

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**SENATE BILL 406**

Short Title: Interconnection of Public Water Systems. (Public)

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Sponsors: Senators Hartsell; and Clodfelter.

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Referred to: Agriculture/Environment/Natural Resources.

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March 7, 2005

1                                   A BILL TO BE ENTITLED  
2 AN ACT REQUIRING THE INTERCONNECTION OF PUBLIC WATER SYSTEMS  
3 OR WASTEWATER SYSTEMS TO REGIONAL SYSTEMS WHEN  
4 NECESSARY TO PROMOTE PUBLIC HEALTH, PROTECT THE  
5 ENVIRONMENT, AND ENSURE COMPLIANCE AND TO REQUIRE THAT  
6 AN ANALYSIS OF REASONABLE ALTERNATIVES BE DONE BEFORE  
7 CONSTRUCTING OR ALTERING A PUBLIC WATER SYSTEM.

8 The General Assembly of North Carolina enacts:

9           **SECTION 1.** G.S. 130A-317(c) reads as rewritten:

10       "(c) No person or unit of local government shall begin construction or alteration  
11 of a public water system or award a contract for construction or alteration unless:

- 12           (1) The plans for construction or alteration have been prepared by an  
13           engineer licensed by this State;
- 14           (2) The Department has determined that the system, as constructed or  
15           altered, will be capable of compliance with the drinking water rules;
- 16           (3) The Department has determined that the system is capable of  
17           interconnection at an appropriate time with an expanding municipal,  
18           county or regional system; the Department may require  
19           interconnection with a municipal, county, or regional system within a  
20           county, or between or among counties if approved by the board of  
21           commissioners of each county, if necessary to promote the public  
22           health, protect the environment, or ensure compliance with drinking  
23           water rules;

24           (3a) The Department has determined that an analysis was done, including a  
25           financial analysis, of the reasonable alternatives to the proposed  
26           construction or alteration of the public water system and that the  
27           analysis indicates that the proposed construction or alteration is  
28           appropriate;

1 (4) The Department has determined that adequate arrangements have been  
2 made for the continued operation, service and maintenance of the  
3 public water system; and

4 (5) The Department has approved the plans and specifications."

5 **SECTION 2.** G.S. 130A-317(d) reads as rewritten:

6 "(d) Municipalities, counties, local boards or commissions, water and sewer  
7 authorities, or groups of municipalities and counties may establish and administer  
8 within their utility service areas their own approval program in lieu of State approval of  
9 water system plans required in subsection (c) of this section for construction or  
10 alteration of the distribution system of a proposed or existing public water system,  
11 subject to the prior certification of the Department. For purposes of this subsection, the  
12 service area of a municipality shall include only that area within the corporate limits of  
13 the municipality and that area outside a municipality in its extraterritorial jurisdiction  
14 where water service is already being provided to the permit applicant by the  
15 municipality or connection to the municipal water system is immediately available to  
16 the applicant; the service areas of counties and the other entities or groups shall include  
17 only those areas where water service is already being provided to the applicant by the  
18 permitting authority or connection to the permitting authority's system is immediately  
19 available. No later than the 180th day after the receipt of an approval program and  
20 statement submitted by any local government, commission, authority, or board, the  
21 Department shall certify any local program that:

22 (1) Provides by ordinance or local law for requirements compatible with  
23 those imposed by this Article, and the standards and rules adopted  
24 pursuant to this Article;

25 (2) Provides that the Department receives notice and a copy of each  
26 application for approval and that the Department receives copies of  
27 approved plans;

28 (3) Provides that plans and specifications for all construction and  
29 alterations be prepared by or under the direct supervision of an  
30 engineer licensed to practice in this State;

31 (4) Provides for the adequate enforcement of the program requirements by  
32 appropriate administrative and judicial process;

33 (5) Provides for the adequate administrative organization, engineering  
34 staff, financial and other resources necessary to effectively carry out its  
35 plan review program;

36 (6) Provides that the system is capable of interconnection at an appropriate  
37 time with an expanding municipal, county, or regional ~~system~~; system  
38 and requires interconnection with a municipal, county, or regional  
39 system when the Department determines interconnection is necessary  
40 to promote the public health, protect the environment, or ensure  
41 compliance with drinking water rules;

42 (7) Provides for the adequate arrangement for the continued operation,  
43 service, and maintenance of the public water system;

- 1 (8) Provides that an approved system, as constructed or altered, will be  
2 capable of compliance with the drinking water rules; and  
3 (9) Is approved by the Department as adequate to meet the requirements of  
4 this Article and any applicable rules adopted pursuant to this Article.

5 The Department may deny, suspend, or revoke the certification of a local program  
6 upon a finding that a violation of the provisions in subsection (d) of this section has  
7 occurred. A local government administering an approval program shall be given notice  
8 that there has been a tentative decision to deny, suspend, or revoke certification and that  
9 an administrative hearing will be held in accordance with Chapter 150B of the General  
10 Statutes where the decision may be challenged. If a violation of the provisions in  
11 subsection (d) of this section presents an imminent hazard, certification may be  
12 suspended or revoked immediately. The Department shall give notice of the immediate  
13 suspension or revocation and notice that an administrative hearing will be held in  
14 accordance with Chapter 150B of the General Statutes where the decision may be  
15 challenged.

16 Notwithstanding any other provisions of this subsection, if the Department  
17 determines that a public water system is violating plan approval requirements of a local  
18 program and that the local government has not acted to enforce those approval  
19 requirements, the Department may, after written notice to the local government, take  
20 enforcement action in accordance with the provisions of this Article."

21 **SECTION 3.** G.S. 143-215.1(b)(4) reads as rewritten:

22 "(4) The Commission shall have the power:

- 23 a. To grant a permit with such conditions attached as the  
24 Commission believes necessary to achieve the purposes of this  
25 Article.  
26 b. To require that an applicant satisfy the Department that the  
27 applicant, or any parent, subsidiary, or other affiliate of the  
28 applicant or parent:  
29 1. Is financially qualified to carry out the activity for which  
30 the permit is required under subsection (a) of this  
31 section; and  
32 2. Has substantially complied with the effluent standards  
33 and limitations and waste management treatment  
34 practices applicable to any activity in which the  
35 applicant has previously engaged, and has been in  
36 substantial compliance with other federal and state laws,  
37 regulations, and rules for the protection of the  
38 environment.  
39 3. As used in this subdivision, the words "affiliate,"  
40 "parent," and "subsidiary" have the same meaning as in  
41 17 Code of Federal Regulations § 240.12b-2 (1 April  
42 1990 Edition).  
43 4. For a privately owned treatment works that serves 15 or  
44 more service connections or that regularly serves 25 or

1 more individuals, financial qualification may be  
2 demonstrated through the use of a letter of credit,  
3 insurance, surety, trust agreement, financial test, bond, or  
4 a guarantee by corporate parents or third parties who can  
5 pass the financial test. No permit shall be issued under  
6 this section for a privately owned treatment works that  
7 serves 15 or more service connections or that regularly  
8 serves 25 or more individuals, until financial  
9 qualification is established and the issuance of the permit  
10 shall be contingent on the continuance of the financial  
11 qualification for the duration of the activity for which the  
12 permit was issued.

- 13 c. To modify or revoke any permit upon not less than 60 days'  
14 written notice to any person affected.
- 15 d. To designate certain classes of minor activities for which a  
16 general permit may be issued, after considering:
- 17 1. The environmental impact of the activities;
  - 18 2. How often the activities are carried out;
  - 19 3. The need for individual permit oversight; and
  - 20 4. The need for public review and comment on individual  
21 permits.
- 22 e. To designate certain classes of minor activities for which:
- 23 1. Performance conditions may be established by rule; and
  - 24 2. Individual or general permits are not required.
- 25 f. To require connection to a municipal, county, or regional  
26 wastewater system if necessary to promote public health,  
27 protect the environment, or ensure compliance with water  
28 quality rules."

29 **SECTION 4.** G.S. 143-215.1(f) reads as rewritten:

30 "(f) Local Permit Programs for Sewer Extension. – Municipalities, counties, local  
31 boards or commissions, water and sewer authorities, or groups of municipalities and  
32 counties may establish and administer within their utility service areas their own general  
33 permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8)  
34 above, for construction, operation, alteration, extension, change of proposed or existing  
35 sewer system, subject to the prior certification of the Commission. For purposes of this  
36 subsection, the service area of a municipality shall include only that area within the  
37 corporate limits of the municipality and that area outside a municipality in its  
38 extraterritorial jurisdiction where sewer service is already being provided by the  
39 municipality to the permit applicant or connection to the municipal sewer system is  
40 immediately available to the applicant; the service areas of counties and the other  
41 entities or groups shall include only those areas where sewer service is already being  
42 provided to the applicant by the permitting authority or connection to the permitting  
43 authority's system is immediately available. No later than the 180th day after the receipt

1 of a program and statement submitted by any local government, commission, authority,  
2 or board the Commission shall certify any local program that:

- 3 (1) Provides by ordinance or local law for requirements compatible with  
4 those imposed by this Part and the rules implementing this Part;
- 5 (2) Provides that the Department receives notice and a copy of each  
6 application for a permit and that it receives copies of approved permits  
7 and plans upon request by the Commission;
- 8 (3) Provides that plans and specifications for all construction, extensions,  
9 alterations, and changes be prepared by or under the direct supervision  
10 of an engineer licensed to practice in this State;
- 11 (4) Provides for the adequate enforcement of the program requirements by  
12 appropriate administrative and judicial process;
- 13 (5) Provides for the adequate administrative organization, engineering  
14 staff, financial and other resources necessary to effectively carry out its  
15 plan review program;
- 16 (6) Provides that the system is capable of interconnection at an appropriate  
17 time with an expanding municipal, county, or regional ~~system~~system  
18 and requires interconnection with a municipal, county, or regional  
19 system when the Department determines interconnection is necessary  
20 to promote the public health, protect the environment, or ensure  
21 compliance with water quality rules;
- 22 (6a) Provides that an analysis, including a financial analysis, of the  
23 reasonable alternatives to any proposed construction or alteration of a  
24 public sewer system must be done and that the analysis must  
25 demonstrate that the proposed construction or alteration is appropriate;
- 26 (7) Provides for the adequate arrangement for the continued operation,  
27 service, and maintenance of the sewer system; and
- 28 (8) Is approved by the Commission as adequate to meet the requirements  
29 of this Part and the rules implementing this Part.

30 The Commission may deny, suspend, or revoke certification of a local program upon  
31 a finding that a violation of the provisions in subsection (f) of this section has occurred.  
32 A denial, suspension, or revocation of a certification of a local program shall be made  
33 only after notice and a public hearing. If the failure of a local program to carry out this  
34 subsection creates an imminent hazard, the Commission may summarily revoke the  
35 certification of the local program. Chapter 150B of the General Statutes does not apply  
36 to proceedings under this subsection.

37 Notwithstanding any other provision of this subsection, if the Commission  
38 determines that a sewer system, treatment works, or disposal system is operating in  
39 violation of the provisions of this Article and that the appropriate local authorities have  
40 not acted to enforce those provisions, the Commission may, after written notice to the  
41 appropriate local government, take enforcement action in accordance with the  
42 provisions of this Article."

43 **SECTION 5.** G.S. 143-215.1(b) is amended by adding two new subdivisions  
44 to read:

- 1           "(6) No permit for a new or expanded municipal waste treatment system or  
2           nonmunicipal treatment system (human waste only) shall be issued,  
3           unless the applicant:
- 4           a. Has adopted a plan to implement a program to reduce demand  
5           and manage existing capacity by reducing or eliminating  
6           stormwater and groundwater infiltration and intrusion into  
7           collection lines;
- 8           b. Has performed and submits an analysis, including a financial  
9           analysis, of reasonable alternatives to the proposed new or  
10           expanded waste treatment system, including the consideration  
11           of discharging to created wetlands and the beneficial reuse of  
12           treated wastewater for nondrinking water purposes; and
- 13           c. Can demonstrate that the proposed new or expanded waste  
14           treatment facility will be planned, designed, and constructed to  
15           facilitate or accommodate eventual interconnection with  
16           adjoining systems or regional waste treatment systems.
- 17           (7) In deciding whether to grant a permit application under subdivision (6)  
18           of this subsection, the Commission may consider whether the applicant  
19           is making adequate progress in the implementation of  
20           G.S. 143-215.1(b)(6)a. and may consider whether the applicant could  
21           feasibly choose an alternative under G.S. 143-215.1(b)(6)b. that will  
22           provide better protection for water quality."

23           **SECTION 6.** The Commission for Health Services shall adopt rules to  
24 implement G.S. 130A-317, as amended by Sections 1 and 2 of this act, by October 1,  
25 2005. The Environmental Management Commission shall adopt rules to implement  
26 G.S. 143-215.1, as amended by Sections 3, 4, and 5 of this act, by October 1, 2005.  
27 Notwithstanding G.S. 150B-21.1(a)(2), this act shall not be construed to authorize the  
28 adoption of temporary rules.

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