

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE DRS85171-SBf-11 (01/22)

Short Title: Water Resource Policy Act of 2009.

(Public)

Sponsors: Senator Clodfelter.

Referred to:

1
2 A BILL TO BE ENTITLED
3 AN ACT TO ENACT THE WATER RESOURCE POLICY ACT OF 2009.
4 The General Assembly of North Carolina enacts:

5
6 **PART I. DECLARATION OF POLICY**

7
8 **SECTION 1.** Article 38 of Chapter 143 of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 143-350.1. Declaration of policy.**

11 The following principles constitute the water resources policy of the State. All
12 administrative and judicial decisions regarding water use and allocation by the State, its
13 agencies, subdivisions, and units of local government shall be governed by these principles.

14 (1) Water is a public trust resource. – The waters of the State are a natural
15 resource owned by the State in trust for the public and subject to the
16 sovereign power of the State to plan, regulate, and control the withdrawal
17 and use of those waters, under law, in order to protect the public health,
18 safety, and welfare by promoting economic growth, mitigating the harmful
19 effects of drought, resolving conflicts among competing water users,
20 achieving balance between consumptive and nonconsumptive uses of water,
21 encouraging conservation, protecting ecological integrity, and enhancing the
22 productivity of water-related activities.

23 (2) Water should be used efficiently and productively. – Pursuant to this Article,
24 the State undertakes, by permits and other steps authorized by law, to
25 allocate the waters of the State among users in a manner that fosters efficient
26 and productive use of the water supply of the State in a sustainable manner
27 in the satisfaction of economic, environmental, and other social goals,
28 whether public or private, with the availability and utility of water being
29 extended with a view to preventing water from becoming a limiting factor in
30 the general improvement of social welfare.

31 (3) Legal security and procedural fairness for water rights. – In order to provide
32 legal security for water rights within the constraints provided in this Article,
33 this Article establishes a system of permits that makes a water right a matter
34 of legal record entitled to legal protection. The State shall provide procedural
35 protection and fairness to parties to disputes over water rights through public



- 1 proceedings on the allocation or modification of water rights, making
2 available and encouraging formal and informal procedures for dispute
3 resolution, and encouraging alternative dispute resolution mechanisms.
- 4 (4) Protection of instream flows and groundwater levels. – The State and its
5 agencies, subdivisions, and persons residing or doing business in the State
6 shall preserve flow regimes and groundwater levels in all water sources as
7 necessary to protect their physical, chemical, and ecological integrity by
8 reserving the appropriate portion of surface waters from allocation; by
9 seeking a long-term balance between the amount of groundwater withdrawn
10 from each aquifer or growth area and the amount of water recharged to the
11 aquifer or growth area; and by authorizing additional protections of the
12 waters of the State.
- 13 (5) Integration with water quality and adaptation of plans and hydrologic models
14 to establish water budgets. – The State shall coordinate the plans, laws,
15 regulations, and decisions pertaining to water allocation with those
16 pertaining to water quality, and shall adapt and update plans and hydrologic
17 models to ensure that actual and projected water consumption in the State
18 plus the water needed for instream uses does not exceed the water supply.
19 The State shall conserve the waters of the State through suitable policies and
20 by encouraging private efforts to conserve water and avoid waste.
- 21 (6) Pricing water to cover costs fully. – The State shall encourage, through its
22 funding and oversight of local government and utility finances, that water be
23 priced to fully cover the costs of its capture, treatment, distribution,
24 collection, scarcity, and reuse, including the maintenance, repair, and
25 replacement of water infrastructure, rather than being priced to keep rates as
26 low as possible.
- 27 (7) Efficient and equitable allocation during shortfalls. – The State, in the
28 exercise of its sovereign police power to protect the public interest in the
29 waters of the State, undertakes to provide, through this Article, an orderly
30 strategy to allocate available water efficiently and equitably in times of
31 water shortage or water emergency.
- 32 (8) Reasonable use requirement. – No person shall make any use of the waters
33 of the State except insofar as the use is reasonable as determined pursuant to
34 this Article. No person using the waters of the State shall cause unreasonable
35 injury to other water uses made pursuant to valid water rights, regardless of
36 whether the injury relates to the quality or the quantity impacts of the
37 activity causing the injury.
- 38 (9) No prohibition of use based on location of use. – Uses of the waters of the
39 State on nonriparian or nonoverlying land are lawful and entitled to equal
40 consideration with uses on riparian or overlying land in any administrative
41 or judicial proceeding relating to the allocation, withdrawal, or use of water
42 or to the modification of a water right. Nothing in this Article shall be
43 construed to authorize access to the waters of the State by a person seeking
44 to make a nonriparian or nonoverlying use apart from access lawfully
45 available to that person.
- 46 (10) Regulating interstate and interbasin water transfers to achieve these goals on
47 a regional basis. – The State shall maintain the waters of the State both for
48 supplying water requirements within the State and within each river basin of
49 origin and, under appropriate circumstances, for out-of-state and
50 out-of-basin transportation and use. The State shall protect the reasonable

1 needs of water basins of origin through the regulation of interbasin
2 transfers."

4 PART II. WATER WITHDRAWAL PERMITS AND ALLOCATIONS

6 SECTION 2.1. G.S. 143-350 reads as rewritten:

7 "§ 143-350. Definitions.

8 As used in this Article:

- 9 (1) "Approved basinwide hydrologic model" means a basinwide hydrologic
10 model adopted by the Commission pursuant to G.S. 143-355.19.
- 11 ~~(1)~~(1a) "Commission" means the Environmental Management Commission.
- 12 (1b) "Consumptive use" has the same meaning as in G.S. 143-215.21.
- 13 (2) "Department" means the Department of Environment and Natural Resources.
- 14 (2a) "Ecological integrity" means the ability of a living system to support and
15 maintain a balanced, integrated, adaptive community of organisms having a
16 species composition, diversity, and functional organization comparable to
17 that of the natural habitat and, when subject to disruption, to recover and
18 continue to provide the natural goods and services that normally accrue from
19 the system. "Ecological integrity" includes the biological, chemical, and
20 physical components of a living system.
- 21 (3) "Essential water use" means the use of water necessary for firefighting,
22 health, and safety; water needed to sustain human and animal life; and water
23 necessary to satisfy federal, State, and local laws for the protection of public
24 health, safety, welfare, the environment, and natural resources; and a
25 minimum amount of water necessary to maintain the economy of the State,
26 region, or area.
- 27 (3a) "Groundwater resource" means any water flowing or lying under the surface
28 or contained within an aquifer.
- 29 (3b) "Historical withdrawal" means the highest actual daily withdrawal made by
30 a water withdrawer from January 1, 2006, to January 1, 2009.
- 31 (4) "Large community water system" means a community water system, as
32 defined in G.S. 130A-313(10), that regularly serves 1,000 or more service
33 connections or 3,000 or more individuals.
- 34 (4a) "Nonconsumptive use" has the same meaning as in G.S. 143-215.21.
- 35 (4b) "Permit holder" means a person that is authorized under this Article to
36 withdraw water from a surface water resource or a groundwater resource.
- 37 (4c) "Person" means any individual, firm, partnership, association, public or
38 private institution, municipality or political subdivision, governmental
39 agency, and private or public corporation organized or existing under the
40 laws of this State or any other state or country. For purposes of determining
41 thresholds for withdrawal permitting under this Article, "person" includes
42 any person related as parent or affiliate. "Parent" has the same meaning as in
43 17 Code of Federal Regulations § 240.12b 2 (1 April 1996 Edition).
44 "Affiliate" has the same meaning as in 17 Code of Federal Regulations §
45 240.12b 2 (1 April 1996 Edition).
- 46 (4d) "Prior allocation" means a right of withdrawal under G.S. 143-215.44, a
47 permitted withdrawal right under G.S. 143-215.15, or an interest in federal
48 storage projects owned by applicants or permittees under G.S. 143-354.11.
- 49 (4e) "Surface water resource" means any lake, pond, river, stream, creek, run,
50 spring, or other water flowing or lying on the surface.

- 1 (5) "Unit of local government" means a county, city, consolidated city-county,
2 sanitary district, or other local political subdivision or authority or agency of
3 local government.
- 4 (6) "U.S. Drought Monitor" means the national drought map that designates
5 areas of drought using the following categories D0-Abnormally Dry,
6 D1-Moderate, D2-Severe, D3-Extreme, and D4-Exceptional. The U.S.
7 Drought Monitor is developed and maintained by the Joint Agricultural
8 Weather Facility, the Climate Prediction Center, the National Climatic Data
9 Center, and the National Drought Mitigation Center with input from the
10 United States Geological Survey, the National Water and Climate Center,
11 the Climate Diagnostics Center, the National Weather Service, state
12 climatologists, and state water resource agencies.
- 13 (7) "Water shortage emergency" means a water shortage resulting from
14 prolonged drought, contamination of the water supply, damage to water
15 infrastructure, or other unforeseen causes that presents an imminent threat to
16 public health, safety, and welfare or to the environment."

17 **SECTION 2.2.** Article 38 of Chapter 143 of the General Statutes is amended by
18 adding 10 new sections to read:

19 **"§ 143-355.10. Certain water withdrawals unlawful without a permit; exemptions.**

20 (a) Water Withdrawal Permit Required. – Except as otherwise provided in this section,
21 no person shall withdraw water from the waters of the State without obtaining a water
22 withdrawal permit under this Article from the Department and without complying with all
23 orders, permit terms and conditions, and rules established pursuant to this Article.

24 (b) Exception. – A permit shall not be required pursuant to this section for a withdrawal
25 of water from the waters of the State if the withdrawal is always less than 100,000 gallons in
26 any single 24-hour period. To calculate the amount of withdrawal of water from the waters of
27 the State pursuant to this section, the Department shall count all separate withdrawals by a
28 single person for a single use or for related uses as a single withdrawal.

29 (c) Daily Withdrawal Limit. – A water withdrawal permit shall include a daily
30 withdrawal limit based on inflows, seasons, and other conditions that are shown by the
31 approved basinwide hydrologic model to be significant factors in meeting the water resource
32 policies set out in G.S. 143-352.

33 (d) Voluntary Permit. – A person not required to obtain a water withdrawal permit
34 under this section may voluntarily apply for and obtain a water withdrawal permit subject to the
35 same procedures, terms, and conditions as for other water withdrawal permits obtained
36 pursuant to this Article.

37 (e) Certain Prior Acts Not Factors for Consideration. – The fact that an applicant for a
38 water withdrawal permit has acquired property for the purpose of serving as a site for proposed
39 facilities to withdraw or use water or has undertaken construction of such facilities, prior to
40 obtaining a water withdrawal permit under this Article, is not admissible in any administrative
41 or judicial proceeding relating to the application or permit and shall have no bearing on
42 decisions relating to the application or permit. Prior acquisition of land or prior commencement
43 of construction is a voluntary risk assumed by the applicant and no compensation is due for any
44 loss in the value of the land or of the investment in facilities should a permit be denied or
45 issued subject to terms and conditions less favorable than those sought by the applicant.

46 **"§ 143-355.11. Water withdrawal permits.**

47 (a) Water Withdrawal Permits. – The Department shall issue water withdrawal permits
48 as provided in this section for water withdrawals in river basins for which approved hydrologic
49 models have been adopted by the Commission.

50 (b) Application. – An application for a water withdrawal permit shall contain all of the
51 following information:

- 1 (1) The name and address of the applicant and owner of the withdrawal facility.
- 2 (2) The amount of water to be withdrawn under the permit, including estimates
- 3 of the daily, monthly, seasonal, and annual mean and peak withdrawals.
- 4 (3) The place and source of the withdrawal, including the latitude and longitude.
- 5 (4) The place, nature, and amount of the use of water.
- 6 (5) A classification of the uses of the withdrawn water as consumptive or
- 7 nonconsumptive.
- 8 (6) The place and amount of return flows of withdrawn water, including daily,
- 9 monthly, seasonal, and annual mean and peak return flows.
- 10 (7) An estimate of the overall consumptive use of water from the withdrawal.
- 11 (8) The anticipated effects, if any, of the withdrawal on existing or proposed
- 12 uses of the same water resource.
- 13 (9) A list of persons known by the applicant to have existing or proposed uses of
- 14 the same water resource.
- 15 (10) The impact of the proposed withdrawal on other water resources that are
- 16 hydrologically interconnected with the water source from which the
- 17 withdrawal is to be made.
- 18 (11) The operating capacity of any existing withdrawal system and the effect of
- 19 the proposed withdrawal on the existing withdrawal system.
- 20 (12) Any land acquisition, equipment, energy consumption, or the relocation or
- 21 resiting of any existing community, facility, right-of-way, or structure that
- 22 will be required by the withdrawal.
- 23 (13) The total anticipated costs of any construction related to the withdrawal.
- 24 (14) A list of all federal, State, or local approvals, permits, licenses, or other
- 25 authorizations required for the water withdrawal system, the return flow
- 26 system, or any other component of or system related to the water
- 27 withdrawal.
- 28 (15) A statement of whether and how the withdrawal will comply with all
- 29 applicable plans and strategies for the use, management, and protection of
- 30 the waters of the State and related land resources.
- 31 (16) The planning status and estimated timetable for the completion of the
- 32 proposed project.
- 33 (17) A description of alternative means for satisfying the applicant's need for
- 34 water if the requested permit is denied or modified.
- 35 (18) A description of any water conservation or efficiency efforts that have been
- 36 or are planned to be implemented that are related to the withdrawal.
- 37 (19) For a withdrawal by a local government or large community water system, a
- 38 copy of the most recent local water supply plan prepared pursuant to
- 39 G.S. 143-215.119.
- 40 (20) The amount of any historical withdrawal of water or interim allocation.
- 41 (21) Any other information requested by the Department.
- 42 (c) Prior to making a permit decision, the Department shall publish a notice of the
- 43 permit application once each week for four consecutive weeks in a newspaper of general
- 44 circulation in each river basin that would be affected by the withdrawal; publish a notice of the
- 45 permit application in the North Carolina Register; and provide individual electronic or written
- 46 notice to each unit of State or local government with regulatory authority over the withdrawal
- 47 and to each person holding a permit under this section or under the National Pollutant
- 48 Discharge Elimination System for the water resource from which the withdrawal is to be made.
- 49 The notice shall indicate the water resource from which withdrawal is to be made, the quantity
- 50 and location of the withdrawal, and the uses to be made of the withdrawn water. Notice for any
- 51 particular permit application under this section may be provided by a notice listing all proposed

1 permits under review by the Department in a river basin. Any person may submit written
2 comments to the Department on any application within 45 days of the publication of the notice.

3 (d) If the Department determines that an application for a water withdrawal permit
4 meets the requirements for a withdrawal under this Article, the Department shall issue the
5 water withdrawal permit accompanied by a written statement of any permit terms and
6 conditions. If the Department determines that an application for a water withdrawal permit fails
7 to meet the requirements for a withdrawal under this Article, the Department shall deny the
8 application, and the application shall be returned to the applicant accompanied by a written
9 statement of the reasons for the denial.

10 **"§ 143-355.12. Establishment of river basin planning organizations.**

11 The General Assembly may establish a river basin planning organization to plan for and
12 manage water resource supply and demand in the river basin or a portion of the river basin in
13 order to prevent or eliminate overallocation. A river basin planning organization may include
14 representatives of water systems, permitted or allocated water withdrawers, environmental
15 advocacy groups, wildlife advocacy groups, State agencies, local governments, and other
16 entities with significant operations, activities, or interests related to the water resources of the
17 river basin. Funds for the staffing and operation of a river basin planning organization shall be
18 provided by an annual payment from each member that withdraws water. The amount of
19 payment by a member shall be based on the amount of water withdrawn by that member.
20 Members of a river basin planning organization that do not withdraw water shall not be
21 assessed a payment to participate in the organization. Votes shall be apportioned equally among
22 the members of the organization.

23 **"§ 143-355.13. Water withdrawal permits for overallocated river basins.**

24 (a) Determination of Overallocation. – A river basin or portion of a river basin is
25 overallocated if both:

26 (1) An approved hydrologic model demonstrates or projects that the river basin
27 or portion of the river basin does not or will not have sufficient available
28 daily yield to meet the needs of water withdrawers and instream water uses
29 in accordance with the policies set out in G.S. 143-215.350.1 at any time
30 within the next 40 years.

31 (2) More than one interim allocation or permitted withdrawal is projected to
32 have insufficient water to meet its present and future demands for more than
33 seven consecutive days in two or more years and the projected shortfalls
34 cannot be demonstrated to be due to the failure of the approved hydrologic
35 model to consider alternative sources of water that are allocated or permitted
36 and legally available to the system with a projected shortfall.

37 (b) Determination of Available Daily Yield. –

38 (1) Surface water. – The available daily yield of a surface water resource is the
39 amount of water that can be withdrawn at a given location without violating
40 the physical or chemical integrity of the water source or the ecological
41 integrity of the river basin in which the water source is located and without
42 impeding other allocated or permitted withdrawals in the river basin. To
43 determine the available daily yield of a surface water resource, the
44 Department shall apply all of the following assumptions to the approved
45 hydrologic model for the river basin in which the surface water resource is
46 located:

47 a. Flow years with inflows at least as low as the lowest recorded
48 historical flows.

49 b. Return flows no greater than currently permitted by the Department
50 or certified by the Department to be permissible.

- 1 c. High-growth assumptions for withdrawals, including any growth
2 assumptions provided by water systems in a local water supply plan.
- 3 (2) Groundwater. – The available daily yield of a groundwater resource is an
4 estimate by the Department of the volume of water that can be withdrawn
5 from the resource for a stated unit of time without impairing the long-term
6 balance between the amount of groundwater withdrawn and the amount of
7 water recharged.
- 8 (3) Other factors. – Determinations of available daily yield for surface or
9 groundwater resources shall include consideration of the connections
10 between surface and groundwater resources in a given geographic area.
- 11 (c) When the Department determines that a river basin or portion of a river basin is
12 overallocated, water in that river basin or portion of a river basin shall be allocated as provided
13 in this section. The Department shall choose the procedure for addressing overallocation based
14 on its determination of the most efficient and equitable means of preventing or eliminating the
15 overallocation. Holders of interim allocations under this act may continue to make withdrawals
16 associated with those allocations until and unless reductions are ordered under this Article. In a
17 river basin that is overallocated, no person may make a new withdrawal, increase an existing
18 withdrawal beyond the level previously permitted or allocated, extend water or sewer lines, or
19 increase the number of water or sewer connections until the Department certifies that the water
20 withdrawers in the basin have implemented measures adequate to ensure that the river basin or
21 portion of a river basin is no longer overallocated under this section.
- 22 (d) Modification of Allocations by the Department. –
- 23 (1) The Department may modify allocations and permits to prevent or eliminate
24 overallocation according to the following priorities and in the following
25 order of preference:
- 26 a. Prior allocations.
- 27 b. Historical withdrawals.
- 28 c. Expanded withdrawals that propose expansion within the limits
29 imposed by past capital investment in treatment capacity and that
30 will be operated in accordance with the standards for approval of
31 permits under this Article.
- 32 d. New or expanded withdrawals that clearly and convincingly
33 demonstrate attainment of the standards for approval of permits
34 under this Article.
- 35 e. All other essential water uses.
- 36 (2) In modifying allocations and permits under this subsection, the Department
37 may determine whether applications are competing by aggregating the
38 applications by periods of time and by processing applications in order to
39 issue permits on a basinwide schedule. Within each preference category,
40 uses are to be preferred that maximize the reasonable use of water.
41 Voluntary efficiency and conservation activities implemented in advance of
42 the Departmental actions taken pursuant to this section that reduce an
43 existing withdrawal shall be given credit.
- 44 (e) Modification by Agreement of a River Basin Planning Organization. –
- 45 (1) The Department may request that a river basin planning organization
46 established pursuant to G.S. 143-355.12 convene and prepare a plan to
47 prevent or eliminate overallocation of its river basin. The river basin
48 planning organization shall complete its work within two years of
49 notification by the Department of its intention to modify allocations and
50 permits under this section and shall give a final report of its
51 recommendations to the Department.

- 1 (2) If there is no river basin planning organization for an overallocated river
2 basin, the Department may request that the General Assembly establish one.
3 A river basin planning organization that is established pursuant to this
4 subdivision shall complete its work within three years of its establishment,
5 or as provided by the General Assembly, and shall give a final report of its
6 recommendations to the Department.
- 7 (3) If the Department finds that the recommendations of a river basin planning
8 organization assure that overallocation of the river basin will be prevented or
9 eliminated, the Department shall implement the recommendations, including
10 actions to modify, grant, revoke, or otherwise act on allocations and permits
11 in the affected river basin and shall ensure that implementation actions
12 required to be taken by water withdrawers are taken in a legally binding
13 manner.
- 14 (4) If the Department finds that the recommendations of a river basin planning
15 organization do not assure that overallocation of the river basin will be
16 prevented or eliminated, or if the legislature does not create a river basin
17 planning organization pursuant to subdivision (2) of this subsection, then the
18 Department shall either adjust allocations and permits under subdivision (1)
19 of this subsection of this section or shall request that the Commission begin
20 rule making for a capacity use area under G.S. 143-215.13 that will prevent
21 or eliminate overallocation of the river basin.
- 22 (f) Modification by the Commission Under a Capacity Use Area. – The Department
23 may request that the Commission begin rule making for a capacity use area under
24 G.S. 143-215.13 that will prevent or eliminate overallocation of the river basin.

25 **§ 143-355.14. Standards of approval for water withdrawal permits.**

- 26 (a) Standards for Approval. – The Department shall approve an application and issue a
27 water withdrawal permit only if the Department determines all of the following:
- 28 (1) The use of the withdrawn water is reasonable, as provided under subsection
29 (b) of this section.
- 30 (2) The withdrawal will not exceed or cause the river basin to exceed the
31 available daily yield of the water resource from which the water is
32 withdrawn.
- 33 (3) The withdrawal and use of the water are consistent with any applicable
34 comprehensive water allocation plan and drought management strategies.
- 35 (4) The applicant's existing water withdrawals and uses, if any, and the proposed
36 permitted water withdrawal and use incorporate a reasonable plan for
37 conservation.
- 38 (5) The withdrawal and use will be consistent with any order, permit term or
39 condition, and regulation made pursuant to this Article; any order of a
40 federal or State court or administrative agency; any interstate agreement
41 governing the allocation of water to which the State is a party; and any
42 license for a hydroelectric generating facility issued by the Federal Energy
43 Regulatory Commission, including any protocol or subsidiary agreement
44 that may be part of or incorporated in any such order, interstate agreement,
45 or operating license of any other state pertaining to the use of water.
- 46 (6) The permit will not cause a violation of water quality standards, cause a
47 degradation of water quality in the resource water or downstream water
48 bodies, or result in greater impairment of an impaired water body.
- 49 (7) The applicant and any parent or affiliate have substantially complied with
50 the water use, effluent standards and limitations, and waste management
51 treatment practices applicable to any activity in which the applicant or its

1 parent and affiliates have previously engaged and have been in substantial
2 compliance with other federal and state laws, regulations, and rules for the
3 protection of the environment.

4 (b) Reasonable Use. – In determining whether a use is reasonable under this section, the
5 Department shall consider all of the following:

6 (1) The number of persons using the water resource; the object, extent, and
7 necessity of the proposed withdrawal; and the use of other existing or
8 planned withdrawals and uses of water.

9 (2) The supply potential of the water resource in question, considering quantity,
10 quality, and reliability, including the available daily yield of all
11 hydrologically interconnected water resources.

12 (3) The economic and social importance of the proposed water use and other
13 existing or planned water uses sharing the water resource.

14 (4) The probable severity and duration of any injury caused or expected to be
15 caused to other lawful consumptive and nonconsumptive uses of water by
16 the withdrawal and use under foreseeable conditions.

17 (5) The probable effects of the withdrawal and use on the public interest in
18 waters of the State, including, but not limited to, general environmental,
19 ecological, and aesthetic effects; sustainable development; domestic and
20 municipal uses; recharge areas for underground water; waste assimilation
21 capacity; other aspects of water quality; and wetlands and floodplains.

22 (6) Whether the use is planned in a fashion that will avoid or minimize the waste
23 of water.

24 (7) Any impacts on interstate or interbasin water uses.

25 (8) The scheduled date the withdrawal and use of water is to begin and whether
26 the projected time between the issuing of the permit and the expected
27 initiation or expansion of the withdrawal will unreasonably preclude other
28 possible uses of the water.

29 (9) Any other factors that the Department determines are necessary to promote
30 the policies set out in G.S. 143-350.1.

31 (c) Presumptively Reasonable Withdrawals and Allocations. – All of the following
32 types of withdrawals, allocations, and associated uses are presumed to be reasonable, and shall
33 be permitted unless the Department determines by clear and convincing evidence that the
34 presumption of reasonability does not apply to a particular permit application:

35 (1) A nonconsumptive use that will not increase the need for future withdrawals
36 through direct, secondary, or cumulative impacts.

37 (2) A prior allocation.

38 (3) An historical withdrawal.

39 **§ 143-355.15. Water withdrawal permit duration, terms, and conditions.**

40 (a) Duration. – A water withdrawal permit issued by the Department under this Article
41 shall be valid for a period of five years. The Department may issue a permit or an allocation
42 that is valid for a period of less than five years for the purpose of coordinating water permits
43 with the river basin planning schedule developed by the Department.

44 (b) Permit Information, Terms, and Conditions. – A water withdrawal permit issued by
45 the Department under this Article shall include all of the following information, terms, and
46 conditions:

47 (1) The location of the withdrawal.

48 (2) The authorized amount of the withdrawal.

49 (3) The amount of consumptive use and required conservation measures, if any.

- 1 (4) The dates or seasons during which water is to be withdrawn, including any
2 seasons or shorter variations in the authorized withdrawals or level of
3 consumptive use.
- 4 (5) The uses for which water is authorized to be withdrawn.
- 5 (6) The amount of return flow required and required place of discharge, if any.
- 6 (7) The requirements for metering surveillance and reporting as the Department
7 determines to be necessary to ensure compliance with other conditions,
8 limitations, or restrictions of the permit, including consent to inspections or
9 investigations.
- 10 (8) A statement that during conditions of water shortage emergency, the
11 Department may order the permit holder to reduce or eliminate withdrawals
12 otherwise authorized by the permit to protect public health, safety, or
13 welfare, or to avoid irreversible damage to the physical, chemical, or
14 ecological integrity of waters of the State in the river basin where the water
15 resource is located.
- 16 (9) The date on which the permit expires.
- 17 (10) A reopener clause to incorporate any applicable standard or reallocation of
18 permitted withdrawals. The Department may modify or revoke and reissue
19 any permit if an approved hydrologic model indicates that the water source
20 no longer meets ecological criteria, water quality standards, or assures the
21 available daily yield.

22 (c) Additional Information, Terms, and Conditions for New or Expanded Withdrawals.
23 – A water withdrawal permit issued by the Department for a new or expanded withdrawal shall
24 also include all of the following information, terms, and conditions:

- 25 (1) The time within which all necessary construction authorized by the permit
26 must be completed or within which the withdrawal or use of water must
27 begin to be made, with the delay not to exceed one-half of the duration of the
28 permit, subject to extension by order of the Department for cause shown.
- 29 (2) Any extraordinary withdrawals of the waters of the State necessary for
30 construction of any facilities necessary to withdraw or use the water.
- 31 (3) Any obligation to restore the lands or waters of the State to their condition
32 prior to the issuance of the permit upon its expiration.
- 33 (4) Any other conditions, limitations, and restrictions the Department
34 determines to be necessary to protect public health, safety, or welfare; the
35 environment and ecosystems; and to ensure the conservation, sustainable
36 development, proper management, and aesthetic enhancement of the waters
37 of the State.

38 (d) Water Conservation Measures. – A water withdrawal permit issued by the
39 Department that includes a consumptive use shall also include the following terms and
40 conditions with respect to the consumptive use:

- 41 (1) Measures to minimize the consumptive use through greater efficiency of
42 water use and water conservation;
- 43 (2) Measures to offset or mitigate the consumptive use through leak detection
44 and repair, rainwater capture, or other water management practices.

45 "**§ 143-355.16. Water withdrawal permit renewal, modification, revocation and**
46 **reissuance, transfer, and termination.**

47 (a) Process. – A water withdrawal permit may be renewed, modified, revoked and
48 reissued, or terminated by the Department or at the request of the permittee or other interested
49 party. When the Department receives any information, including a request for renewal,
50 modification, revocation and reissuance, or a review of the permit file, the Department shall
51 determine whether or not one or more of the causes set out in subsections (c) and (d) of this

1 section apply. If the Department determines that cause exists, the Department may modify or
2 revoke and reissue the permit and may request an updated application if necessary. When a
3 permit is modified, only the conditions subject to modification may be considered. If a permit
4 is revoked and reissued, the entire permit may be considered, is subject to revision, and is
5 reissued for a new term. If the Department determines that cause does not exist, the Department
6 shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria
7 in subsection (e) of this section for a minor modification, the permit may be modified without a
8 draft permit or public review. Otherwise a draft permit must be prepared and the draft permit
9 may be subject to public review, as determined by the Department.

10 (b) **Renewal.** –

- 11 (1) Not more than six months prior to the expiration of a water withdrawal
12 permit, a permit holder may apply for a renewal of the permit.
13 (2) If the permit is for a withdrawal in an overallocated river basin, the
14 Department shall review the application as provided in G.S. 143-355.13.
15 (3) If the permit is for a withdrawal in a river basin that is not overallocated, the
16 Department shall recalculate the available daily yield at the point of
17 withdrawal using the approved basinwide hydrologic model for the
18 appropriate basin and make any other appropriate adjustments in approved
19 hydrologic models of related river basins. The Department shall issue the
20 renewed permit accompanied by a written statement of such terms and
21 conditions as are appropriate.
22 (4) A permit renewed under this section shall not increase permitted
23 withdrawals. An application for expanded withdrawals shall be reviewed
24 under G.S. 143-355.11.

25 (c) **Cause for Modification.** – Cause for permit modification exists under any of the
26 following circumstances:

- 27 (1) There is a material or substantial alteration or addition to the permitted
28 withdrawal that occurred after permit issuance that justifies the application
29 of permit conditions that are different or absent in the existing permit.
30 (2) The Department has received new information. Permits may be modified
31 during their terms for this cause only if the information was not available at
32 the time of permit issuance and would have justified the application of
33 different permit conditions at the time of issuance. For permitted
34 withdrawals, this shall include any information indicating that the river basin
35 is overallocated.
36 (3) The standards or rules on which the permit was based have been changed by
37 adoption of amended standards or rules or by judicial decision after the
38 permit was issued. Permits may be modified during their terms for this cause
39 only as follows:
40 a. For adoption of amended standards or rules, when:
41 1. The permit condition requested to be modified was based on a
42 standard that is no longer legally valid.
43 2. The Department or Commission has revised, withdrawn, or
44 modified that portion of the rule on which the permit
45 modification was based.
46 3. A permittee requests modification.
47 b. For judicial decisions, a court of competent jurisdiction has
48 remanded and stayed or vacated Department or Commission rules, if
49 the remand and stay concern that portion of the rules on which the
50 permit was based and a request was filed by the permittee.

- 1 (4) When required by a reopener condition in a permit, pursuant to
2 G.S. 143-355.15.
- 3 (5) To correct technical mistakes, such as errors in calculation or mistaken
4 interpretations of law made in determining permit conditions.
- 5 (d) Cause for Modification or Revocation and Reissuance. – Causes for modification or
6 revocation and reissuance exist under any of the following circumstances:
- 7 (1) Cause exists for terminations under subsection (f) of this section and the
8 Department determines that modification or revocation and reissuance is
9 appropriate.
- 10 (2) The Department has received notification of a proposed transfer of the
11 permit.
- 12 (e) Minor Modifications of a Permit. – With the consent of the permittee, the
13 Department may modify a permit to make corrections or allowances for changes in the
14 permitted activities as listed in this section without public notice and comment. Any permit
15 modification not qualifying as a minor modification under this subsection must be made for
16 cause and after public notice and comment as provided in G.S. 143-355.11(c). The Department
17 may do any of the following as a minor modification:
- 18 (1) Correct typographical errors.
- 19 (2) Require more frequent monitoring or reporting by permittee.
- 20 (3) Change an interim compliance date in a schedule of compliance, if the new
21 date is not more than 120 days after the date specified in the existing permit
22 and does not interfere with attainment of the final compliance date
23 requirement.
- 24 (4) Allow for a change in ownership or operational control of a facility where
25 the Department determines that no other change in the permit is necessary, if
26 the written agreement containing the specific date for transfer of permit
27 responsibility, coverage, and liability between the current and new
28 permittees has been submitted to and approved by the Department.
- 29 (5) Change in the construction schedule for a new permit.
- 30 (6) Delete a withdrawal point or intake when the termination of the withdrawal
31 does not result in increased withdrawals from other intakes except in
32 accordance with permit limits.
- 33 (f) Permit Termination. – The Department may terminate a water withdrawal permit or
34 deny the renewal of a water withdrawal permit based on any of the following:
- 35 (1) Failure of the permittee to comply with any condition of the permit.
- 36 (2) Failure of the permittee in the application or during the permit issuance
37 process to fully disclose all relevant facts.
- 38 (3) Misrepresentation by the permittee of any relevant facts in the application or
39 during the permit issuance process.
- 40 (4) The Department determines that the permitted activity endangers public
41 health, safety, or welfare or the environment and can only be regulated to
42 acceptable levels by permit modification or termination.
- 43 (5) A change in any condition that requires either a temporary or permanent
44 reduction or elimination of any withdrawal.
- 45 (6) The Department determines that the holder of the permit will be unable
46 under any foreseeable circumstances to comply with this Article or with
47 relevant orders, permit terms or conditions, or rules adopted pursuant to this
48 Article or any other statute, rule, or order pertaining to the use of water.
- 49 (7) A change in ownership or operational control of a water withdrawal facility
50 that is made without a prior approved transfer of a permit or allocation,
51 including any filing of a petition for bankruptcy. A right to withdraw and use

1 water under this Article is personal to the holder of the permit or allocation
2 and may not be transferred, alienated, or pledged as security to another
3 person without approval of the Department.

4 (g) Extent of Permit Termination. – When the Department terminates a permit under
5 subsection (f) of this section, it may terminate it in whole or in part, depending on the extent to
6 which the water is wasted or not withdrawn or used, or the extent to which the permit holder is
7 unable to comply with the terms or conditions of the permit.

8 (h) Transfer by Modification. – A permit may be transferred by the permittee to a new
9 owner or operator only if the permit has been modified, revoked and reissued, or a minor
10 modification made to identify the new permittee and incorporate such other requirements as
11 may be necessary.

12 (i) Permit Generally Nontransferable. – Unless otherwise authorized by this section,
13 water withdrawal permits shall not be transferred.

14 **"§ 143-355.17. Water withdrawal permit fees.**

15 (a) Fees to Cover Costs. – Annual fees and application fees for water withdrawal
16 permits and interim allocations for historical withdrawals shall not exceed the aggregate costs
17 of administering the water withdrawal permitting program, including the development of
18 hydrologic models, monitoring, and enforcement.

19 (b) Annual Fees. – Annual fees for water withdrawal permits and interim allocations
20 shall be as follows:

21 (1) For a withdrawal of 100,000 gallons per day to 499,999 gallons per day, the
22 annual fee shall be seven hundred fifty dollars (\$750.00).

23 (2) For a withdrawal of 500,000 gallons per day to 999,999 gallons per day, the
24 annual fee shall be one thousand dollars (\$1,000).

25 (3) For a withdrawal of 1,000,000 gallons per day to 4,999,999 gallons per day,
26 the annual fee shall be two thousand five hundred dollars (\$2,500).

27 (4) For a withdrawal of 5,000,000 gallons per day to 9,999,999 gallons per day,
28 the annual fee shall be five thousand dollars (\$5,000).

29 (5) For a withdrawal of 10,000,000 gallons per day to 49,999,999 gallons per
30 day, the annual fee shall be seven thousand five hundred dollars (\$7,500).

31 (6) For a withdrawal of 50,000,000 gallons per day to 99,999,999 gallons per
32 day, the annual fee shall be ten thousand dollars (\$10,000).

33 (7) For a withdrawal of 100,000,000 gallons per day to 499,999,999 gallons per
34 day, the annual fee shall be fifteen thousand dollars (\$15,000).

35 (8) For a withdrawal of 500,000,000 gallons per day to 999,999,999 gallons per
36 day, the annual fee shall be twenty thousand dollars (\$20,000).

37 (9) For a withdrawal of 1,000,000,000 gallons per day or more, the annual fee
38 shall be twenty-five thousand dollars (\$25,000).

39 (c) General Permit Fee. – The annual fee for a general water withdrawal permit
40 established pursuant to G.S. 143-354(f) shall be two hundred fifty dollars (\$250.00).

41 (d) Processing Fees. – Processing fees for water withdrawal permits and interim
42 allocations shall be as follows:

43 (1) The application processing fee for a withdrawal permit renewal and interim
44 allocation for a historical withdrawal shall be one thousand dollars (\$1,000).

45 (2) The application processing fee for a new or expanded withdrawal or interim
46 allocation shall be five thousand dollars (\$5,000).

47 (3) The application processing fee for a general permit shall be two hundred
48 fifty dollars (\$250.00).

49 **"§ 143-355.18. Administrative procedures for water withdrawal permits.**

50 (a) Review of Permit Decisions. – If the Department determines that a water
51 withdrawal permit application fails to meet the requirements of this Article, the application

1 shall be denied, and the application shall be returned to the applicant accompanied by a written
2 statement of the reasons for its denial. Unless the permit applicant contests a proposed permit,
3 the proposed permit shall become effective on the date set in the proposed permit. A person
4 who is dissatisfied with a decision of the Department concerning that user's or another user's
5 permit application or permit may commence a contested case under G.S. 150B-23.

6 (b) Review of Technical Decisions. – In any contested case or judicial proceeding in
7 which the validity of an approved hydrologic model or a component of an approved hydrologic
8 model, including data, algorithms, calculations of available daily yield, overallocated river
9 basins, estimates of water required for instream purposes, and estimates for ecological,
10 chemical, and biological integrity, the administrative law judge or court shall defer to the
11 decision of the Department so long as the decision is not arbitrary or capricious.

12 (c) Review River Basin Planning Organization Decisions. – Judicial review of
13 decisions and deliberations of a river basin planning organization established under this Article
14 shall be taken only by a contested case proceeding under G.S. 150B-23 that challenges the final
15 decision of the Department regarding a permit application or applications. Deliberations,
16 decisions, and reports of a river basin planning organization established under this Article shall
17 be considered nonfinal agency action that is not ripe for judicial review.

18 **"§ 143-355.19. Basinwide hydrologic models.**

19 (a) Basinwide Hydrologic Model. – The Department shall develop and implement a
20 basinwide hydrologic model for each of the major river basins in the State as identified in
21 G.S. 143-215.22G. Each basinwide hydrologic model shall:

- 22 (1) Include surface water resources within the river basin, groundwater
23 resources within the river basin to the extent known by the Department,
24 transfers into and out of the river basin that are required to be registered
25 under G.S. 143-215.22H, withdrawals permitted under this Article and an
26 estimate of withdrawals that are exempt from the permitting requirements,
27 ecological flow and other instream flow requirements, projections of future
28 withdrawals, and an estimate of return flows within the river basin.
- 29 (2) Be designed to predict the flows and available daily yield of each surface
30 water resource within the basin.
- 31 (3) Be based on the best science and modeling methodology practically
32 available.
- 33 (4) Be based solely on data and algorithms that are public records and open to
34 public review and comment.

35 (b) Adoption. – The Commission shall adopt rules to approve each initial basinwide
36 hydrologic model developed by the Department pursuant to this section as the approved
37 basinwide hydrologic model.

38 (c) Update Due to Changed Circumstances. – The Department shall revise each
39 basinwide hydrologic model to reflect new data on water resources, withdrawals, allocations,
40 and uses, including, but not limited to, inflow data, changes in water quality data and standards,
41 changes in groundwater standards, local water supply plans, instream flows to protect
42 ecological integrity, and other technical and scientific information collected under this Article.
43 A revision made pursuant to this subsection is not a rule under G.S. 150B-2. The Commission
44 shall adopt rules to provide for scientific and technical review of and public comment on the
45 revisions."

46 **SECTION 2.3.** G.S. 143-354 is amended by adding a new subsection to read:

47 "(f) Water Withdrawal Permits. – The Commission shall adopt any rules necessary to
48 implement the water withdrawal permit program established by this Article. The Commission
49 shall develop general water withdrawal permits for categories of withdrawers whose water use
50 is intermittent or onetime. General water withdrawal permits developed pursuant to this

1 subdivision may contain reporting, low-flow, and other permit conditions contained in
2 individual permits."

3 **SECTION 2.4.** G.S. 143-355 is amended by adding a new subsection to read:

4 "(b2) Water Withdrawal Permits. – The Department shall issue water withdrawal permits
5 as provided in this Article. The Department shall develop, in consultation with the North
6 Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, and the
7 National Marine Fisheries Service, ecological criteria that will protect the ecological integrity
8 of each river basin and each river sub-basin in the State."

9 **SECTION 2.5.** G.S. 143-355.6 is amended by adding a new subsection to read:

10 "(c1) The Secretary may assess a civil penalty of not more than ten thousand dollars
11 (\$10,000) per month against any person who violates any provision of Article 38 of this
12 Chapter or rules adopted pursuant to the Article. The amount of the civil penalty shall be based
13 on the factors set out in G.S. 143B-282.1(b). The Secretary may remit a civil penalty based on
14 the factors set out in G.S. 143B-282.1(c)(1)."

15 16 **PART III. INTERIM ALLOCATIONS**

17
18 **SECTION 3.1.** For water withdrawals in a river basin for which an approved
19 hydrologic model has not been adopted by the Commission, the Department shall issue interim
20 allocations as provided in this section.

21 **SECTION 3.2.** Interim Allocations for Historical Withdrawals. –

22 (a) Interim Allocation Required. – Except as otherwise provided in this section, no
23 person shall continue a historical withdrawal of water from the waters of the State without
24 obtaining an interim allocation for a historical withdrawal from the Department under this
25 section and without complying with all orders, terms and conditions, and rules established
26 pursuant to this section.

27 (b) Exception. – An interim allocation for a historical withdrawal shall not be required
28 pursuant to this section for a withdrawal if the withdrawal is less than 100,000 gallons per day
29 in any single 24-hour period. To calculate the amount of the withdrawal, the Department shall
30 count all separate withdrawals by a single person for a single use or for related uses as a single
31 withdrawal.

32 (c) Issuance Process. – The Department shall issue interim allocations for historical
33 withdrawals as provided in this subsection.

34 (1) Eligibility. – To be eligible for an interim allocation for a historical
35 withdrawal, the person applying for the interim allocation must do all of the
36 following:

- 37 a. Register the withdrawal pursuant to subsection (a) or (b2) of
38 G.S. 143-215.22H prior to the time of application.
39 b. Apply to the Department for the interim allocation by the earlier of
40 July 1, 2010, or the effective date of the approved basinwide
41 hydrologic model developed and adopted under G.S. 143-355.19 for
42 the river basin in which the historical withdrawal occurred.

43 (2) Application. – An application for an interim allocation for a historical
44 withdrawal must include all of the following information:

- 45 a. The name and address of the applicant and the owner of the water
46 withdrawal facility.
47 b. The amount of the historical withdrawal of water, including daily,
48 monthly, seasonal, and annual mean and peak withdrawals.
49 c. The place and source of the historical withdrawal, including the
50 latitude and longitude.

- 1 d. The place, nature, and amount of the historical uses of the withdrawn
2 water.
- 3 e. A classification of the historical uses of the withdrawn water as
4 consumptive or nonconsumptive.
- 5 f. The place and amount of the historical return flows of the withdrawn
6 water, including daily, monthly, seasonal, and annual mean and peak
7 return flows.
- 8 g. The operating capacity of the historical water withdrawal and return
9 flow systems.
- 10 h. A list of all federal, State, or local approvals, permits, licenses, or
11 other authorizations issued for the historical water withdrawal and
12 return flow systems.
- 13 i. For local government or large community water system applicants, a
14 copy of the most recent local water supply plan prepared pursuant to
15 G.S. 143-215.119.
- 16 (3) Determination. – The Department shall issue an interim allocation for a
17 historical withdrawal if it determines that evidence submitted as a part of the
18 application, including, but not limited to, water withdrawal registration
19 under subsections (a) or (b2) of G.S.143-215.22H, demonstrates that the
20 applicant has made and has properly registered the historical withdrawal.
- 21 (4) Permit conditions. – An interim allocation for a historical withdrawal shall
22 include a written statement of any terms and conditions, including terms and
23 conditions that would be required of a permit holder under G.S. 143-355.16,
24 as enacted by Section 2.2 of this act. An interim allocation for a historical
25 withdrawal shall authorize maximum daily withdrawals no greater than the
26 historical withdrawal defined in G.S. 143-350.
- 27 (d) Continued Withdrawal. – A person who is eligible to apply for an interim allocation
28 for a historical withdrawal and who makes a timely application for the interim allocation may
29 continue the historical withdrawal and its related use until the Department completes action on
30 the application. Failure to file an application as provided in this section shall be conclusive
31 evidence of the abandonment of any right to withdraw water based on a historical withdrawal
32 by the person failing to apply.
- 33 **SECTION 3.3.** Interim Allocations for New and Expanded Withdrawals. –
- 34 (a) Interim Allocation Required. – Except as otherwise provided in this section, no
35 person shall make a new or expanded withdrawal of water from the waters of the State without
36 obtaining an interim allocation for a new or expanded withdrawal from the Department under
37 this section and without complying with all orders, terms and conditions, and rules established
38 pursuant to this section.
- 39 (b) Exception. – An interim allocation for a new or expanded withdrawal shall not be
40 required pursuant to this section for a new or expanded withdrawal of water if the new or
41 expanded withdrawal is less than 100,000 gallons per day in any single 24-hour period. To
42 calculate the amount of the new or expanded withdrawal, the Department shall count all
43 separate withdrawals by a single person for a single use or for related uses as a single
44 withdrawal.
- 45 (c) Issuance Process. – The Department shall issue interim allocation for new
46 withdrawals and expanded withdrawals as provided in this subsection.
- 47 (1) Eligibility. –
- 48 a. To be eligible for an interim allocation for a new withdrawal, the
49 person applying for the new withdrawal must supply all information
50 needed to properly register the withdrawal pursuant to subsection (a)
51 or (b2) of G.S. 143-215.22H prior to the time of application.

- 1 b. To be eligible for an interim allocation for an expanded withdrawal,
2 the person applying for the expanded withdrawal must register the
3 historical withdrawal pursuant to subsection (a) or (b2) of
4 G.S. 143-215.22H prior to the time of application.
- 5 (2) Application. – An application for an interim allocation for a new or
6 expanded withdrawal must include all of the following information:
- 7 a. The name and address of the applicant and the owner of the
8 withdrawal facility.
- 9 b. The amount of any historical withdrawal of water and amount of the
10 proposed new or expanded withdrawal, including daily, monthly,
11 seasonal, and annual mean and peak withdrawals.
- 12 c. The place and source of any historical and proposed withdrawals,
13 including the latitude and longitude.
- 14 d. The place, nature, and amount of any historical and proposed uses of
15 withdrawn water.
- 16 e. A classification of the historical and proposed uses of the withdrawn
17 water as consumptive or nonconsumptive.
- 18 f. The place and amount of historical and proposed return flows of
19 withdrawn water, including daily, monthly, seasonal, and annual
20 mean and peak return flows.
- 21 g. The operating capacity of the historical withdrawal and return flow
22 systems and the proposed capacities of any new or expanded
23 withdrawal and return flow systems.
- 24 h. A list of all federal, State, or local approvals, permits, licenses, or
25 other authorizations issued to the historical withdrawal and return
26 flow systems.
- 27 i. For local government or large community water system applicants, a
28 copy of the most recent local water supply plan prepared pursuant to
29 G.S. 143-215.119.
- 30 j. Any other information requested by the Department that is necessary
31 to determine the ecological flow needs of the portion of the river
32 basin in which the new or expanded withdrawal is proposed to be
33 located, along with any other information required pursuant to the
34 State Environmental Policy Act or requested by commenters on the
35 proposed new or expanded withdrawal.
- 36 (3) The Department shall issue an interim allocation for a new or expanded
37 withdrawal if:
- 38 a. It determines that evidence submitted as a part of the application,
39 including, but not limited to, water withdrawal registration under
40 subsections (a) or (b2) of G.S.143-215.22H, demonstrates that the
41 applicant owns and has properly registered the withdrawal.
- 42 b. It determines that evidence submitted as a part of the application
43 demonstrates that the applicant owns the proposed withdrawal and
44 has provided the information necessary to properly register the
45 proposed withdrawal.
- 46 c. After circulation of an environmental document under G.S. 113A-4
47 for the new or expanded withdrawal, the Department determines that
48 there will be no major adverse change in the environment or conflicts
49 concerning alternative uses of available natural resources as a result
50 of the proposed withdrawal.

- 1 (4) Permit conditions. – An interim allocation for a new or expanded withdrawal
2 shall include a written statement of such terms and conditions as are
3 appropriate, including terms and conditions that would be required of a
4 permit holder under G.S. 143-355.16, as enacted by Section 2.2 of this act.

5 **SECTION 3.4. General Provisions Governing Interim Allocations. –**

6 (a) Duration. – An interim allocation issued by the Department under this section shall
7 be valid until the earlier of five years from the date the interim allocation was issued or the
8 effective date of the approved basinwide hydrological model for the river basin in which the
9 withdrawal is located. An interim allocation shall expire automatically on the effective date of
10 the approved basinwide hydrologic model for the river basin in which the withdrawal is
11 located. The Department may issue an allocation that is valid for less than five years for the
12 purpose of coordinating water permits with the river basin planning schedule developed by the
13 Department.

14 (b) Water Withdrawal Permit Provisions Applicable. – Interim allocations may be
15 renewed, modified, revoked and reissued, transferred, or terminated in accordance with the
16 requirements and procedures for permits in G.S. 143-355.16, as enacted by Section 2.2 of this
17 act.

18 (c) Fees. – Fees for interim allocations shall be the same as fees for withdrawal permits
19 under G.S. 143-355.17, as enacted by Section 2.2 of this act.

20 (d) Enforcement. – The Secretary may assess civil penalties as provided in
21 G.S. 143-355.6(c1), as enacted by Section 2.2 of this act.

22
23 **PART IV. MISCELLANEOUS PROVISIONS**

24
25 **SECTION 4.1. G.S. 113A-12 reads as rewritten:**

26 **"§ 113A-12. Environmental document not required in certain cases.**

27 No environmental document shall be required in connection with:

- 28 (1) The construction, maintenance, or removal of an electric power line, water
29 line, sewage line, stormwater drainage line, telephone line, telegraph line,
30 cable television line, data transmission line, or natural gas line within or
31 across the right-of-way of any street or highway.
- 32 (2) An action approved under a general permit issued under G.S. 113A-118.1,
33 143-215.1(b)(3), or 143-215.108(c)(8).
- 34 (3) A lease or easement granted by a State agency for:
- 35 a. The use of an existing building or facility.
- 36 b. Placement of a wastewater line on or under submerged lands
37 pursuant to a permit granted under G.S. 143-215.1.
- 38 c. A shellfish cultivation lease granted under G.S. 113-202.
- 39 (4) The construction of a driveway connection to a public roadway.
- 40 (5) The planning, funding, and construction of a water storage system that meets
41 all of the following criteria:
- 42 a. Sited in an area with no federal- or State-listed threatened or
43 endangered species.
- 44 b. Designed and constructed solely for the purpose of water supply.
- 45 c. Built and operated with a release regime that fully meets instream
46 flow requirements.
- 47 d. Located in an overallocated river basin as determined pursuant to
48 G.S. 143-355.13.
- 49 e. Recommended by a river basin planning organization established
50 pursuant to G.S. 143-355.12."

51 **SECTION 4.2. G.S. 143-211(a) reads as rewritten:**

1 "(a) It is hereby declared to be the public policy of this State to provide for the
2 conservation of its water and air resources. Furthermore, it is the intent of the General
3 Assembly, within the context of this Article and Articles ~~21A and 21B~~21A, 21B, and 38 of this
4 Chapter, to achieve and to maintain for the citizens of the State a total environment of superior
5 quality. Recognizing that the water and air resources of the State belong to the people, the
6 General Assembly affirms the State's ultimate responsibility for the preservation and
7 development of these resources in the best interest of all its citizens and declares the prudent
8 utilization of these resources to be essential to the general welfare."

9 **SECTION 4.3.** G.S. 143-214.13(b) reads as rewritten:

10 "(b) Within the meaning of this Part "a capacity use area" is one where the Commission
11 finds that the aggregate uses of groundwater or surface water, or both, in or affecting said area
12 (i) have developed or threatened to develop to a degree which requires coordination and
13 regulation, ~~or~~ (ii) exceed or threaten to exceed, or otherwise threaten or impair, the renewal or
14 replenishment of such waters or any part of ~~them~~them, or (iii) have created or are projected to
15 create an overallocated river basin, as determined pursuant to G.S. 143-215.13."

16 **SECTION 4.4.** G.S. 143-215.22H(b) is repealed.

17 **SECTION 4.5.** G.S. 162A-20, 162A-21, 162A-22, 162A-23, 162A-24, and
18 162A-25 are repealed.

19 **SECTION 4.6.** Promote Public Access to Water and Water Funding Information. –

20 The Department of Environment and Natural Resources, in conjunction with the North
21 Carolina League of Municipalities, the North Carolina Association of County Commissioners,
22 and interested private water systems, and with the assistance of the Institute for the
23 Environment at the University of North Carolina at Chapel Hill, shall:

- 24 (1) Identify all of the water-reporting requirements of the State and of the
25 United States Environmental Protection Agency.
- 26 (2) Provide greater public access to water and water funding information.
- 27 (3) Develop and implement a plan to consolidate water data into one or more
28 comprehensive Water System Reports to the State and for the public.

29 **SECTION 4.7.** Continue Study of Water Allocation Issues. – The Environmental
30 Review Commission may continue to study those topics identified for further research and
31 study in the 2008 Report of the Water Allocation Study to the Environmental Review
32 Commission.

33 **SECTION 4.8.** Financial Review of Public Water Supply and Wastewater
34 Systems. – The Department of Environment and Natural Resources and the Local Government
35 Commission in the Office of State Treasurer shall monitor the revenues and costs of public
36 water supply and wastewater systems in the State. If the Department and Commission find that
37 a public water supply or wastewater system fails on an annual basis to raise revenue sufficient
38 to cover the costs associated with the system, including the costs of maintenance and repair and
39 replacement of treatment and distribution or collection infrastructure, the Department and
40 Commission shall request a written explanation for the revenue shortfall from the governing
41 board of the system. The governing board of the system shall respond to the request within 90
42 days and shall include in the response the measures that it has agreed to implement to ensure
43 that system revenues cover system costs.

44 **SECTION 4.9.** Water Efficiency Report. – The Division of Pollution Prevention
45 and Environmental Assistance in the Department of Environment and Natural Resources, other
46 appropriate divisions in the Department, and the Department of Agriculture and Consumer
47 Services shall report no later than April 1, 2010, on all of the following:

- 48 (1) The implementation of water efficiency measures required under Section 9
49 of S.L. 2008-143.
- 50 (2) The coordination of water efficiency audits and energy efficiency audits.

- 1 (3) The water efficiency standards and accomplishments of significant industrial
2 and agricultural water users in the State.
3 (4) Other water efficiency efforts that are being implemented in the State.
4

5 **PART V. EFFECTIVE DATES**

6 **SECTION 5.1.** This act is effective when it becomes law.
7