

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 129\*

Environment and Natural Resources Committee Substitute Adopted 5/30/91

Short Title: Water Transfer Permits.

(Public)

Sponsors:

Referred to:

February 20, 1991

A BILL TO BE ENTITLED

AN ACT TO REQUIRE REGISTRATION OF ALL WATER TRANSFERS AND TO REQUIRE A PERMIT FOR THE TRANSFER OF ONE MILLION GALLONS OR MORE OF WATER PER DAY FROM ONE RIVER BASIN TO ANOTHER.

The General Assembly of North Carolina enacts:

Section 1. Article 21 of Chapter 143 is amended by adding a new Part to read:

**“PART 2A. REGULATION OF WATER TRANSFERS.**

**”§ 143-215.22A. Definitions.**

In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following definitions apply to this Part:

- (1) ‘Receiving river basin’ means a river basin which is the recipient of an increase in water as the result of a transfer of surface water from a different river basin.
- (2) ‘River basin’ means any of the following river basins designated on the map entitled ‘Major River Basins and Sub-Basins in North Carolina’ and filed in the Office of the Secretary of State on 16 April 1991:
  - a. Albemarle Sound.
  - b. Chowan River.
  - c. Meherrin River.
  - d. Roanoke River.
  - e. Pamlico River and Sound.
  - f. Tar River.

- 1           g.     Fishing Creek.  
2           h.     Neuse River.  
3           i.     Contentnea Creek.  
4           j.     Trent River.  
5           k.     White Oak River.  
6           l.     New River.  
7           m.     Northeast Cape Fear River.  
8           n.     Cape Fear River.  
9           o.     South River.  
10          p.     Deep River.  
11          q.     Haw River.  
12          r.     Shalotte River.  
13          s.     Waccamaw River.  
14          t.     Lumber River.  
15          u.     Big Shoe Heel Creek.  
16          v.     Yadkin River.  
17          w.     Uwharrie River.  
18          x.     Rocky River.  
19          y.     South Yadkin River.  
20          z.     New River.  
21          aa.    Catawba River.  
22          bb.    South Fork Catawba River.  
23          cc.    Watauga River.  
24          dd.    Broad River.  
25          ee.    French Broad River.  
26          ff.    Toe River.  
27          gg.    Pigeon River.  
28          hh.    Little Tennessee River.  
29          ii.    Tuckasegee River.  
30          jj.    Hiwassee River.  
31          kk.    Savannah River Basin.  
32          (3)    'Source river basin' means a river basin which sustains a decrease in  
33               surface water as the result of a transfer of water to a different river  
34               basin and there is no significant return of the water to the river basin of  
35               origin.  
36          (4)    'Surface water' means any of the waters of the State located on or  
37               derived from the land surface that are not derived by pumping from  
38               groundwater.  
39          (5)    'Transfer' means the withdrawal, diversion, or pumping of surface  
40               water from one river basin and the use or discharge of all or any part of  
41               the water in a river basin different from the origin.  
42          "**§ 143-215.22B. Permit required for water transfers.**"

1        Except as provided in G.S. 143-215.22I, no person may transfer 1,000,000 gallons or  
2 more of surface water a day on any day from one river basin to another unless the  
3 person shall first obtain a permit from the Commission.

4 **"§ 143-215.22C. Permit application.**

5        (a) An application for a water transfer permit shall be in writing and shall  
6 include:

7            (1) Information on existing water uses by the applicant, including the  
8 following:

9            a. The approximate amount of water used for residential,  
10 industrial, commercial, agricultural, and other purposes.

11            b. The existing water supply sources used by the applicant and  
12 their yields.

13            c. The water conservation measures used by the applicant to  
14 assure efficient use of water and avoidance of waste.

15            (2) Information on the applicant's projected use of the water to be  
16 transferred under the requested permit, including the following:

17            a. The approximate amount of water projected to be used for  
18 residential, industrial, commercial, agricultural, and other  
19 purposes.

20            b. The water conservation measures proposed to be used by the  
21 applicant to assure efficient use of the transferred water and  
22 avoidance of waste.

23            c. Alternative sources of water to the proposed transfer considered  
24 by the applicant, including their estimated cost, environmental  
25 effects, and other relevant factors.

26            d. A description of the facilities proposed to be used to transfer the  
27 water, including the location and capacity of the collection,  
28 withdrawal, transfer, and discharge facilities.

29            (3) Any other information deemed necessary by the Commission for  
30 review of the proposed water transfer.

31        (b) The Commission may conduct any inquiry or investigation that it considers  
32 necessary before acting on an application and may require an applicant to submit plans,  
33 specifications, and other information the Commission considers necessary to evaluate  
34 the application.

35 **"§ 143-215.22D. Public notice and public hearing requirements.**

36        (a) Within 60 working days following the submission of a completed application,  
37 the Commission shall publish notice of the application in the North Carolina Register.  
38 The notice that an application for a water transfer has been received shall include a  
39 nontechnical description of the applicant's request and a conspicuous statement in bold  
40 type as to the effects of the water transfer on the source and receiving rivers including a  
41 statement that the proposed source basin may decrease if the requested water transfer  
42 permit is granted.

1       **(b)** At least one public hearing for each application for a water transfer permit  
2 shall be conducted by the Commission at a location in the source river basin below the  
3 point of transfer.

4       **(c)** The Commission shall publish notice of the public hearing once a week for  
5 two consecutive weeks prior to the date of the public hearing in a newspaper of general  
6 circulation in each river basin area to be affected and in a newspaper of general  
7 circulation that originates in the source river basin. The Commission shall also give  
8 notice of the public hearing at least 30 days in advance of the date of the hearing by  
9 certified mail, return receipt requested, to each of the following within the proposed  
10 source and receiving river basins within the State:

11           **(1)** A person holding a water transfer permit or who has registered a water  
12 transfer under this Part.

13           **(2)** A person holding a wastewater discharge permit issued under the  
14 National Pollutant Discharge Elimination System (NPDES) and  
15 located downstream from either the proposed withdrawal or discharge  
16 point of the proposed transfer.

17           **(3)** The board of county commissioners of each county that is located  
18 entirely or partially within the source or receiving river basin.

19           **(4)** The governing body of any municipality that takes water from the  
20 main stem of the source or receiving river downstream from the  
21 proposed point of withdrawal and discharge.

22       **(d)** The notice of the public hearing shall include a nontechnical description of  
23 the applicant's request and a conspicuous statement in bold type as to the effects of the  
24 water transfer on the source and receiving rivers including a statement that the proposed  
25 source basin may decrease if the requested water transfer permit is granted. The notice  
26 shall further indicate the procedure to be followed by anyone wishing to submit  
27 comments on the proposed water transfer and shall direct local governments that  
28 objections from a local government must be filed with the Commission within 30 days  
29 of the receipt of the notice by the local government.

30 **"§ 143-215.22E. Permit application review.**

31       **(a)** No permit may be granted for a water transfer that will cause or result in a  
32 violation of State stream classifications or of any applicable State or federal water  
33 quality standard.

34       **(b)** In reviewing an application, the Commission shall consider information  
35 developed through studies, analyses, or inquiries undertaken by the Commission and  
36 information and comments submitted to the Commission by the applicant, public  
37 agencies, affected persons, and the public.

38       **(c)** In determining whether a transfer may be permitted the Commission shall  
39 specifically consider each of the following items and state in writing its findings of fact  
40 with regard to each item:

41           **(1)** The necessity, reasonableness, and beneficial effects of the amount of  
42 surface water proposed to be transferred and its proposed uses.

43           **(2)** The present and reasonably foreseeable future detrimental effects on  
44 the source river basin, including effects on public, industrial, and

- 1                    agricultural water supply, wastewater assimilation, water quality, fish  
2                    and wildlife habitat, hydroelectric power generation, navigation,  
3                    recreation, and any other relevant factors.
- 4                    (3)    The detrimental effects on the receiving river basin, including effects  
5                    on water quality, wastewater assimilation, fish and wildlife habitat,  
6                    navigation, recreation, flooding, and any other relevant factors.
- 7                    (4)    The reasonable alternatives to the proposed transfer, including their  
8                    probable cost, environmental impacts, and any other significant  
9                    factors.
- 10                  (5)    Mitigation measures proposed to minimize the detrimental effects.
- 11                  (6)    The applicant's present efforts and plans to impound water.
- 12                  (7)    The protection of the availability of water in the source river basin to  
13                  respond to emergencies, including drought.
- 14                  (8)    For existing water transfers under G.S. 143-215.22I and for permit  
15                  renewals under G.S. 143-215.22G, the hardship to the applicant that  
16                  would result from the termination of an existing withdrawal or right of  
17                  withdrawal of water.
- 18                  (9)    Any other facts and circumstances as are reasonably necessary to carry  
19                  out the purposes of this Part.
- 20                  (d)    No permit may be granted for a water transfer unless the Commission  
21                  concludes by a preponderance of the evidence based upon the preceding findings of fact  
22                  that:
- 23                    (1)    The present and reasonably foreseeable future water needs of the  
24                    source river basin are protected for the duration of the permit,  
25                    including municipal, industrial, and agricultural water supply,  
26                    wastewater assimilation, water quality, fish and wildlife habitat,  
27                    hydroelectric power generation, navigation, recreation, emergency  
28                    water needs, and any other significant factors.
- 29                    (2)    The benefits of the proposed transfer outweigh its potential detriments.
- 30                    (3)    Significant detrimental effects have been mitigated to the extent  
31                    reasonably possible and all reasonable alternatives have been  
32                    considered.
- 33                    (4)    The amount of water to be transferred and its proposed uses are both  
34                    necessary and reasonable.
- 35                    (5)    The applicant, or any parent, subsidiary, or other affiliate of the  
36                    applicant or parent is financially qualified to implement its  
37                    responsibilities under the permit.
- 38                    (6)    The applicant, or any parent, subsidiary, or other affiliate of the  
39                    applicant or parent has been in substantial compliance with other  
40                    federal and state laws, regulations, and rules for the protection of the  
41                    environment.
- 42                  **§ 143-215.22F. Commission's power as to permits; permit action.**

1 (a) The Commission may grant, deny, or issue with conditions a water transfer  
2 permit. The Commission may attach to a permit any conditions necessary to achieve  
3 the purposes of this Part, including the following:

4 (1) The amount of surface water approved for transfer may be varied  
5 seasonally.

6 (2) The water transfer shall cease or decrease when the flow of the source  
7 river, at a specified point, is less than a specified minimum required to  
8 protect against adverse effects to the river basin.

9 (3) Special provisions may be included to promote an adequate water  
10 supply for the State or to mitigate any future adverse conditions  
11 resulting from the transfer.

12 (4) The installation, maintenance, and use of streamflow monitoring  
13 equipment may be required.

14 (5) The establishment and reporting of transfer activities by the permittee  
15 may be required.

16 (b) The permit shall specify the location of all collection, withdrawal,  
17 transmission, and discharge facilities to be used or constructed to effect the water  
18 transfer and shall specify the amount which can be withdrawn.

19 **§ 143-215.22G. Duration of permits; modification, suspension, or revocation of**  
20 **permits; renewal of permits.**

21 (a) Except as provided in subdivisions (1) or (2) of this subsection, a water  
22 transfer permit shall be issued for a period of 20 years.

23 (1) The Commission may issue a water transfer permit for a period less  
24 than 20 years if requested by an applicant.

25 (2) The Commission may issue a water transfer permit for a period greater  
26 than 20 years if deemed reasonable by the Commission based upon a  
27 review of all relevant facts and circumstances pertaining to the  
28 proposed water transfer. However, the period of the permit may not  
29 exceed 40 years.

30 (b) The Commission may, for good cause shown, modify, suspend, or revoke any  
31 water transfer permit, issued under G.S. 143-215.22F. This provision shall not apply to  
32 water transfers authorized by G.S. 143-215.22I(b).

33 (c) A permit may be renewed following its expiration upon a full review of all  
34 factors set out in G.S. 143-215.22E. Renewal water transfer permits are subject to the  
35 term of years limitations applicable to water transfer permits. Permits may not be  
36 transferred except with the approval of the Commission.

37 **§ 143-215.22H. Emergency permits.**

38 (a) The Governor may declare a water transfer emergency in response to a  
39 substantial risk of a water supply failure caused by low lake levels or streamflows, or in  
40 response to a water contamination or equipment failure emergency.

41 (b) Upon the issuance by the Governor of a declaration of a water transfer  
42 emergency, the Commission may waive the usual permitting requirements and grant a  
43 temporary emergency water transfer permit. The emergency water transfer permit shall  
44 be limited to meet the needs created by the emergency and shall be issued for a period

1 no longer than 140 days or the duration of the Governor's declaration whichever period  
2 is shorter.

3 **"§ 143-215.22I. Registration of all water transfers; preexisting water transfers.**

4 (a) Any water transfer from one river basin to another shall be registered with the  
5 Commission. A person registering a water transfer shall provide the Commission with  
6 the following information:

7 (1) The maximum daily amount of the water transfer expressed in gallons  
8 per day.

9 (2) The amount of water used or planned to be used and a description of  
10 the water use or planned use.

11 (3) The location of the points of withdrawal and discharge of the water  
12 transfer, and of the facilities used to make the transfer.

13 (b) Any water transfer listed below may continue without a permit under this Part  
14 if the transfer is registered with the Commission within six months of the effective date  
15 of this Part. However, if the water transfer exceeds the amount registered under this  
16 section by one million gallons per day or more, the increase over the amount registered  
17 must be reviewed and permitted in accordance with G.S. 143-215.22B. For purposes of  
18 this subsection, 'named river' means any body of water bearing the designation 'river'  
19 on the latest edition as of 18 July 1990 of the appropriate U.S. Geological Survey 7.5  
20 minute quadrangle map.

21 (1) The diversion of waters from the basin of one named river to another  
22 where the actual diversion of waters lawfully began before 18 July  
23 1990.

24 (2) The diversion of waters from the basin of one named river to another if  
25 the diversion is authorized under a certificate or permit issued before  
26 18 July 1990 by the Environmental Management Commission as  
27 provided by G.S. 153A-285 and G.S. 162A-7, provided the diversion  
28 does not exceed the level authorized by the certificate or permit as  
29 issued before 18 July 1990.

30 (3) The diversion of waters from the basin of one named river to another if  
31 the diversion was included in the plans for a federal reservoir project  
32 that received congressional approval before 18 July 1990 but was not  
33 constructed before that date.

34 (4) The diversion of waters from the basin of one named river to another if  
35 the diversion was included in plans for a water treatment facility and  
36 funds to construct the water treatment facility were approved in a bond  
37 referendum held prior to 18 July 1990.

38 (5) The discharge of waters from the basin of one named river to another  
39 if the discharge is authorized under a permit issued before 18 July  
40 1990 by the Environmental Management Commission as provided by  
41 G.S. 143-215.1. The amount of the discharge shall be adjusted for  
42 infiltration.

43 (6) The diversion of waters from the basin of one named river to another  
44 by a county that is situated on a ridge between two river basins for

1           which the feeder streams flow into free flowing rivers rather than a  
2           reservoir if the diversion is included in plans to construct a water  
3           treatment plant that is part of a joint project with a water and sewer  
4           authority located in another state and a permit for an interbasin transfer  
5           has been issued by the state in which the water and sewer authority is  
6           located.

7           (c) In any event, a transfer authorized under this section must be reviewed under  
8 the criteria of G.S. 143-215.22E upon the occurrence of any of the following conditions:

9           (1) The cessation of the transfer for any reason for a continuous period of  
10 three years after the transfer has been initiated.

11           (2) Following a period from the effective date of this Part no longer than  
12 the longest of the following: (i) 20 years, or (ii) a period found by the  
13 Commission to be reasonable based upon review of all relevant facts  
14 and circumstances pertaining to the existing water transfer, but the  
15 period may be not longer than 40 years.

16 **"§ 143-215.22J. Permit and registration fees.**

17           (a) Notwithstanding G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), the  
18 Commission may charge fees for the following:

19           (1) Processing of an application for a permit under this Part.

20           (2) Providing notice of an application as required under G.S. 143-  
21 215.22D(a) and for providing notice of a public hearing as required  
22 under G.S. 143-215.22D(c).

23           (3) Administering a permit issued under this Part including monitoring  
24 compliance with the terms of the permit.

25           (4) Registering a water transfer under this Part.

26           (b) The Commission shall adopt a fee schedule in a rule following the procedures  
27 established by the Administrative Procedure Act. The fee schedule shall be established  
28 to reflect the staff costs involved, relative costs of the issuance of new permits and the  
29 reissuance of existing permits, and shall include adequate safeguards to prevent unusual  
30 fee assessments which would result in serious economic burden on an individual  
31 applicant. In its rule making to establish fee schedules, the Commission shall consider a  
32 method of rewarding facilities which achieve full compliance with administrative and  
33 self-monitoring reporting requirements, and shall consider, in those cases where the cost  
34 of renewal or amendment of a permit is less than for the original permit, a lower fee for  
35 such renewal or amendment.

36           (c) Fees collected under this section shall be credited to the General Fund and  
37 may be used to:

38           (1) Defray the expenses of any project or program, including educational  
39 programs, supporting the application review and compliance activities  
40 under this Part; and

41           (2) Establish additional permanent positions, subject to Chapter 126 of the  
42 General Statutes, to conduct application review and compliance  
43 activities under this Part.

44 **"§ 143-215.22K. Actions for loss of water rights.**



1 Nothing in this Part changes or modifies existing common or statutory law with  
2 respect to the relative rights of riparian owners or others concerning the use of or  
3 disposal of water in the streams of North Carolina. Failure to assert an objection to the  
4 issuance of a permit for a water transfer shall not constitute a waiver of riparian rights."

5 Sec. 2. G.S. 143-215.6A(a) reads as rewritten:

6 "(a) A civil penalty of not more than ten thousand dollars (\$10,000) may be  
7 assessed by the Secretary against any person who:

8 (1) Violates any classification, standard, limitation, or management  
9 practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-  
10 215.

11 (2) Is required but fails to apply for or to secure a permit required by G.S.  
12 143-215.1, or who violates or fails to act in accordance with the terms,  
13 conditions, or requirements of such permit.

14 (3) Violates or fails to act in accordance with the terms, conditions, or  
15 requirements of any special order or other appropriate document issued  
16 pursuant to G.S. 143-215.2.

17 (4) Fails to file, submit, or make available, as the case may be, any  
18 documents, data, or reports required by this Article or G.S. 143-355(k)  
19 relating to water use information.

20 (5) Refuses access to the Commission or its duly designated representative  
21 to any premises for the purpose of conducting a lawful inspection  
22 provided for in this Article.

23 (6) Violates a rule of the Commission implementing this ~~Part~~ Part, Part 2A  
24 of this Article, or G.S. 143-355(k).

25 (7) Violates or fails to act in accordance with the statewide minimum  
26 water supply watershed management requirements adopted pursuant to  
27 G.S. 143-214.5, whether enforced by the Commission or a local  
28 government.

29 (8) Violates the offenses set out in G.S. 143-215.6B.

30 (9) Is required but fails to apply for or to secure a permit required by G.S.  
31 143-215.22B or who violates or fails to act in accordance with the  
32 terms, conditions, or requirements of such permit."

33 Sec. 3. G.S. 143-6B(f) reads as rewritten:

34 "(f) Any person who negligently violates any classification, standard or limitation  
35 established pursuant to G.S. 143-214.1, 143-214.2, or 143-215; any term, condition, or  
36 requirement of a permit issued pursuant to G.S. 143-215.1 or G.S. 143-215.22B or of a  
37 special order or other appropriate document issued pursuant to G.S. 143-215.2; fails to  
38 register a transfer of water as required by G.S. 143-215.22I; or any rule of the  
39 Commission implementing any of the said sections, shall be guilty of a misdemeanor  
40 punishable by a fine not to exceed fifteen thousand dollars (\$15,000) per day of  
41 violation, provided that such fine shall not exceed a cumulative total of two hundred  
42 thousand dollars (\$200,000) for each period of 30 days during which a violation  
43 continues, or by imprisonment not to exceed six months, or by both."

44 Sec. 4. G.S. 153A-285 reads as rewritten:

1 **"§ 153A-285. Prerequisites to acquisition of water, water rights, etc.**

2 The word 'authority' as used in G.S. 162A-7(b) through (f) includes counties and  
3 cities acting jointly or through joint agencies to provide water services or sewer services  
4 or both. No county or city acting jointly and no joint agency may ~~divert water from one~~  
5 ~~stream or river to another nor~~ institute any proceeding in the nature of eminent domain to  
6 acquire water, water rights, or lands having water rights attached thereto until the  
7 ~~diversion or~~ acquisition is authorized by a certificate from the Environmental  
8 Management Commission pursuant to G.S. 162A-7. Any proceeding to secure a  
9 certificate from the Environmental Management Commission shall be governed by the  
10 provisions of G.S. 162A-7(b) through 162A-7(f)."

11 Sec. 5. G.S. 143B-282(2) reads as rewritten:

12 "(2) The Environmental Management Commission shall adopt rules:

- 13 a. For air quality standards, emission control standards and  
14 classifications for air contaminant sources pursuant to G.S. 143-  
15 215.107;
- 16 b. For water quality standards and classifications pursuant to G.S.  
17 143-214.1 and G.S. 143-215;
- 18 c. To implement water and air quality reporting pursuant to G.S.  
19 143-215.68;
- 20 d. To be applied in capacity use areas pursuant to G.S. 143-  
21 215.14;
- 22 e. To implement the issuance of permits for water use within  
23 capacity use areas pursuant to G.S. 143-215.20;
- 24 f. Repealed by Session Laws 1983, c. 222, s. 3, effective April 25,  
25 1983;
- 26 g. For the protection of the land and the waters over which this  
27 State has jurisdiction from pollution by oil, oil products and oil  
28 by-products pursuant to Article 21A of Chapter 143.
- 29 h. Governing underground tanks used for the storage of hazardous  
30 substances or oil pursuant to Article 21 or Article 21A of  
31 Chapter 143 of the General Statutes.
- 32 i. To implement the provisions of Part 2A of Article 21 of  
33 Chapter 143 of the General Statutes."

34 Sec. 6. G.S. 153A-287 is repealed.

35 Sec. 7. This act becomes effective 1 July 1991.