

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2499*
Committee Substitute Favorable 7/8/08

Short Title: Drought/Water Management Recommendations. (Public)

Sponsors:

Referred to:

May 26, 2008

1 A BILL TO BE ENTITLED

2 AN ACT TO IMPROVE DROUGHT PREPAREDNESS AND RESPONSE IN
3 NORTH CAROLINA, AS RECOMMENDED BY THE ENVIRONMENTAL
4 REVIEW COMMISSION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 143-215.22H reads as rewritten:

7 "**§ 143-215.22H. Registration of water withdrawals and transfers required.**

8 (a) Any person who withdraws 100,000 gallons per day or more of water from
9 the surface or groundwaters of the State or who transfers 100,000 gallons per day or
10 more of water from one river basin to another shall register the withdrawal or transfer
11 with the Commission. A person registering a water withdrawal or transfer shall provide
12 the Commission with the following information:

13 (1) The maximum daily amount of the water withdrawal or transfer
14 expressed in thousands of gallons per day.

15 (1a) The monthly average withdrawal or transfer expressed in thousands of
16 gallons per day.

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

19 (3) The monthly average discharge expressed in thousands of gallons per
20 day.

21 (b) Any person initiating a new water withdrawal or transfer of 100,000 gallons
22 per day or more shall register the withdrawal or transfer with the Commission not later
23 than ~~six~~two months after the initiation of the withdrawal or transfer. The information
24 required under subsection (a) of this section shall be submitted with respect to the new
25 withdrawal or transfer.

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

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

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

14 (e) Any person who is required to register a water transfer or withdrawal under
15 this section and fails to do so shall pay, in addition to the registration fee required under
16 G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a late registration fee of ~~five dollars~~
17 ~~(\$5.00) per day for each day the registration is late up to a maximum of five hundred~~
18 ~~dollars (\$500.00).~~ one hundred dollars (\$100.00). A person who is required to update a
19 registration under this section and fails to do so shall pay a fee of ~~five dollars (\$5.00)~~
20 ~~per day for each day the updated information is late up to a maximum of five hundred~~
21 ~~dollars (\$500.00).~~ fifty dollars (\$50.00). A late registration fee shall not be charged to a
22 farmer who submits a registration that pertains to farming operations. For each willful
23 action or failure to act for which a penalty may be assessed under this subsection, the
24 Commission may consider each day the action or inaction continues after notice is given
25 of the violation as a separate violation. A separate penalty may be assessed for each
26 separate violation."

27 **SECTION 2.(a)** G.S. 106-24 reads as rewritten:

28 "**§ 106-24. Collection and publication of information relating to agriculture;**
29 **cooperation.**

30 (a) The Department of Agriculture and Consumer Services shall collect, compile,
31 systematize, tabulate, and publish statistical information relating to agriculture. The
32 Department is authorized to use sample surveys to collect primary data relating to
33 agriculture. The Department is authorized to cooperate with the United States
34 Department of Agriculture and the several boards of county commissioners of the State,
35 to accomplish the purpose of this Part.

36 (b) The Department of Agriculture and Consumer Services shall annually collect
37 information on water use by persons who withdraw 10,000 gallons per day or more of
38 water from the surface or groundwater sources of the State for activities directly related
39 or incidental to the production of crops, fruits, vegetables, ornamental and flowering
40 plants, dairy products, livestock, poultry, and other agricultural products. The
41 information shall be collected by survey conducted pursuant to subsection (a) of this
42 section and in accordance with Title 7 United States Code Section 2276 (Confidential
43 Information Protection and Statistical Efficiency Act). The Department shall develop
44 the survey form in consultation with the Department of Environment and Natural

1 Resources. The Department shall report the results of the water use survey to the
2 Environmental Review Commission no later than 1 July of each year and shall provide a
3 copy of the report to the Department of Environment and Natural Resources. The report
4 shall include recommendations about modifications to the survey, including changes in
5 the gallons per day threshold for water use data collection. The report shall provide
6 agricultural water use data by county. If the county is located in more than one river
7 basin, the report shall separate the county data to show agricultural water use by river
8 basin within the county. If publication of county or watershed data would result in
9 disclosure of an individual operation's water use, the data will be combined with data
10 from another county or watershed."

11 **SECTION 2.(b)** The first report required by subsection (a) of this section
12 shall be submitted on or before 1 July 2009.

13 **SECTION 3.** G.S. 143-350 reads as rewritten:

14 **"§ 143-350. Definitions.**

15 As used in this Article:

- 16 (1) "Commission" means the Environmental Management Commission.
- 17 (2) "Department" means the Department of Environment and Natural
18 Resources.
- 19 (3) "Essential water use" means the use of water necessary for firefighting,
20 health, and safety; water needed to sustain human and animal life; and
21 water necessary to satisfy federal, State, and local laws for the
22 protection of public health, safety, welfare, the environment, and
23 natural resources; and a minimum amount of water necessary to
24 maintain the economy of the State, region, or area.
- 25 (4) "Large community water system" means a community water system,
26 as defined in G.S. 130A-313(10), that regularly serves 1,000 or more
27 service connections or 3,000 or more individuals.
- 28 (5) "Unit of local government" means a county, city, consolidated
29 city-county, sanitary district, or other local political subdivision or
30 authority or agency or local government.
- 31 (6) "U.S. Drought Monitor" means the national drought map that
32 designates areas of drought using the following categories
33 D0-Abnormally Dry, D1-Moderate, D2-Severe, D3-Extreme, and
34 D4-Exceptional. The U.S. Drought Monitor is developed and
35 maintained by the Joint Agricultural Weather Facility, the Climate
36 Prediction Center, the National Climatic Data Center, and the National
37 Drought Mitigation Center with input from the United States
38 Geological Survey, the National Water and Climate Center, the
39 Climate Diagnostics Center, the National Weather Service, state
40 climatologists, and state water resource agencies.
- 41 (7) "Water shortage emergency" means a water shortage resulting from
42 prolonged drought, contamination of the water supply, damage to
43 water infrastructure, or other unforeseen causes that presents an

1 imminent threat to public health, safety, and welfare or to the
2 environment."

3 **SECTION 4.** G.S. 143-354 reads as rewritten:

4 **"§ 143-354. Ordinary powers and duties of the Commission.**

5 (a) Powers and Duties in General. – Except as otherwise specified in this Article,
6 the powers and duties of the Commission shall be as follows:

- 7 (1) The Commission shall carry out a program of planning and education
8 concerning the most beneficial long-range conservation and use of the
9 water resources of the State. It shall investigate the long-range needs
10 of counties and municipalities and other local governments for water
11 supply storage available in federal projects.
- 12 (2) The Commission shall advise the Governor as to how the State's
13 present water research activities might be coordinated.
- 14 ~~(3) The Commission, based on information available, shall notify any~~
15 ~~municipality or other governmental unit of potential water shortages or~~
16 ~~emergencies foreseen by the Commission affecting the water supply of~~
17 ~~such municipality or unit together with the Commission's~~
18 ~~recommendations for restricting and conserving the use of water or~~
19 ~~increasing the water supply by or in such municipality or unit. Failure~~
20 ~~reasonably to follow such recommendations shall make such~~
21 ~~municipality or other governmental unit ineligible to receive any~~
22 ~~emergency diversion of waters as hereinafter provided.~~
- 23 (4) The Commission is authorized to call upon the Attorney General for
24 such legal advice as is necessary to the functioning of the Commission.
- 25 (5) Recognizing the complexity and difficulties attendant upon the
26 recommendation of the General Assembly of fair and beneficial
27 legislation affecting the use and conservation of water, the
28 Commission shall solicit from the various water interests of the State
29 their suggestions thereon.
- 30 (6) The Commission may hold public hearings for the purpose of
31 obtaining evidence and information and permitting discussion relative
32 to water resources legislation and shall have the power to subpoena
33 witnesses therefor.
- 34 (7) All recommendations for proposed legislation made by the
35 Commission shall be available to the public.
- 36 (8) The Commission shall adopt such rules and regulations as may be
37 necessary to carry out the purposes of this Article.
- 38 (9) Any member of the Commission or any person authorized by it, shall
39 have the right to enter upon any private or public lands or waters for
40 the purpose of making investigations and studies reasonably necessary
41 in the gathering of facts concerning streams and watersheds, subject to
42 responsibility for any damage done to property entered.
- 43 (10) The Commission is authorized to provide to federal agencies the
44 required assurances, subject to availability of appropriations by the

1 General Assembly or applicable funds or assurances from local
2 governments, of nonfederal cooperation for water supply storage and
3 other congressionally authorized purposes in federal projects.

- 4 (11) The Commission is authorized to assign or transfer to any county or
5 municipality or other local government having a need for water supply
6 storage in federal projects any interest held by the State in such
7 storage, upon the assumption of repayment obligation therefor, or
8 compensation to the State, by such local government. The Commission
9 shall also have the authority to reassign or transfer interests in such
10 storage held by local governments, if indicated by the investigation of
11 needs made pursuant to subdivision (1) of subsection (a)(1)(a) of this
12 section, subject to equitable adjustment of financial responsibility.

13 ~~(b) Declaration of Water Emergency.— Upon the request of the governing body~~
14 ~~of a county, city or town the Commission shall conduct an investigation to determine~~
15 ~~whether the needs of human consumption, necessary sanitation and public safety require~~
16 ~~emergency action as hereinafter provided. Upon making such determination, the~~
17 ~~Commission shall conduct a public hearing on the question of the source of relief water~~
18 ~~after three days' written notice of such hearing has been given to any persons having the~~
19 ~~right to the immediate use of water at the point from which such water is proposed to be~~
20 ~~diverted. After determining the source of such relief water the Commission shall then~~
21 ~~notify the Governor and he shall have the authority to declare a water emergency in an~~
22 ~~area including said county, city or town and the source or sources of water available for~~
23 ~~the relief hereinafter provided; provided, however, that no emergency period shall~~
24 ~~exceed 30 days but the Governor may declare any number of successive emergencies~~
25 ~~upon request of the Commission.~~

26 ~~(c) Water Emergency Powers and Duties of the Commission.— Whenever,~~
27 ~~pursuant to this Article, the Governor has declared the existence of a water emergency~~
28 ~~within a particular area of the State, the Commission shall have the following duties and~~
29 ~~powers to be exercised only within said area and only during such time as the Governor~~
30 ~~has, pursuant to this Article, designated as the period of emergency:~~

- 31 ~~(1) To authorize any county, city or town in which an emergency has been~~
32 ~~declared to divert water in the emergency area sufficient to take care of~~
33 ~~the needs of human consumption, necessary sanitation and public~~
34 ~~safety. Provided, however, there shall be no diversion of waters from~~
35 ~~any stream or body of water pursuant to this Article unless the person~~
36 ~~controlling the water or sewerage system into which such waters are~~
37 ~~diverted shall first have limited and restricted the use of water in such~~
38 ~~water or sewerage system to human consumption, necessary sanitation~~
39 ~~and public safety and shall have effectively enforced such restrictions.~~
40 ~~Diversion of waters shall cease upon the termination of the water~~
41 ~~emergency or upon the finding of the Commission that the person~~
42 ~~controlling the water or sewerage system using diverted waters has~~
43 ~~failed to enforce effectively the restrictions on use to human~~
44 ~~consumption and necessary sanitation and public safety. In the event~~

1 waters are diverted pursuant to this Article, there shall be no diversion
2 to the same person in any subsequent year unless the Commission
3 finds as fact from evidence presented that the person controlling the
4 water or sewerage system has made reasonable plans and acted with
5 due diligence pursuant thereto to eliminate future emergencies by
6 adequately enlarging such person's own water supply.

7 (2) ~~To make such reasonable rules and regulations governing the~~
8 ~~conservation and use of diverted waters within the emergency area as~~
9 ~~shall be necessary for the health and safety of the persons who reside~~
10 ~~within the emergency area; and the violation of such rules and~~
11 ~~regulations during the period of the emergency shall constitute a Class~~
12 ~~1 misdemeanor; provided, however, that before such rules and~~
13 ~~regulations shall become effective, they shall be published in not less~~
14 ~~than two consecutive issues of not less than one newspaper generally~~
15 ~~circulated in the emergency area.~~

16 (d) ~~Temporary Rights of Way. When any diversion of waters is ordered by the~~
17 ~~Commission pursuant to this Article, the person controlling the water or sewerage~~
18 ~~system into which such waters are diverted is hereby empowered to lay necessary~~
19 ~~temporary water lines for the period of such emergency across, under or above any and~~
20 ~~all properties to connect the emergency water supply to an intake of said water or~~
21 ~~sewerage system. The route of such water lines shall be prescribed by the Commission.~~

22 (e) ~~Compensation for Water Allocated during Water Emergency and Temporary~~
23 ~~Rights of Way. Whenever the Commission, pursuant to this Article has ordered any~~
24 ~~diversion of waters, the person controlling the waters or sewerage system into which~~
25 ~~such waters are diverted shall be liable to all persons suffering any loss or damage~~
26 ~~caused by or resulting from the diversion of such waters or caused by or resulting from~~
27 ~~the laying of temporary water lines to effectuate such diversion. The Commission,~~
28 ~~before ordering such diversion, shall require that the person against whom liability~~
29 ~~attaches hereunder to post bond with a surety approved by the Commission in an~~
30 ~~amount determined by the Commission and conditioned upon the payment of such loss~~
31 ~~or damage."~~

32 **SECTION 5.** Article 38 of Chapter 143 of the General Statutes is amended
33 by adding a new section to read:

34 "**§ 143-355.2. Water conservation measures for drought.**

35 (a) Each unit of local government that provides public water service and each
36 large community water system shall develop and implement water conservation
37 measures to respond to drought or other water shortage conditions as provided in this
38 section. Pursuant to G.S. 143-355(l), water conservation measures to respond to drought
39 or other water shortage conditions shall be set out in a water shortage response plan and
40 submitted to the Department for review and approval. The Department shall approve the
41 water shortage response plan if the plan meets all of the following criteria:

42 (1) The plan includes tiered levels of water conservation measures or other
43 response actions based on the severity of water shortage conditions.

1 (2) Each tier of water conservation measures shall be based on increased
2 severity of drought or water shortage conditions and will result in more
3 stringent water conservation measures.

4 (3) All other requirements of rules adopted by the Commission pursuant to
5 S.L. 2002-167.

6 (b) The Department may require each unit of local government that provides
7 public water service and each large community water system to implement the more
8 stringent water conservation measures described in subsection (d) of this section if the
9 Department makes written findings that any county, as determined by subsection (e) of
10 this section, in which the source of water for the public water system operated by the
11 unit of local government or by a large community water system is in:

12 (1) Severe, extreme, or exceptional drought, and the Department finds all
13 of the following:

14 a. The unit of local government that provides water service or
15 large community water system has not begun implementation of
16 any level of water conservation measures set out in the water
17 shortage response plan.

18 b. Implementation of measures is necessary to minimize the
19 harmful impacts of drought on public health, safety, and the
20 environment, including the potential impacts of drought or other
21 water shortage on interconnected water systems and other water
22 systems withdrawing from the same water source, or

23 (2) Extreme or exceptional drought, and the Department finds that the unit
24 of local government that provides water service or large community
25 water system has implemented the measures required under the water
26 shortage response plan for the appropriate tier of water conservation
27 measure for 30 days or more and that implementation of the measures
28 required has not reduced water use in an amount sufficient to minimize
29 the harmful impacts of drought on public health, safety, and the
30 environment, including the potential impact of drought or other water
31 shortage on interconnected water systems and other water systems
32 withdrawing from the same water source.

33 (c) In making the findings required under subsection (b) of this section, the
34 Department shall consider the:

35 (1) Hydrological drought conditions.

36 (2) Drought forecast.

37 (3) Reductions in water use achieved under water conservation measures
38 in effect.

39 (4) Availability of other water supply sources and other indicators of the
40 extent and severity of drought impacts.

41 (5) Economic impacts on the community to implement more stringent
42 water conservation measures.

43 (6) Conservation measures of all registered water withdrawals within the
44 same 8 digit hydrologic unit code established by the U.S. Geological

1 Survey to the extent the Department is able to document those
2 measures.

3 (d) Based on the findings required under subsection (b) of this section, the
4 Department may require the unit of local government that provides public water service
5 or the large community water system to begin implementation of its plan or to
6 implement the next tier of water shortage response measures. If, after consultation with
7 the unit of local government or the large community water system, the Department
8 makes a written finding that the next tier of measures set out in the plan, together with
9 any other reasonable steps that may be available to reduce water use, will not reduce
10 water use in an amount sufficient to minimize the harmful impacts of drought on public
11 health, safety, and the environment, including the potential impact of drought or other
12 water shortage on interconnected water systems and other water systems drawing from
13 the same water source, then the Department may require implementation of the tier that
14 is two levels more stringent than the tier being implemented.

15 (e) For purposes of this section, the drought designation for an area shall be the
16 U.S. Drought Monitor designation for the county in which the water source is located as
17 published by the Drought Management Advisory Council. If the Secretary approves a
18 county drought designation that is different from the U.S. Drought Monitor designation
19 pursuant to G.S. 143-355.1(f1), the level of water conservation shall correspond to the
20 designation approved by the Secretary. If the water source is located in more than one
21 county and the counties have different drought designations, the Council shall
22 recommend to the Secretary the level of water conservation measures to be
23 implemented under this section by water systems that withdraw water from the water
24 source. The recommendation of the Council shall be based on the drought indicators
25 identified in G.S. 143-355.1(f) as applied to the water source.

26 (f) A unit of local government that provides public water service or large
27 community water system that does not have a water shortage response plan shall
28 implement the default water conservation measures for extreme and exceptional drought
29 set out in the rules adopted by the Commission pursuant to S.L. 2002-167.

30 (g) A unit of local government that provides water service or a large community
31 water system that does not have an approved water shortage response plan shall
32 implement the default water conservation measures specified in subsection (f) of this
33 section within 10 days following a drought designation that requires implementation of
34 water conservation measures. A water shortage response plan is presumed to be
35 approved until the Department notifies the unit of local government or large community
36 water system that the plan has been disapproved. A unit of local government that
37 provides water service and a large community water system shall be deemed to be in
38 compliance with this section if, within 10 days after water shortage conditions identified
39 in the plan require implementation of water conservation measures, the water system
40 begins implementation of the water conservation measures required by the plan.

41 (h) Water conservation measures imposed by a unit of local government that
42 provides public water service or by a large community water system may be more
43 stringent than the minimum water conservation measures required under this section.

1 This subsection shall not be construed to authorize the regulation of deepwater wells
2 that do not impact surface water.

3 (i) A unit of local government that provides water service and a large community
4 water system shall report that the water system has begun implementation of water
5 conservation measures set out in the water system's water shortage response plan or the
6 default water conservation measures to the Department within 72 hours after beginning
7 implementation.

8 (j) This section shall not be construed to authorize or require the implementation
9 of water conservation management measures that conflict with or are superseded by the
10 provisions of any order of a federal or State court or administrative agency, any
11 interstate agreement governing the allocation of water to which the State is a party, or
12 any license for a hydroelectric generating facility issued by the Federal Energy
13 Regulatory Commission; including, without limitation, any protocol or subsidiary
14 agreement that may be part of or incorporated in any such order, interstate agreement, or
15 operating license."

16 **SECTION 6.** The Environmental Review Commission, as part of its
17 ongoing study of the allocation of water resources in the State required by Section 1 of
18 S.L. 2007-518, shall study whether and to what extent private groundwater wells and
19 the use of water produced by private groundwater wells should be regulated by the State
20 or units of local government. The Environmental Review Commission shall report its
21 findings and recommendations, including any legislative proposals, to the General
22 Assembly as provided by Section 1 of S.L. 2007-518, as amended.

23 **SECTION 7.** G.S. 143-355 reads as rewritten:

24 "**§ 143-355. Powers and duties of the Department.**

25 (a) Repealed by Session Laws 1989, c. 603, s. 1.

26 (b) Functions to Be Performed. – The Department shall:

- 27 (1) Request the North Carolina Congressional Delegation to apply to the
28 Congress of the United States whenever deemed necessary for
29 appropriations for protecting and improving any harbor or waterway in
30 the State and for accomplishing needed flood control, shore-erosion
31 prevention, and water-resources development for water supply, water
32 quality control, and other purposes.
- 33 (2) Initiate, plan, and execute a long-range program for the preservation,
34 development and improvement of rivers, harbors, and inland ports, and
35 to promote the public interest therein.
- 36 (3) Prepare and recommend to the Governor and the General Assembly
37 any legislation which may be deemed proper for the preservation and
38 improvement of rivers, harbors, dredging of small inlets, provision for
39 safe harbor facilities, and public tidewaters of the State.
- 40 (4) Make engineering studies, hydraulic computations, hydrographic
41 surveys, and reports regarding shore-erosion projects, dams, reservoirs,
42 and river-channel improvements; to develop, for budget and planning
43 purposes, estimates of the costs of proposed new projects; to prepare
44 bidding documents, plans, and specifications for harbor, coastal, and

- 1 river projects, and to inspect materials, workmanship, and practices of
2 contractors to assure compliance with plans and specifications.
- 3 (5) Cooperate with the United States Army Corps of Engineers in causing
4 to be removed any wrecked, sunken or abandoned vessel or
5 unauthorized obstructions and encroachments in public harbors,
6 channels, waterways, and tidewaters of the State.
- 7 (6) Cooperate with the United States Coast Guard in marking out and
8 establishing harbor lines and in placing buoys and structures for
9 marking navigable channels.
- 10 (7) Cooperate with federal and interstate agencies in planning and
11 developing water-resource projects for navigation, flood control,
12 hurricane protection, shore-erosion prevention, and other purposes.
- 13 (8) Provide professional advice to public and private agencies, and to
14 citizens of the State, on matters relating to tidewater development,
15 river works, and watershed development.
- 16 (9) Discuss with federal, State, and municipal officials and other interested
17 persons a program of development of rivers, harbors, and related
18 resources.
- 19 (10) Make investigations and render reports requested by the Governor and
20 the General Assembly.
- 21 (11) Participate in activity of the National Rivers and Harbors Congress, the
22 American Shore and Beach Preservation Association, the American
23 Watershed Council, the American Water Works Association, the
24 American Society of Civil Engineers, the Council of State
25 Governments, the Conservation Foundation, and other national
26 agencies concerned with conservation and development of water
27 resources.
- 28 (12) Prepare and maintain climatological and water-resources records and
29 files as a source of information easily accessible to the citizens of the
30 State and to the public generally.
- 31 (13) Formulate and administer a program of dune rebuilding, hurricane
32 protection, and shore-erosion prevention.
- 33 (14) Include in the biennial budget the cost of performing the additional
34 functions indicated above.
- 35 (15) Initiate, plan, study, and execute a long-range floodplain management
36 program for the promotion of health, safety, and welfare of the public.
37 In carrying out the purposes of this subsection, the primary
38 responsibility of floodplain management rests with the local levels of
39 government and it is, therefore, the policy of this State and of this
40 Department to provide guidance, coordination, and other means of
41 assistance, along with the other agencies of this State and with the
42 local levels of government, to effectuate adequate floodplain
43 management programs.

1 (b1) The Department is directed to pursue an active educational program of
2 floodplain management measures, to include in each biennial report a statement of flood
3 damages, location where floodplain management is desirable, and suggested legislation,
4 if deemed desirable, and within its capacities to provide advice and assistance to State
5 agencies and local levels of government.

6 (c) Repealed by Session Laws 1961, c. 315.

7 (d) Investigation of Coasts, Ports and Waterways of State. – The Department is
8 designated as the official State agency to investigate and cause investigations to be
9 made of the coasts, ports and waterways of North Carolina and to cooperate with
10 agencies of the federal and State government and other political subdivisions in making
11 such investigations. The provisions of this section shall not be construed as in any way
12 interfering with the powers and duties of the Utilities Commission, relating to the
13 acquiring of rights-of-way for the Intra-Coastal Waterway; or to authorize the
14 Department to represent the State in connection with such duties.

15 (e) Repealed by Session Laws 1998-129, s. 1, effective January 1, 2000.

16 (f) Samples of Cuttings to Be Furnished the Department When Requested. –
17 Every person, firm or corporation engaged in the business of drilling, boring, coring or
18 constructing wells in any manner by the use of power machinery shall furnish the
19 Department samples of cuttings from such depths as the Department may require from
20 all wells constructed by such person, firm or corporation, when such samples are
21 requested by the Department. The Department shall bear the expense of delivering such
22 samples. The Department shall, after an analysis of the samples submitted, furnish a
23 copy of such analysis to the owner of the property on which the well was constructed;
24 the Department shall not report the results of any such analysis to any other person
25 whatsoever until the person legally authorized to do so authorizes in writing the release
26 of the results of the analysis.

27 (g) Reports of Each Well Required. – Every person, firm or corporation engaged
28 in the business of drilling, boring, coring, or constructing wells with power machinery
29 within the State of North Carolina shall, within 30 days of the completion of each well,
30 report to the Department on forms furnished by the Department the location, size, depth,
31 number of feet of casing used, method of finishing, and formation log information of
32 each such well. In addition such person, firm or corporation shall report any tests made
33 of each such well including the method of testing, length of test, draw-down in feet and
34 yield in gallons per minute. The person, firm or corporation making such report to the
35 Department shall at the time such report is made also furnish a copy thereof to the
36 owner of the property on which the well was constructed.

37 (h) Drilling for Petroleum and Minerals Excepted. – The provisions of this
38 Article shall not apply to drillings for petroleum and minerals.

39 (i) Penalty for Violation. – Any person violating the provisions of subsections
40 (e), (f) and (g) of G.S. 143-355 shall be guilty of a Class 3 misdemeanor and, upon
41 conviction, shall only be punished by a fine of fifty dollars (\$50.00). Each violation
42 shall constitute a separate offense.

43 (j) Miscellaneous Duties. – The Department shall make investigations of water
44 supplies and water powers, prepare and maintain a general inventory of the water

1 resources of the State and take such measures as it may consider necessary to promote
2 their development; and to supervise, guide, and control the performance of the duties set
3 forth in subsection (b) of this section and to hold hearings with regard thereto. In
4 connection with administration of the well-drilling law the Department may prepare
5 analyses of well cuttings for mineral and petroleum content.

6 (k) Water Use Information. – Any person using, withdrawing, diverting or
7 obtaining water from surface streams, lakes and underground water sources shall, upon
8 the request of the Department, file a monthly report with the Department showing the
9 amount of water used, withdrawn, diverted or obtained from such sources. Such report
10 shall be on a form supplied by the Department and shall show the identification of the
11 water well or other withdrawal facility, location, withdrawal rate (measured in gallons
12 per minute), and total gallons withdrawn during the month. Reports required to be filed
13 under this subsection shall be filed on or before the fifteenth day of the month
14 succeeding the month during which the using, withdrawing, diverting or obtaining water
15 required to be reported occurred. This subsection does not apply to withdrawals or uses
16 by individuals or families for household, livestock, or gardens. All reports required
17 under this subsection are provided solely for the purpose of the Department. Within the
18 meaning of this subsection the term "person" means any and all persons, including
19 individuals, firms, partnerships, associations, public or private institutions,
20 municipalities or political subdivisions, governmental agencies, and private or public
21 corporations organized or existing under the laws of this State or any other state or
22 country. In the event of extreme or exceptional drought or other water shortage, the
23 Department may require each local government water system and each large community
24 water system in the affected area to report the amount of water used, withdrawn,
25 diverted, or obtained on a weekly basis and may require the reporting of additional
26 information necessary to assess and manage the drought or water shortage.

27 ~~(l) For purposes of this subsection, "community water system" means a~~
28 ~~community water system, as defined in G.S. 130A-313(10), that regularly serves 1,000~~
29 ~~or more service connections or 3,000 or more individuals.~~ Local Water Supply Plans. –
30 Each unit of local government that provides public water service or that plans to provide
31 public water service and each large community water system shall, either individually
32 or together with other units of local government and large community water systems,
33 prepare a local water supply plan and submit it to the ~~Department.~~ Department for
34 approval. The Department shall provide technical assistance with the preparation of
35 plans to units of local government and large community water systems upon request and
36 to the extent that the Department has resources available to provide assistance. At a
37 minimum, each unit of local government and large community water system shall
38 include in local water supply plans all information that is readily available to it. Plans
39 shall include present and projected population, industrial development, and water use
40 within the service area; present and future water supplies; an estimate of the technical
41 assistance that may be needed at the local level to address projected water needs; current
42 and future water conservation and water reuse programs; a description of how the local
43 government or large community water system will respond to drought and other water
44 shortage emergencies and continue to meet essential public water supply needs during

1 the emergency; and any other related information as the Department may require in the
2 preparation of a State water supply plan. Local plans shall be revised to reflect changes
3 in relevant data and projections at least once each five years unless the Department
4 requests more frequent revisions. The revised plan shall include the current and
5 anticipated reliance by the local government unit or large community water system on
6 surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans
7 shall be submitted to the Department once they have been approved by each unit of
8 local government and large community water system that participated in the preparation
9 of the plan.

10 (m) In order to assure the availability of adequate supplies of good quality water
11 to protect the public health and to support desirable economic growth, the Department
12 shall develop a State water supply plan. The State water supply plan shall include the
13 information and projections required to be included in local plans, a summary of water
14 conservation and water reuse programs described in local plans, a summary of the
15 technical assistance needs indicated by local plans, and shall indicate the extent to
16 which the various local plans are compatible. The State plan shall identify potential
17 conflicts among the various local plans and ways in which local water supply programs
18 could be better coordinated.

19 (n) The Department of Environment and Natural Resources shall report to the
20 Environmental Review Commission on the implementation of this section and the
21 development of the State water supply plan on or before 1 September of each year."

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

24 "**§ 143-355.3. Water shortage emergency powers.**

25 (a) Declaration of Water Shortage Emergency. – If, after consultation with the
26 affected water system and the unit of local government with jurisdiction over the area
27 served by the water system, the Secretary determines that the needs of human
28 consumption, necessary sanitation, and public safety require emergency action, the
29 Secretary shall provide the Governor with written findings setting out the basis for
30 declaration of a water shortage emergency. The Governor shall have the authority to
31 declare a water shortage emergency in the area affected by the water shortage
32 emergency, which may include both the water system experiencing a water shortage
33 emergency and the area served by a water system required under subdivision (1) of
34 subsection (b) of this section to provide water in response to the water shortage
35 emergency. No emergency period shall exceed 30 days, but the Governor may declare
36 successive emergencies upon recommendation of the Secretary.

37 (b) Water Shortage Emergency Powers and Duties. – Whenever, pursuant to this
38 Article, the Governor declares the existence of a water shortage emergency within a
39 particular area of the State, the Secretary shall have the powers and duties set out in
40 subdivisions (1), (2), and (3) of this subsection. These powers may only be exercised
41 within the designated water shortage emergency area, after the Secretary has consulted
42 with the affected water systems and determined that the water shortage emergency
43 cannot be effectively managed in the absence of exercising these powers, and only for

1 the period of the water shortage emergency. Under these circumstances, the Secretary
2 has the power and duty to:

3 (1) Require any water system that has water supply in excess of that
4 required to meet the essential water uses of its customers to provide
5 water to a water system experiencing a water shortage emergency. The
6 Secretary shall give preference to diversion of water from a water
7 system within the same river basin as the water system that is
8 experiencing a water shortage emergency. A diversion of water that
9 requires a certificate under G.S. 143-215.22L shall meet the
10 requirements of that section. The amount required to be supplied shall
11 be limited to the amount necessary to supply essential water uses
12 within the receiving system. The required diversion of waters shall
13 cease upon the termination of the water shortage emergency.

14 (2) Adopt rules governing the conservation and use of water within the
15 water shortage emergency area as shall be necessary to maintain
16 essential water use within the water shortage emergency area. Before
17 such rules and regulations shall become effective, they shall be
18 published in two consecutive issues of a daily newspaper generally
19 circulated in the emergency area. This subdivision shall not be
20 construed to authorize the regulation of deepwater wells that do not
21 impact surface water.

22 (3) Adopt rules governing conservation and use of water within the
23 service area of the water system from which water is being diverted as
24 shall be necessary to maintain essential water uses in the system while
25 supplying water to the water shortage emergency area. This
26 subdivision shall not be construed to authorize the regulation of
27 deepwater wells that do not impact surface water.

28 (c) Temporary Rights-of-Way. – A water system that is affected by a water
29 shortage emergency is authorized to lay necessary temporary waterlines for the period
30 of a declared water shortage emergency across, under, or above any and all properties to
31 connect the water system experiencing a water shortage emergency to an emergency
32 intake in a new water source or to interconnect the water system to a supplying water or
33 wastewater system without first acquiring right-of-way. The Department shall expedite
34 the approval of temporary waterlines needed to provide emergency water supply under
35 this section. Temporary waterlines installed under this section shall be removed within
36 90 days following the end of the emergency period except that the Secretary may, for
37 good cause, authorize a 30-day extension.

38 (d) Compensation for Water Allocated During Water Shortage Emergency and
39 Temporary Rights-of-Way. – Whenever the Secretary, pursuant to this Article, has
40 ordered any diversion of water, the receiving water or wastewater system shall
41 reimburse the supplying water system for the cost of the water. The cost charged to the
42 receiving system shall not exceed the retail cost that would be charged to a customer of
43 the supplying system for an equivalent amount of water and any additional costs
44 incurred by the supplying system for alterations to its infrastructure or water treatment

1 to effectuate the diversion except as provided under an interlocal agreement. The
2 receiving water system shall be liable to all persons suffering any loss or damage caused
3 by or resulting from the laying of temporary waterlines to effectuate the diversion. The
4 Secretary, before ordering a diversion, shall require the receiving water or wastewater
5 system to post bond with a surety approved by the Secretary, in an amount determined
6 by the Secretary, and conditioned upon the payment of any loss or damage.

7 (e) This section shall not be construed to authorize or require any actions that
8 conflict with or are superseded by the provisions of any order of a federal or State court
9 or administrative agency, any interstate agreement governing the allocation of water to
10 which the State is a party, or any license for a hydroelectric generating facility issued by
11 the Federal Energy Regulatory Commission; including, without limitation, any protocol
12 or subsidiary agreement that may be part of or incorporated in any such order, interstate
13 agreement, or operating license."

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

16 "**§ 143-355.4. Water system efficiency.**

17 (a) Local government water systems and large community water systems shall
18 require separate meters for new in-ground irrigation systems.

19 (b) To be eligible for State water infrastructure funds from the Drinking Water
20 Revolving Fund or the Drinking Water Reserve Fund or any other grant or loan of funds
21 allocated by the General Assembly whether the allocation of funds is to a State agency
22 or to a nonprofit organization for the purpose of extending waterlines or expanding
23 water treatment capacity, a local government or large community water system must
24 demonstrate that the system:

25 (1) Has established a water rate structure that is adequate to pay the cost of
26 maintaining, repairing, and operating the system, including reserves
27 for payment of principal and interest on indebtedness incurred for
28 maintenance or improvement of the water system during periods of
29 normal use and periods of reduced water use due to implementation of
30 water conservation measures. The funding agency shall apply
31 guidelines developed by the State Water Infrastructure Commission in
32 determining the adequacy of the water rate structure to support
33 operation and maintenance of the system.

34 (2) Has implemented a leak detection and repair program.

35 (3) Has an approved water supply plan pursuant to G.S. 143-355.

36 (4) Meters all water use except for water use that is impractical to meter,
37 including, but not limited to, use of water for firefighting and to flush
38 waterlines.

39 (5) Does not use a rate structure that gives residential water customers a
40 lower per-unit water rate as water use increases.

41 (6) Has evaluated the extent to which the future water needs of the water
42 system can be met by reclaimed water."

43 **SECTION 10.** Article 38 of Chapter 143 is amended by adding a new
44 section to read:

1 **"§ 143-355.5. Water reuse; policy; rule making.**

2 (a) Water Reuse Policy. – It is the public policy of the State that the reuse of
3 treated wastewater or reclaimed water is critical to meeting the existing and future water
4 supply needs of the State. The General Assembly finds that reclaimed water systems
5 permitted and operated under G.S. 143-215.1(d2) in an approved wastewater reuse
6 program can provide water for many beneficial purposes in a way that is both
7 environmentally acceptable and protective of public health.

8 (b) Rule Making. – The Commission shall encourage and promote safe and
9 beneficial reuse of treated wastewater as an alternative to surface water discharge. The
10 Commission shall adopt rules to:

- 11 (1) Identify acceptable uses of reclaimed water, including toilet flushing,
12 fire protection, decorative water features, and landscape irrigation.
13 (2) Facilitate the permitting of reclaimed water systems.
14 (3) Establish standards for reclaimed water systems that are adequate to
15 prevent the direct distribution of reclaimed water as potable water."

16 **SECTION 11.** Article 38 of Chapter 143 of the General Statutes is amended
17 by adding a new section to read:

18 **"§ 143-355.6. Enforcement.**

19 (a) The Secretary may assess a civil penalty of not less than one hundred dollars
20 (\$100.00) nor more than five hundred dollars (\$500.00) against any person who:

- 21 (1) Fails to report water use or other information required under
22 G.S. 143-355(k).
23 (2) Fails to act in accordance with the terms, conditions, or requirements
24 of an order issued by the Secretary under G.S. 143-355.3.
25 (3) Violates any provision of this Article or any rule adopted by the
26 Commission, the Department, or the Secretary implementing this
27 Article.

28 (b) For each willful action or failure to act for which a penalty may be assessed
29 under this section, the Secretary may consider each day the action or inaction continues
30 after notice is given of the violation as a separate violation. A separate penalty may be
31 assessed for each separate violation.

32 (c) The Secretary may assess a civil penalty of not more than ten thousand
33 dollars (\$10,000) per month against a unit of local government that provides water
34 service or a large community water system that fails to implement the water
35 conservation measures set out in the water shortage response plan approved by the
36 Department under G.S. 143-355.2, measures required by the Department under
37 subsections (b) and (d) of G.S. 143-355.2, or the default measures required under rules
38 adopted by the Commission under S.L. 2002-167. The amount of the civil penalty shall
39 be based on the factors set out in G.S. 143B-282.1(b). The Secretary may remit a civil
40 penalty based on the factors set out in G.S. 143B-282.1(c)(1).

41 (d) The violation of emergency water conservation rules adopted by the Secretary
42 pursuant to G.S. 143-355.3(b) is a Class 1 misdemeanor.

43 (e) The Secretary shall notify any person assessed a civil penalty of the
44 assessment and the specific reasons for the assessment by registered or certified mail or

1 by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed
2 within 30 days of receipt of the notice of assessment."

3 **SECTION 12.** Article 10 of Chapter 143 of the General Statutes is amended
4 by adding a new section to read:

5 **"§ 130A-329. Reporting.**

6 Reports required to be submitted under this Article or under rules adopted by the
7 Commission shall be submitted electronically on a form specified by the Department.
8 The Department may waive the requirement for electronic submission of a report if the
9 water system demonstrates that it lacks the technical capability to report electronically."

10 **SECTION 13.** G.S. 130A-335(a) reads as rewritten:

11 "(a) A person owning or controlling a residence, place of business or a place of
12 public assembly shall provide an approved wastewater system. Except as may be
13 allowed under another provision of law, all wastewater from water-using fixtures and
14 appliances connected to a water supply source shall discharge to the approved
15 wastewater system. A wastewater system may include components for collection,
16 treatment and disposal of wastewater."

17 **SECTION 14.(a)** For purposes of this section, "gray water" means
18 wastewater removed from household wash basins, bathtubs, and showers.

19 **SECTION 14.(b)** The Commission for Health Services shall adopt rules to
20 authorize the use of gray water during periods of drought to hand water trees, shrubs,
21 and inedible plants on single-family residential property. The rules shall encourage the
22 use of gray water as provided in this section while protecting public health, safety,
23 welfare, and the environment. In developing the rules, the Commission shall review the
24 provisions set out in subsection (c) of this section

25 **SECTION 14.(c)** Notwithstanding G.S. 130A-335(a), untreated gray water
26 may be used in periods of drought to hand water trees, shrubs, and inedible plants on
27 single-family residential property under the following conditions:

- 28 (1) Gray water shall be applied as soon as practicable. Untreated gray
29 water should not be stored for later use.
- 30 (2) Gray water containing hazardous chemicals including, but not limited
31 to, residue from solvents shall not be used.
- 32 (3) Use of untreated gray water is restricted to the residential property
33 where the gray water originates. Untreated gray water shall not be
34 allowed to run off onto adjoining property, roadways, or into drainage
35 features such as ditches and storm drains.
- 36 (4) Untreated gray water shall be applied using buckets, watering cans, or
37 other handheld containers. Gray water may not be used in an irrigation
38 system unless the gray water has been treated in accordance with
39 standards set out in the State Plumbing Code.
- 40 (5) Gray water shall not be applied closer than 100 feet to surface waters
41 or a water supply well.

42 **SECTION 15.** G.S. 159G-23 reads as rewritten:

43 **"§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or**
44 **Drinking Water Reserve.**

1 The criteria in this section apply to a loan or grant from the Wastewater Reserve or
2 the Drinking Water Reserve. The Division of Water Quality and the Division of
3 Environmental Health must each establish a system of assigning points to applications
4 based on the following criteria:

- 5 (1) Public necessity. – An applicant must explain how the project
6 promotes public health and protects the environment. A project that
7 improves a system that is not in compliance with permit requirements
8 or is under orders from the Department, enables a moratorium to be
9 lifted, or replaces failing septic tanks with a wastewater collection
10 system has priority.
- 11 (2) Effect on impaired waters. – A project that improves designated
12 impaired waters of the State has priority.
- 13 (3) Efficiency. – A project that achieves efficiencies in meeting the State's
14 water infrastructure needs or reduces vulnerability to drought
15 consistent with Part 2A of Article 21 of Chapter 143 of the General
16 Statutes by one of the following methods has priority:
- 17 a. The combination of two or more wastewater or public water
18 systems into a regional wastewater or public water system by
19 merger, consolidation, or another means.
- 20 b. Conservation or reuse of water, including bulk water
21 reuse facilities and waterlines to supply reuse water for
22 irrigation and other approved uses.
- 23 c. Construction of an interconnection between water systems
24 intended for use in drought or other water shortage emergency.
- 25 d. Repair or replacement of leaking waterlines.
- 26 e. Replacement of meters and installation of new metering
27 systems.
- 28 (4) Comprehensive land-use plan. – A project that is located in a city or
29 county that has adopted or has taken significant steps to adopt a
30 comprehensive land-use plan under Article 18 of Chapter 153A of the
31 General Statutes or Article 19 of Chapter 160A of the General Statutes
32 has priority over a project located in a city or county that has not
33 adopted a plan or has not taken steps to do so. The existence of a plan
34 has more priority than steps taken to adopt a plan, such as adoption of
35 a zoning ordinance. A plan that exceeds the minimum State standards
36 for protection of water resources has more priority than one that does
37 not. A project is considered to be located in a city or county if it is
38 located in whole or in part in that unit. A land-use plan is not
39 considered a comprehensive land-use plan unless it has provisions that
40 protect existing water uses and ensure compliance with water quality
41 standards and classifications in all waters of the State affected by the
42 plan.
- 43 (5) Flood hazard ordinance. – A project that is located in a city or county
44 that has adopted a flood hazard prevention ordinance under

1 G.S. 143-215.54A has priority over a project located in a city or
 2 county that has not adopted an ordinance. A plan that exceeds the
 3 minimum standards under G.S. 143-215.54A for a flood hazard
 4 prevention ordinance has more priority than one that does not. A
 5 project is considered to be located in a city or county if it is located in
 6 whole or in part in that unit. If no part of the service area of a project is
 7 located within the 100-year floodplain, the project has the same
 8 priority under this subdivision as if it were located in a city or county
 9 that has adopted a flood hazard prevention ordinance. The most recent
 10 maps prepared pursuant to the National Flood Insurance Program or
 11 approved by the Department determine whether an area is within the
 12 100-year floodplain.

13 (6) Sound management. – A project submitted by a local government unit
 14 that has demonstrated a willingness and ability to meet its
 15 responsibilities through sound fiscal policies and efficient operation
 16 and management has priority.

17 (7) Capital improvement plan. – A project that implements the applicant's
 18 capital improvement plan for the wastewater system or public water
 19 system it manages has priority over a project that does not implement a
 20 capital improvement plan. To receive priority, a capital improvement
 21 plan must set out the applicant's expected water infrastructure needs
 22 for at least 10 years.

23 (8) Coastal habitat protection. – A project that implements a
 24 recommendation of a Coastal Habitat Protection Plan adopted by the
 25 Environmental Management Commission, the Coastal Resources
 26 Commission, and the Marine Fisheries Commission pursuant to
 27 G.S. 143B-279.8 has priority over other projects that affect counties
 28 subject to that Plan."

29 **SECTION 16.** G.S. 143-355.1 reads as rewritten:

30 **"§ 143-355.1. Drought Management Advisory Council; drought advisories.**

31 (a) The Department shall establish a Drought Management Advisory Council.
 32 The purposes of the Council are:

33 (1) To improve coordination among local, State, and federal agencies;
 34 public water systems, as defined in G.S. 130A-313(10); and water
 35 users to improve the management and mitigation of the harmful effects
 36 of drought.

37 (2) To provide consistent and accurate information ~~to the public about~~
 38 ~~drought conditions on drought conditions in the State to the U.S.~~
 39 Drought Monitor, the Environmental Management Commission, the
 40 Secretary, the Environmental Review Commission, and the public.

41 (b) The Department shall invite each of the following organizations to designate
 42 a representative to serve on the Council:

43 (1) North Carolina Cooperative Extension Service.

44 (2) State Climate Office at North Carolina State University.

- 1 (3) Public Staff of the Utilities Commission.
- 2 (4) Wildlife Resources Commission.
- 3 (5) Department of Agriculture and Consumer Services.
- 4 (6) Department of Commerce.
- 5 (7) Department of Crime Control and Public Safety.
- 6 (8) National Weather Service of the National Oceanic and Atmospheric
- 7 Administration of the United States Department of Commerce.
- 8 (9) United States Geological Survey of the United States Department of
- 9 the Interior.
- 10 (10) United States Army Corps of Engineers.
- 11 (11) United States Department of Agriculture.
- 12 (12) Federal Emergency Management Agency of the United States
- 13 Department of Homeland Security.
- 14 (13) North Carolina League of Municipalities.
- 15 (14) North Carolina Association of County Commissioners.
- 16 (15) North Carolina Utilities Commission.

17 (b1) Representatives designated under subsection (b) of this section shall have
18 expertise or responsibility in meteorology, groundwater and surface water hydrology,
19 water system operation and management, reservoir management, emergency response,
20 or another subject area related to assessment and management of drought impacts.

21 (c) The Department shall also invite other agencies and organizations that
22 represent water users, including local governments, agriculture, agribusiness, forestry,
23 manufacturing, investor-owned water utilities regulated by the North Carolina Utilities
24 Commission, and others as appropriate, ~~to designate a representative to serve on the~~
25 ~~Council~~ ~~or to participate in the work of the Council with respect to particular drought~~
26 related issues.

27 (d) The Department shall designate an employee of the Department to serve as
28 Chair of the Council. The Council shall meet at least once in each calendar year in order
29 to maintain appropriate agency readiness and participation. In addition, the Council
30 shall meet on the call of the Chair to respond to drought conditions. The provisions of
31 Article 33C of this Chapter apply to meetings of the Council.

32 (e) In order to provide accurate and consistent information to assist ~~local~~
33 ~~governments~~ State agencies, local governments, and other water users in taking
34 appropriate drought response actions, the Council may issue drought advisories that
35 designate:

- 36 (1) Specific areas of the State in which drought conditions are impending.
- 37 (2) Specific areas of the State that are suffering from drought conditions.
- 38 (3) The level of severity of drought ~~conditions,~~ conditions based on the
39 drought categories used in the U.S. Drought Monitor or the drought
40 designation approved by the Secretary under subsection (f) of this
41 section.

42 (f) Drought designations by the U.S. Drought Monitor shall be the default
43 designations for drought advisories issued under subsection (e) of this section. The
44 Council shall publish those drought designations for each county. If more than one

1 drought designation applies to a county, the drought designation for the county shall be
2 the highest drought designation that applies to at least twenty-five percent (25%) of the
3 land area of the county. The Council may recommend a drought designation for a
4 county that is different from the designation based on the U.S. Drought Monitor if the
5 U.S. Drought Monitor does not accurately reflect localized conditions because of
6 differences in scale or because the U.S. Drought Monitor does not consider one or more
7 of the indicators of drought identified in this subsection. ~~In making a determination of~~
8 any of the drought designations described in subsection (e) of this section, In
9 recommending a drought designation that differs from the U.S. Drought Monitor
10 designation, the Council shall consider stream flows, ground water levels, the amount of
11 water stored in reservoirs, weather forecasts, the time of year, and other factors that are
12 relevant to determining the location and severity of drought conditions.

13 (f1) The Secretary shall accept the Council's recommendation to adopt a drought
14 designation for a county that is different from the designation based on the U.S. Drought
15 Monitor if the Secretary finds that the indicators of drought identified by the Council
16 under subsection (f) of this section support the designation recommended by the
17 Council.

18 (g) The Council shall report on the implementation of this section to the
19 Secretary, the Governor, and the Environmental Review Commission no later than 1
20 October of each year. The report shall include a review of drought advisories issued by
21 the Council and any recommendations to improve coordination among local, State, and
22 federal agencies; public water systems; and water users to improve the management and
23 mitigation of the harmful effects of drought."

24 **SECTION 17.** The State Water Infrastructure Commission, in consultation
25 with the Department of Environment and Natural Resources, the School of Government
26 at the University of North Carolina at Chapel Hill, the North Carolina Utilities
27 Commission, the Public Staff of the North Carolina Utilities Commission, and the Local
28 Government Commission, shall develop guidelines for water rate structures that are
29 adequate to pay the cost of maintaining, repairing, and operating the system, including
30 payment of principal and interest on indebtedness incurred for maintenance or
31 improvement of the water system. The guidelines shall also consider the effect of water
32 rates on water conservation and recommend rate structures that support water
33 conservation. Copies of the guidelines shall be made available to the Department of
34 Environment and Natural Resources, the North Carolina Utilities Commission, and to
35 all local government water systems and large community water systems, as defined in
36 G.S. 143-350. The Commission shall report to the Environmental Review Commission
37 on its progress in developing the guidelines no later than January 1, 2009.

38 **SECTION 18.** The Department of Environment and Natural Resources shall
39 develop recommendations, in consultation with the technical working group that
40 consists of scientists from the University of North Carolina and industry experts, for
41 water efficiency standards for water-using fixtures in residential and commercial
42 building and in-ground irrigation systems. The Department shall also develop
43 recommendations for efficient metering of water use by local government and large
44 community water systems. The Department shall submit its recommendations to the

1 Commissioner of Insurance, the Chair of the Building Code Council, and the
2 Environmental Review Commission no later than January 1, 2009.

3 **SECTION 19.(a)** Article 1 of Chapter 47C of the General Statutes is
4 amended by adding a new section to read:

5 **"§ 47C-3-122. Irrigation of landscaping.**

6 Notwithstanding any provision in any declaration of covenants, no requirement to
7 irrigate landscaping shall be construed to:

8 (1) Regulate the irrigation of landscaping, during any period in which the
9 U.S. Drought Monitor, as defined in G.S. 143-350, or the Secretary of
10 Environment and Natural Resources has designated an area in which
11 the association is located as an area of severe, extreme, or exceptional
12 drought and the Governor, a State agency, or unit of local government
13 has imposed water conservation measures applicable to the area
14 unless:

15 a. For covenants registered prior to October 1, 2008, the covenant
16 specifically requires the irrigation of landscaping
17 notwithstanding water conservation measures imposed by the
18 Governor, a State agency, or unit of local government. The
19 association may not fine or otherwise penalize an owner of land
20 for violation of an irrigation requirement during a period of
21 drought as designated under this subdivision, unless the
22 covenant specifically authorizes fines or other penalties.

23 b. For covenants registered on or after October 1, 2008, the
24 covenant must specifically state that any requirement to irrigate
25 landscaping is suspended to the extent the requirement would
26 otherwise be prohibited during any period in which the
27 Governor, a State agency, or unit of local government has
28 imposed water conservation measures. The association may not
29 fine or otherwise penalize an owner of land for violation of an
30 irrigation requirement during a drought designated under this
31 subdivision, unless the covenant authorizes the fines or other
32 penalties. This authorization must be written on the first page of
33 the covenant in print that is in boldface type, capital letters, and
34 no smaller than the largest print used elsewhere in the
35 declarations of covenants.

36 (2) For purposes of this section, the term "landscaping" includes lawns,
37 trees, shrubbery, and other ornamental or decorative plants."

38 **SECTION 19.(b)** Article 3 of Chapter 47F of the General Statutes is
39 amended by adding a new section to read:

40 **"§ 47F-3-122. Irrigation of landscaping.**

41 Notwithstanding any provision in any declaration of covenants, no requirement to
42 irrigate landscaping shall be construed to:

43 (1) Regulate the irrigation of landscaping, during any period in which the
44 U.S. Drought Monitor, as defined in G.S. 143-350, or the Secretary of

1 Environment and Natural Resources has designated an area in which
2 the association is located as an area of severe, extreme, or exceptional
3 drought and the Governor, a State agency, or unit of local government
4 has imposed water conservation measures applicable to the area
5 unless:

6 a. For declarations of covenants registered prior to October 1,
7 2008, the covenant specifically requires the irrigation of
8 landscaping notwithstanding water conservation measures
9 imposed by the Governor, a State agency, or unit of local
10 government. The association may not fine or otherwise penalize
11 an owner of land for violation of an irrigation requirement
12 during a period of a drought as designated under this
13 subdivision, unless the covenant specifically authorizes fines or
14 other penalties.

15 b. For covenants registered on or after October 1, 2008, the
16 covenant must specifically state that any requirement to irrigate
17 landscaping is suspended to the extent the requirement would
18 otherwise be prohibited during any period in which the
19 Governor, a State agency, or unit of local government has
20 imposed water conservation measures. The association may not
21 fine or otherwise penalize an owner of land for violation of an
22 irrigation requirement during a drought designated under this
23 subdivision, unless the covenant authorizes the fines or other
24 penalties. This authorization must be written on the first page of
25 the covenant in print that is in boldface type, capital letters, and
26 no smaller than the largest print used elsewhere in the
27 declarations of covenants.

28 (2) For purposes of this section, the term "landscaping" includes lawns,
29 trees, shrubbery, and other ornamental or decorative plants."

30 **SECTION 20.** Sections 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, and 20
31 of this act are effective when this act becomes law. Water Shortage Response Plans
32 revised to comply with G.S. 143-355.2, as enacted by Section 5 of this act, shall be
33 submitted no later than 1 July 2009. Subsection (c) of Section 14 of this act expires
34 when rules adopted pursuant to subsection (b) of Section 14 of this act become
35 effective. Sections 1, 2, and 19 of this act become effective 1 October 2008. Section 11
36 of this act becomes effective 1 December 2008 and applies to offenses committed on or
37 after that date. Section 9 of this act becomes effective 1 July 2009.