 set out in G.S. 113A-102.

6 **"§ 113A-252. Water quality management plans.**

7 (a) Mandatory Local Plans. – Each local government located within the eight
8 coastal river basins that has within its jurisdiction all or a portion of a watershed that
9 drains into the coastal area shall develop and adopt a local water quality management
10 plan to be submitted to the Clean Water Commission for approval. The water quality
11 management plan shall comply with the standards and requirements established by the
12 Commission and shall also include all of the following:

13 (1) An inventory of the local government's surface water resources.

14 (2) An analysis of the local government's water quality.

15 (3) An inventory of the land uses for those properties adjacent to the water
16 sources and an analysis as to whether those land uses contribute to or
17 abate pollution.

18 (4) Submit a local ordinance to implement a local water quality
19 management plan to the Commission for approval.

20 (5) Enforcement procedures for the water quality management plan.

21 (b) Development and Implementation of Local Plans. – The Commission shall
22 adopt rules for the development and implementation of water quality management
23 plans. The Commission shall establish water quality management goals and minimum
24 best management practice expectations for each watershed located within the eight
25 coastal river basins taking into consideration the goals set out in G.S. 113A-102.

26 (c) Model Plan and Local Ordinances. – The Department shall identify the eight
27 river basins draining into the coastal area and each local government within those basins
28 that has within its jurisdiction all or a portion of a watershed. The Department shall
29 assist local governments to develop water quality management plans that comply with
30 this Article. To further assist local governments, the Commission shall approve and
31 make available a model local water quality management plan. Local governments shall
32 administer and enforce the minimum water quality management requirements. Local
33 governments may adopt such ordinances pursuant to their general police power, power
34 to regulate the subdivision of land, zoning power, or any combination of such powers.
35 This section shall not be construed to affect the validity of any local ordinance adopted
36 for the protection of water quality prior to completion of the review of the ordinance by
37 the Commission. Local governments may create or designate local agencies to
38 administer and enforce the plans. The Commission shall approve a local plan only if it
39 determines that the requirements of the plan equal or exceed the minimum water quality
40 management requirements adopted by the Commission pursuant to this Article.

41 (d) Assumption of Local Programs. – The Commission shall assume
42 responsibility for water quality management planning within all or the affected portion
43 of a watershed, when a local government fails to adopt a plan that meets the
44 requirements of this section or when a local government fails to adequately administer

1 and enforce the provisions of its plan. The Commission shall not assume responsibility
2 for an approved local water quality management plan until it or its designee notifies the
3 local government in writing by certified mail, return receipt requested, of local plan
4 deficiencies, recommendations for changes and improvements in the local plan, and the
5 deadline for compliance. The Commission shall allow a local government a minimum
6 of 120 days to bring its plan into compliance. The Commission shall order assumption
7 of an approved local plan if it finds that the local government has made no substantial
8 progress toward compliance. With no further notice, the Commission may make such
9 finding at any time between 120 days and 365 days after receipt of notice under this
10 subsection by the local government. Proceedings to review the orders by the
11 Commission shall be conducted by the superior court pursuant to Article 4 of Chapter
12 150B of the General Statutes based on the agency record submitted to the Commission
13 by the Secretary.

14 (e) State Enforcement Authority. – The Commission may take any appropriate
15 preventive or remedial enforcement action authorized by this Article against any person
16 who violates any water quality management plan requirement.

17 (f) Civil Penalties. – A local government that fails to adopt a local water quality
18 management plan as required by this Article or willfully fails to administer or enforce
19 the provisions of its plan in substantial compliance with the minimum water quality
20 management requirements shall be subject to a civil penalty pursuant to G.S. 143-
21 215.6A(e). In any upstream area that is not covered by an approved local water quality
22 management plan, any person who violates or fails to act in accordance with any
23 minimum water quality management plan requirements adopted by the Commission for
24 the upstream area pursuant to this Article shall be subject to a civil penalty as specified
25 in G.S. 143-215.6A(a)(7).

26 (g) State Agencies Compliance. – Every State agency shall act in a manner
27 consistent with the policies and purposes of this section and shall comply with the
28 minimum requirements regarding a water quality management plan.

29 **"§ 113A-253. Clean Water Commission.**

30 (a) Established. – The Clean Water Commission is created. For administrative
31 purposes only, the Commission is located under the Department of Environment and
32 Natural Resources.

33 (b) Composition. – The Clean Water Commission shall consist of 15 members
34 appointed as follows:

35 (1) Five appointed by the Governor.

36 (2) Five appointed by the General Assembly upon the recommendation of
37 the Speaker of the House of Representatives in accordance with G.S.
38 120-121.

39 (3) Five appointed by the General Assembly upon the recommendation of
40 the President Pro Tempore of the Senate in accordance with G.S. 120-
41 121.

42 (c) Appointment of Members. – Appointments to the Commission shall be made
43 with consideration given to having a membership that has knowledge and experience in
44 a diverse range of water quality management interests. The members of the Commission

1 shall serve and act on the Commission solely for the best interests of the public and
2 public trust, and shall bring their particular knowledge and experience to the
3 Commission for that end alone.

4 (d) Residential Qualifications. – All nominees must reside within the upstream
5 counties or coastal area. No more than one member appointed by the Governor and one
6 appointed by the General Assembly may reside in a particular county. No more than
7 two members of the entire Commission, at any time, may reside in a particular county.
8 No more than three members of the entire Commission, at any time, may reside outside
9 the upstream counties.

10 (e) Office May Be Held Concurrently With Others. – Membership on the Clean
11 Water Commission is an office that may be held concurrently with other elective or
12 appointive offices in addition to the maximum number of offices permitted to be held by
13 one person under G.S. 128-1.1.

14 (f) Initial Appointments and Terms. – Each appointing officer shall designate
15 one of the officer's initial appointments to serve two-year terms, two to serve four-year
16 terms, and two to serve six-year terms. Thereafter, all appointments shall be for four
17 years, subject to reappointment. All initial appointments shall be made on or before
18 January 1, 2001.

19 (g) Quorum. – A majority of the Commission shall constitute a quorum for the
20 transaction of business.

21 (h) Vacancies. – If a vacancy occurs, other than by the expiration of term, of a
22 member subject to appointment by the General Assembly upon the recommendation of
23 the Speaker of the House of Representatives or the President Pro Tempore of the
24 Senate, the vacancy shall be filled in accordance with G.S. 120-122. All other vacancies
25 shall be filled by the appointing official in the original manner. In making appointments
26 to and filling vacancies upon the Commission, each appointing officer shall give due
27 consideration to securing appropriate representation of women and minorities.

28 (i) Officers. – The chair shall be designated by the Governor from among the
29 members of the Commission to serve as chairman at the pleasure of the Governor. The
30 vice-chair shall be elected by and from the members of the Commission and shall serve
31 for a term of two years or until the expiration of his or her regularly appointed term.

32 (j) Compensation. – The members of the Commission shall receive per diem and
33 necessary travel and subsistence expenses in accordance with the provisions of G.S.
34 138-5.

35 (k) Attendance. – Regular attendance at Commission meetings is a duty of each
36 member. The Commission shall develop procedures for declaring any seat on the
37 Commission to be vacant upon failure by a member to perform this duty.

38 (l) Rules. – The Commission shall adopt rules to implement this Article. Chapter
39 150B of the General Statutes applies to the rules adopted by the Commission.

40 **§ 113A-254. Definitions.**

41 The following definitions apply in this Article:

42 (1) 'Coastal area' is as defined in G.S. 113A-103.

43 (2) 'Commission' means the Clean Water Commission created by G.S.
44 113A-243.

1 (3) 'Department' means the Department of Environment and Natural
2 Resources.

3 (4) 'Local government' means the governing body of any county or city
4 which contains within its boundaries any lands or waters subject to this
5 Article.

6 (5) 'Upstream area' means any local government located within the eight
7 coastal river basins that has within its jurisdiction all or a portion of a
8 watershed that drains into the coastal area."

9 **SECTION 2.** G.S. 113-145.6(b) reads as rewritten:

10 "(b) Develop Grant Criteria. – The Trustees shall develop criteria for awarding
11 grants under this Article. The criteria developed shall include consideration of the
12 following:

13 (1) The significant enhancement and conservation of water quality in the
14 State.

15 (2) The objectives of the basinwide management plans for the State's river
16 basins and watersheds.

17 (3) The promotion of regional integrated ecological networks insofar as
18 they affect water quality.

19 (4) The specific areas targeted as being environmentally sensitive.

20 (5) The geographic distribution of funds as appropriate.

21 (6) The preservation of water resources with significant recreational or
22 economic value and uses.

23 (7) The development of a network of riparian buffer-greenways bordering
24 and connecting the State's waterways that will serve environmental,
25 educational, and recreational uses.

26 (8) The development of a water quality management plan pursuant to
27 Article 18 of Chapter 113A of the General Statutes."

28 **SECTION 3.** There is appropriated from the General Fund to the
29 Department of Environment and Natural Resources the sum of one hundred thousand
30 dollars (\$100,000) for the 2001-2002 fiscal year to implement this act.

31 **SECTION 4.** This act becomes effective July 1, 2001.