

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1299\*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 8/10/98

Short Title: Interbasin Transfer Amendments.

(Public)

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Sponsors:

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Referred to:

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May 27, 1998

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

**"§ 143-211. Declaration of public policy.**

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

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

1 (c) It is the purpose of this Article to create an agency which shall administer a  
2 program of water and air pollution control and water resource management. It is the  
3 intent of the General Assembly, through the duties and powers defined herein, to confer  
4 such authority upon the Department of Environment and Natural Resources as shall be  
5 necessary to administer a complete program of water and air conservation, pollution  
6 abatement and control and to achieve a coordinated effort of pollution abatement and  
7 control with other jurisdictions. Standards of water and air purity shall be designed to  
8 protect human health, to prevent injury to plant and animal life, to prevent damage to  
9 public and private property, to insure the continued enjoyment of the natural attractions  
10 of the State, to encourage the expansion of employment opportunities, to provide a  
11 permanent foundation for healthy industrial development and to secure for the people of  
12 North Carolina, now and in the future, the beneficial uses of these great natural resources.  
13 It is the intent of the General Assembly that the powers and duties of the Environmental  
14 Management Commission and the Department of Environment and Natural Resources be  
15 construed so as to enable the Department and the Commission to qualify to administer  
16 federally mandated programs of environmental management and to qualify to accept and  
17 administer funds from the federal government for such programs."

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

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

23 (1) All activities across a river basin and all point sources and nonpoint  
24 sources of pollutants, including municipal wastewater facilities,  
25 industrial wastewater systems, septic tank systems, stormwater  
26 management systems, golf courses, farms that use fertilizers and  
27 pesticides for crops, public and commercial lawns and gardens,  
28 atmospheric deposition, and animal operations.

29 (2) All transfers into and from a river basin that are required to be registered  
30 under G.S 143-215.22H."

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

32 "**§ 143-215.22H. Registration of water withdrawals and transfers required.**

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

38 (1) The maximum daily amount of the water withdrawal or transfer  
39 expressed in ~~millions~~ thousands of gallons per day.

40 (1a) The monthly average withdrawal or transfer expressed in ~~millions~~  
41 thousands of gallons per day.

42 (2) The location of the points of withdrawal and discharge and  
43 the capacity of each facility used to make the withdrawal or transfer.

1 (3) The monthly average discharge expressed in ~~millions~~thousands of  
2 gallons per day.

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

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

12 (c) A unit of local government that has completed a local water supply plan that  
13 meets the requirements of G.S. 143-355(l) and that has periodically revised and updated  
14 its plan as required by the Department has satisfied the requirements of this section and is  
15 not required to separately register a water withdrawal or transfer or to update a  
16 registration under this section.

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

25 (e) Any person who is required to register a water transfer or withdrawal under  
26 this section and fails to do so shall pay, in addition to the registration fee required under  
27 G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a late registration fee of five dollars  
28 (\$5.00) per day for each day the registration is late up to a maximum of five hundred  
29 dollars (\$500.00). A person who is required to update a registration under this section  
30 and fails to do so shall pay a fee of five dollars (\$5.00) per day for each day the updated  
31 information is late up to a maximum of five hundred dollars (\$500.00). A late  
32 registration fee shall not be charged to a farmer who submits a registration that pertains to  
33 farming operations."

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

35 "**§ 143-215.22I. Regulation of surface water transfers.**

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

37 (1) Initiate a transfer of 2,000,000 gallons of water or more per day from  
38 one river basin to another.

39 (2) Increase the amount of an existing transfer of water from one river basin  
40 to another by twenty-five percent (25%) or more above the average  
41 daily amount transferred during the year ending July 1, 1993, if the total  
42 transfer including the increase is 2,000,000 gallons or more per day.

- 1           (3)    Increase an existing transfer of water from one river basin to another  
2                    above the amount approved by the Commission in a certificate issued  
3                    under G.S. 162A-7 prior to July 1, 1993.
- 4           (b)    Notwithstanding the provisions of subsection (a) of this section, a certificate  
5 shall not be required to transfer water from one river basin to another up to the full  
6 capacity of a facility to transfer water from one basin to another if the facility was  
7 existing or under construction on July 1, 1993.
- 8           (c)    An applicant for a certificate shall petition the Commission for the certificate.  
9 The petition shall be in writing and shall include the following:
- 10           (1)    A description of the facilities to be used to transfer the water, including  
11                    the location and capacity of water intakes, pumps, pipelines, and other  
12                    facilities.
- 13           (2)    A description of the proposed uses of the water to be transferred.
- 14           (3)    The water conservation measures to be used by the applicant to assure  
15                    efficient use of the water and avoidance of waste.
- 16           (4)    Any other information deemed necessary by the Commission for review  
17                    of the proposed water transfer.
- 18           (d)    Upon receipt of the petition, the Commission shall hold a public hearing on the  
19 proposed transfer after giving at least 30 days' written notice of the hearing as follows:
- 20           (1)    By publishing notice in the North Carolina Register.
- 21           (2)    By publishing notice in a newspaper of general circulation in the area of  
22                    the river basin downstream from the point of withdrawal.
- 23           (3)    By giving notice by first-class mail to each of the following:
- 24                    a.    A person who has registered under this Part a water withdrawal  
25                            or transfer from the same river basin where the water for the  
26                            proposed transfer would be withdrawn.
- 27                    b.    A person who secured a certificate under this Part for a water  
28                            transfer from the same river basin where the water for the  
29                            proposed transfer would be withdrawn.
- 30                    c.    A person holding a National Pollutant Discharge Elimination  
31                            System (NPDES) wastewater discharge permit exceeding  
32                            100,000 gallons per day for a discharge located downstream from  
33                            the proposed withdrawal point of the proposed transfer.
- 34                    d.    The board of county commissioners of each county that is  
35                            located entirely or partially within the river basin that is the  
36                            source of the proposed transfer.
- 37                    e.    The governing body of any public water supply system that  
38                            withdraws water downstream from the withdrawal point of the  
39                            proposed transfer.
- 40           (e)    The notice of the public hearing shall include a nontechnical description of the  
41 applicant's request and a conspicuous statement in bold type as to the effects of the water  
42 transfer on the source and receiving river basins. The notice shall further indicate the

1 procedure to be followed by anyone wishing to submit comments on the proposed water  
2 transfer.

3 (f) In determining whether a certificate may be issued for the transfer, the  
4 Commission shall specifically consider each of the following items and state in writing  
5 its findings of fact with regard to each item:

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

8 (2) The present and reasonably foreseeable future detrimental effects on the  
9 source river basin, including present and future effects on public,  
10 industrial, and agricultural water supply needs, wastewater assimilation,  
11 water quality, fish and wildlife habitat, hydroelectric power generation,  
12 navigation, and recreation. Local water supply plans that affect the  
13 source major river basin shall be used to evaluate the projected future  
14 municipal water needs in the source major river basin.

15 (2a) The cumulative effect on the source major river basin of any water  
16 transfer or consumptive water use that, at the time the Commission  
17 considers the application for a certificate is occurring, is authorized  
18 under this section, or is projected in any local water supply plan that has  
19 been submitted to the Department in accordance with G.S. 143-355(l).

20 (3) The detrimental effects on the receiving river basin, including effects on  
21 water quality, wastewater assimilation, fish and wildlife habitat,  
22 navigation, recreation, and flooding.

23 (4) Reasonable alternatives to the proposed transfer, including their  
24 probable costs, and environmental impacts.

25 (5) If applicable to the proposed project, the applicant's present and  
26 proposed use of impoundment storage capacity to store water during  
27 high-flow periods for use during low-flow periods and the applicant's  
28 right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

29 (6) If the water to be withdrawn or transferred is stored in a multipurpose  
30 reservoir constructed by the United States Army Corps of Engineers, the  
31 purposes and water storage allocations established for the reservoir at  
32 the time the reservoir was authorized by the Congress of the United  
33 States.

34 (7) Any other facts and circumstances that are reasonably necessary to carry  
35 out the purposes of this Part.

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

42 (g) A certificate shall be granted for a water transfer if the applicant establishes  
43 and the Commission concludes by a preponderance of the evidence based upon the

1 findings of fact made under subsection (f) of this section that: (i) the benefits of the  
2 proposed transfer outweigh the detriments of the proposed transfer, and (ii) the  
3 detriments have been or will be mitigated to a reasonable degree. The conditions  
4 necessary to ensure that the detriments are and continue to be mitigated to a reasonable  
5 degree shall be attached to the certificate in accordance with subsection (h) of this  
6 section.

7 (h) The Commission may grant the certificate in whole or in part, or deny the  
8 certificate. The Commission may also grant a certificate with any conditions attached  
9 that the Commission believes are necessary to achieve the purposes of this Part. The  
10 conditions may include mitigation measures proposed to minimize any detrimental  
11 effects of the proposed transfer and measures to protect the availability of water in the  
12 source river basin during a drought or other emergency. The certificate shall include a  
13 drought management plan that specifies how the transfer shall be managed to protect the  
14 source river basin during drought conditions. The certificate shall indicate the maximum  
15 amount of water that may be transferred. No person shall transfer an amount of water  
16 that exceeds the amount in the certificate.

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

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

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

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

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

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

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

34       Section 6. Article 1 of Chapter 113A is amended by adding a new section to  
35 read:

36 **"§ 113A-8.1. Surface water transfers.**

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

41       Section 7. By 1 January 1999, each unit of local government that provides  
42 public water service or that plans to provide public water service shall, either individually  
43 or together with other units of local government, prepare a local water supply plan and

1 submit it to the Department in compliance with G.S. 143-355(l). By 1 January 2000, the  
2 Department of Environment and Natural Resources shall develop a State water supply  
3 plan in compliance with G.S. 143-355(m). The Department shall identify in the plan any  
4 area in the State that appears to face existing or future water shortages, conflicts among  
5 water users, or depletion of water resources and shall review the plan at least every five  
6 years thereafter to determine whether any other areas are facing these problems within a  
7 10-year period from the date of review.

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