

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1879*

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

Sponsors: Senators Clodfelter and Albertson.

Referred to: Agriculture/Environment/Natural Resources.

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT WATER MANAGEMENT AND DROUGHT
PREPAREDNESS AND RESPONSE MEASURES, AS RECOMMENDED BY
THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

~~(b1) Subsections (a) and (b) of this section shall not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and 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.** G.S. 143-350 reads as rewritten:

28 "**§ 143-350. Definitions.**

29 As used in this Article:

- 30 (1) "Commission" means the Environmental Management Commission.
31 (2) "Department" means the Department of Environment and Natural
32 Resources.
33 (3) "Essential water use" means the use of water necessary for firefighting,
34 health, and safety; water needed to sustain human and animal life; and
35 water necessary to satisfy federal, State, and local laws for the
36 protection of public health, safety, the environment, and natural
37 resources.
38 (4) "Large community water system" means a community water system,
39 as defined in G.S. 130A-313(10), that regularly serves 1,000 or more
40 service connections or 3,000 or more individuals.
41 (5) "Unit of local government" means a county, city, consolidated
42 city-county, sanitary district, or other local political subdivision or
43 authority or agency or local government."

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

1 **"§ 143-354. Ordinary powers and duties of the Commission.**

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

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

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

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

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

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

1 ~~water or sewerage system has made reasonable plans and acted with~~
2 ~~due diligence pursuant thereto to eliminate future emergencies by~~
3 ~~adequately enlarging such person's own water supply.~~

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

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

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

29 **SECTION 4.** Article 38 of Chapter 143 of the General Statutes is amended
30 by adding a new section to read:

31 **"§ 143-354.1. Water conservation measures for severe, extreme, and exceptional**
32 **drought.**

33 (a) Minimum Water Conservation Measures. — The Commission shall adopt rules
34 establishing minimum water conservation measures to be implemented by cities,
35 counties, and unified local governments located in areas designated by the Drought
36 Management Advisory Council as areas of severe, extreme, or exceptional drought. The
37 rules shall prohibit the use of potable water for uses that can be supplied by reclaimed
38 water, recycled wastewater, or treated gray water in areas that have been in exceptional
39 drought for more than 60 days. Any restrictions on water use established by the rules
40 shall not apply to use of reclaimed or recycled wastewater or to authorize use of treated
41 or untreated gray water.

42 (b) Implementation of Minimum Water Conservation Measures. — Each city,
43 county, or unified local government located in an area of severe, extreme, or exceptional
44 drought as designated by the Drought Management Advisory Council shall implement

1 the minimum water conservation measures established by rules adopted by the
2 Commission pursuant to subsection (a) of this section. A city, county, or unified local
3 government may adopt water conservation ordinances pursuant to their general police
4 power. A local ordinance that imposes water conservation requirements shall be at least
5 as stringent and may be more stringent than the minimum water conservation measures
6 adopted by the Commission.

7 (c) Application of Minimum Water Conservation Measures. – A city, county, or
8 unified local government is authorized to apply water conservation measures to all
9 water users within its jurisdiction, including water users served by an investor-owned
10 utility or private water supply well."

11 **SECTION 5.** G.S. 143-355 reads as rewritten:

12 **"§ 143-355. Powers and duties of the Department.**

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

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

- 15 (1) Request the North Carolina Congressional Delegation to apply to the
16 Congress of the United States whenever deemed necessary for
17 appropriations for protecting and improving any harbor or waterway in
18 the State and for accomplishing needed flood control, shore-erosion
19 prevention, and water-resources development for water supply, water
20 quality control, and other purposes.
- 21 (2) Initiate, plan, and execute a long-range program for the preservation,
22 development and improvement of rivers, harbors, and inland ports, and
23 to promote the public interest therein.
- 24 (3) Prepare and recommend to the Governor and the General Assembly
25 any legislation which may be deemed proper for the preservation and
26 improvement of rivers, harbors, dredging of small inlets, provision for
27 safe harbor facilities, and public tidewaters of the State.
- 28 (4) Make engineering studies, hydraulic computations, hydrographic
29 surveys, and reports regarding shore-erosion projects, dams, reservoirs,
30 and river-channel improvements; to develop, for budget and planning
31 purposes, estimates of the costs of proposed new projects; to prepare
32 bidding documents, plans, and specifications for harbor, coastal, and
33 river projects, and to inspect materials, workmanship, and practices of
34 contractors to assure compliance with plans and specifications.
- 35 (5) Cooperate with the United States Army Corps of Engineers in causing
36 to be removed any wrecked, sunken or abandoned vessel or
37 unauthorized obstructions and encroachments in public harbors,
38 channels, waterways, and tidewaters of the State.
- 39 (6) Cooperate with the United States Coast Guard in marking out and
40 establishing harbor lines and in placing buoys and structures for
41 marking navigable channels.
- 42 (7) Cooperate with federal and interstate agencies in planning and
43 developing water-resource projects for navigation, flood control,
44 hurricane protection, shore-erosion prevention, and other purposes.

- 1 (8) Provide professional advice to public and private agencies, and to
2 citizens of the State, on matters relating to tidewater development,
3 river works, and watershed development.
- 4 (9) Discuss with federal, State, and municipal officials and other interested
5 persons a program of development of rivers, harbors, and related
6 resources.
- 7 (10) Make investigations and render reports requested by the Governor and
8 the General Assembly.
- 9 (11) Participate in activity of the National Rivers and Harbors Congress, the
10 American Shore and Beach Preservation Association, the American
11 Watershed Council, the American Water Works Association, the
12 American Society of Civil Engineers, the Council of State
13 Governments, the Conservation Foundation, and other national
14 agencies concerned with conservation and development of water
15 resources.
- 16 (12) Prepare and maintain climatological and water-resources records and
17 files as a source of information easily accessible to the citizens of the
18 State and to the public generally.
- 19 (13) Formulate and administer a program of dune rebuilding, hurricane
20 protection, and shore-erosion prevention.
- 21 (14) Include in the biennial budget the cost of performing the additional
22 functions indicated above.
- 23 (15) Initiate, plan, study, and execute a long-range floodplain management
24 program for the promotion of health, safety, and welfare of the public.
25 In carrying out the purposes of this subsection, the primary
26 responsibility of floodplain management rests with the local levels of
27 government and it is, therefore, the policy of this State and of this
28 Department to provide guidance, coordination, and other means of
29 assistance, along with the other agencies of this State and with the
30 local levels of government, to effectuate adequate floodplain
31 management programs.

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

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

38 (d) Investigation of Coasts, Ports and Waterways of State. – The Department is
39 designated as the official State agency to investigate and cause investigations to be
40 made of the coasts, ports and waterways of North Carolina and to cooperate with
41 agencies of the federal and State government and other political subdivisions in making
42 such investigations. The provisions of this section shall not be construed as in any way
43 interfering with the powers and duties of the Utilities Commission, relating to the

1 acquiring of rights-of-way for the Intra-Coastal Waterway; or to authorize the
2 Department to represent the State in connection with such duties.

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

4 (f) Samples of Cuttings to Be Furnished the Department When Requested. –
5 Every person, firm or corporation engaged in the business of drilling, boring, coring or
6 constructing wells in any manner by the use of power machinery shall furnish the
7 Department samples of cuttings from such depths as the Department may require from
8 all wells constructed by such person, firm or corporation, when such samples are
9 requested by the Department. The Department shall bear the expense of delivering such
10 samples. The Department shall, after an analysis of the samples submitted, furnish a
11 copy of such analysis to the owner of the property on which the well was constructed;
12 the Department shall not report the results of any such analysis to any other person
13 whatsoever until the person legally authorized to do so authorizes in writing the release
14 of the results of the analysis.

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

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

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

31 (j) Miscellaneous Duties. – The Department shall make investigations of water
32 supplies and water powers, prepare and maintain a general inventory of the water
33 resources of the State and take such measures as it may consider necessary to promote
34 their development; and to supervise, guide, and control the performance of the duties set
35 forth in subsection (b) of this section and to hold hearings with regard thereto. In
36 connection with administration of the well-drilling law the Department may prepare
37 analyses of well cuttings for mineral and petroleum content.

38 (k) Water Use Information. – Any person using, withdrawing, diverting or
39 obtaining water from surface streams, lakes and underground water sources shall, upon
40 the request of the Department, file a monthly report with the Department showing the
41 amount of water used, withdrawn, diverted or obtained from such sources. Such report
42 shall be on a form supplied by the Department and shall show the identification of the
43 water well or other withdrawal facility, location, withdrawal rate (measured in gallons
44 per minute), and total gallons withdrawn during the month. Reports required to be filed

1 under this subsection shall be filed on or before the fifteenth day of the month
2 succeeding the month during which the using, withdrawing, diverting or obtaining water
3 required to be reported occurred. This subsection does not apply to withdrawals or uses
4 by individuals or families for household, livestock, or gardens. All reports required
5 under this subsection are provided solely for the purpose of the Department. Within the
6 meaning of this subsection the term "person" means any and all persons, including
7 individuals, firms, partnerships, associations, public or private institutions,
8 municipalities or political subdivisions, governmental agencies, and private or public
9 corporations organized or existing under the laws of this State or any other state or
10 country. In the event of drought or other water shortage, the Department may require
11 each local government water system and each large community water system to report
12 water use on a weekly basis and may require the reporting of additional information
13 necessary to assess and manage the drought or water shortage.

14 (l) ~~For purposes of this subsection, "community water system" means a~~
15 ~~community water system, as defined in G.S. 130A-313(10), that regularly serves 1,000~~
16 ~~or more service connections or 3,000 or more individuals.~~ Local Water Supply Plans. –
17 Each unit of local government that provides public water service or that plans to provide
18 public water service and each large community water system shall, either individually
19 or together with other units of local government and large community water systems,
20 prepare a local water supply plan and submit it to the ~~Department.~~Department for
21 approval. The Department shall provide technical assistance with the preparation of
22 plans to units of local government and large community water systems upon request and
23 to the extent that the Department has resources available to provide assistance. At a
24 minimum, each unit of local government and large community water system shall
25 include in local water supply plans all information that is readily available to it. Plans
26 shall include present and projected population, industrial development, and water use
27 within the service area; present and future water supplies; an estimate of the technical
28 assistance that may be needed at the local level to address projected water needs; current
29 and future water conservation and water reuse programs; a description of how the local
30 government or large community water system will respond to drought and other water
31 shortage emergencies and continue to meet essential public water supply needs during
32 the emergency; a water audit and leak detection program, identification of existing and
33 planned interconnections to other water systems; and any other related information as
34 the Department may require in the preparation of a State water supply plan. A unit of
35 local government or large community water system shall submit a revised plan that
36 specifies how the water system intends to address foreseeable future water needs when
37 eighty percent (80%) of the water system's available water supply based on average
38 daily demand has been allocated to current or prospective water users or the seasonal
39 demand exceeds ninety percent (90%). A unit of local government or large community
40 water system shall submit a revised plan that reflects ~~Local plans shall be revised to~~
41 ~~reflect~~ changes in relevant data and projections at least once each five years unless the
42 Department requests more frequent revisions. The revised plan shall include the current
43 and anticipated reliance by the local government unit or large community water system
44 on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised

1 plans shall be submitted to the Department once they have been approved by each unit
2 of local government and large community water system that participated in the
3 preparation of the plan. The Department shall review each local water supply plan and
4 shall approve a plan if the Department finds that the plan includes the information
5 required under this subsection and the water supply sources identified in the plan can be
6 used to supply potable water and are adequate to meet the water supply needs projected
7 in the plan.

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

17 (m1) The Secretary shall adopt all rules necessary to implement this section.

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

21 **SECTION 6.** Article 38 of Chapter 143 of the General Statutes is amended
22 by adding a new section to read:

23 "**§ 143-355.2. Water shortage emergency powers.**

24 (a) Declaration of Water Shortage Emergency. – If the Secretary determines that
25 the needs of human consumption, necessary sanitation, and public safety require
26 emergency action, the Secretary shall notify the Governor. The Governor shall have the
27 authority to declare a water shortage emergency in the area affected by the water
28 shortage emergency. No emergency period shall exceed 30 days, but the Governor may
29 declare successive emergencies upon recommendation of the Secretary.

30 (b) Water Shortage Emergency Powers and Duties. – Whenever, pursuant to this
31 Article, the Governor declares the existence of a water shortage emergency within a
32 particular area of the State, the Secretary shall have the powers and duties set out in
33 subdivisions (1), (2), and (3) of this subsection. These powers may only be exercised
34 within the designated water shortage emergency area, after the Secretary has consulted
35 with the affected water systems and determined that the water shortage emergency
36 cannot be effectively managed in the absence of exercising these powers, and only for
37 the period of the water shortage emergency. Under these circumstances, the Secretary
38 has the power and duty to:

39 (1) Require any water system that has water supply in excess of that
40 required to meet the essential water uses of its customers to provide
41 water to a water system experiencing a water shortage emergency. The
42 amount required to be supplied shall be limited to the amount
43 necessary to supply essential water uses within the receiving system.

1 The required diversion of waters shall cease upon the termination of
2 the water shortage emergency.

3 (2) Adopt rules governing the conservation and use of water within the
4 water shortage emergency area as shall be necessary for the health and
5 safety of the persons who reside within the water shortage emergency
6 area. Before such rules and regulations shall become effective, they
7 shall be published in two consecutive issues of a newspaper generally
8 circulated in the emergency area.

9 (3) Adopt rules governing conservation and use of water within the
10 service area of the water system from which water is being diverted as
11 shall be necessary to maintain essential water uses in the system while
12 supplying water to the water shortage emergency area.

13 (c) Temporary Rights-of-Way. – When any diversion of waters is ordered by the
14 Secretary pursuant to this Article, the receiving water or wastewater system is
15 authorized to lay necessary temporary waterlines for the period of the water shortage
16 emergency across, under, or above any and all properties to connect the emergency
17 water supply to an intake of the supplying water or wastewater system without first
18 acquiring right-of-way. The Department shall expedite the approval of temporary
19 waterlines needed to provide emergency water supply under this section.

20 (d) Compensation for Water Allocated During Water Shortage Emergency and
21 Temporary Rights-of-Way. – Whenever the Secretary, pursuant to this Article, has
22 ordered any diversion of water, the receiving water or wastewater system shall
23 reimburse the supplying water system for the cost of the water. The cost charge to the
24 receiving system shall not exceed the retail cost that would be charged to a customer of
25 the supplying system for an equivalent amount of water and any additional costs
26 incurred by the supplying system for alterations to its infrastructure to effectuate the
27 diversion. The receiving water system shall be liable to all persons suffering any loss or
28 damage caused by or resulting from the laying of temporary waterlines to effectuate the
29 diversion. The Secretary, before ordering a diversion, shall require the receiving water
30 or wastewater system to post bond with a surety approved by the Secretary, in an
31 amount determined by the Secretary, and conditioned upon the payment of any loss or
32 damage."

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

35 **"§ 143-355.3. Water system efficiency.**

36 (a) For purposes of maintaining accurate records of water use, local government
37 and large community water systems shall ensure that water delivered by the water
38 system is metered to the maximum extent practicable.

39 (b) Local government water systems and large community water systems shall
40 require separate meters for newly installed in-ground irrigation systems.

41 (c) To be eligible for State water infrastructure funds from the Drinking Water
42 Revolving Fund or the Drinking Water Reserve Fund or any other grant or loan of funds
43 allocated by the General Assembly whether the allocation of funds is to a State agency
44 or to a nonprofit organization for the purpose of extending waterlines or expanding

1 water treatment capacity, a local government or large community water system must
2 demonstrate that the system:

- 3 (1) Has established a water rate structure that is adequate to pay the cost of
4 maintaining, repairing, and operating the system, including reserves
5 for payment of principal and interest on indebtedness incurred for
6 maintenance or improvement of the water system during periods of
7 normal use and periods of reduced water use due to implementation of
8 water conservation measures. The funding agency shall apply
9 guidelines developed by the State Water Infrastructure Commission in
10 determining the adequacy of the water rate structure to support
11 operation and maintenance of the system.
- 12 (2) Implemented a leak detection and repair program.
- 13 (3) Has an approved water supply plan pursuant to G.S. 143-355.
- 14 (d) No water system shall use a rate structure that gives residential water
15 customers a lower per unit water rate as water use increases."

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

18 **"§ 143-355.4. 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. 143-355.2.
- 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) A civil penalty of not more than one thousand dollars (\$1,000) per month
33 may be assessed against any city, county, or unified local government that fails to adopt
34 a water conservation ordinance that meets the mandatory minimum standards for severe,
35 extreme, and exceptional drought established by the Commission as required by
36 G.S. 143-354.1 or willfully fails to administer or enforce the provisions of its program
37 in substantial compliance with the minimum water conservation standards.

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

40 (e) The Secretary shall notify any person assessed a civil penalty of the
41 assessment and the specific reasons for the assessment by registered or certified mail, or
42 by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed
43 within 30 days of receipt of the notice of assessment."

1 **SECTION 9.** Article 10 of Chapter 143 of the General Statutes is amended
2 by adding a new section to read:

3 **"§ 130A-329. Reporting.**

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

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

9 "(a) A person owning or controlling a residence, place of business or a place of
10 public assembly shall provide an approved wastewater system. All wastewater from
11 water-using fixtures and appliances connected to a water supply source shall discharge
12 to the approved wastewater system. A wastewater system may include components for
13 collection, treatment and disposal of wastewater."

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

16 **"§ 130A-345. Untreated gray water; allowed uses.**

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

19 (b) Notwithstanding G.S. 130A-335(a), untreated gray water may be used in
20 periods of drought to hand water trees, shrubs, and inedible plants under the following
21 conditions:

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

36 **SECTION 12.** G.S. 159G-23 reads as rewritten:

37 **"§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or**
38 **Drinking Water Reserve.**

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

- 43 (1) Public necessity. – An applicant must explain how the project
44 promotes public health and protects the environment. A project that

- 1 improves a system that is not in compliance with permit requirements
2 or is under orders from the Department, enables a moratorium to be
3 lifted, or replaces failing septic tanks with a wastewater collection
4 system has priority.
- 5 (2) Effect on impaired waters. – A project that improves designated
6 impaired waters of the State has priority.
- 7 (3) Efficiency. – A project that achieves efficiencies in meeting the State's
8 water infrastructure needs or reduces vulnerability to drought by one
9 of the following methods has priority:
- 10 a. The combination of two or more wastewater or public water
11 systems into a regional wastewater or public water system by
12 merger, consolidation, or another means.
- 13 b. Conservation or reuse of ~~water~~-water, including bulk water
14 reuse facilities and waterlines to supply reuse water for
15 irrigation and other approved uses.
- 16 c. Construction of an interconnection between water systems
17 intended for use in drought or other water shortage emergency.
- 18 d. Repair or replacement of leaking waterlines.
- 19 e. Replacement of meters and installation of new metering
20 systems.
- 21 (4) Comprehensive land-use plan. – A project that is located in a city or
22 county that has adopted or has taken significant steps to adopt a
23 comprehensive land-use plan under Article 18 of Chapter 153A of the
24 General Statutes or Article 19 of Chapter 160A of the General Statutes
25 has priority over a project located in a city or county that has not
26 adopted a plan or has not taken steps to do so. The existence of a plan
27 has more priority than steps taken to adopt a plan, such as adoption of
28 a zoning ordinance. A plan that exceeds the minimum State standards
29 for protection of water resources has more priority than one that does
30 not. A project is considered to be located in a city or county if it is
31 located in whole or in part in that unit. A land-use plan is not
32 considered a comprehensive land-use plan unless it has provisions that
33 protect existing water uses and ensure compliance with water quality
34 standards and classifications in all waters of the State affected by the
35 plan.
- 36 (5) Flood hazard ordinance. – A project that is located in a city or county
37 that has adopted a flood hazard prevention ordinance under
38 G.S. 143-215.54A has priority over a project located in a city or
39 county that has not adopted an ordinance. A plan that exceeds the
40 minimum standards under G.S. 143-215.54A for a flood hazard
41 prevention ordinance has more priority than one that does not. A
42 project is considered to be located in a city or county if it is located in
43 whole or in part in that unit. If no part of the service area of a project is
44 located within the 100-year floodplain, the project has the same

1 priority under this subdivision as if it were located in a city or county
2 that has adopted a flood hazard prevention ordinance. The most recent
3 maps prepared pursuant to the National Flood Insurance Program or
4 approved by the Department determine whether an area is within the
5 100-year floodplain.

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

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

16 (8) Coastal habitat protection. – A project that implements a
17 recommendation of a Coastal Habitat Protection Plan adopted by the
18 Environmental Management Commission, the Coastal Resources
19 Commission, and the Marine Fisheries Commission pursuant to
20 G.S. 143B-279.8 has priority over other projects that affect counties
21 subject to that Plan."

22 **SECTION 13.** The State Water Infrastructure Commission, in consultation
23 with the Department of Environment and Natural Resources and the School of
24 Government at the University of North Carolina at Chapel Hill, shall develop guidelines
25 for water rate structures that are adequate to pay the cost of maintaining, repairing, and
26 operating the system, including payment of principal and interest on indebtedness
27 incurred for maintenance or improvement of the water system. The guidelines shall also
28 consider the effect of water rates on water conservation and recommend rate structures
29 that support water conservation. Copies of the guidelines shall be made available to the
30 Department of Environment and Natural Resources, the North Carolina Utilities
31 Commission, and to all local government water systems and large community water
32 systems, as defined in G.S. 143-350. The Commission shall report to the Environmental
33 Review Commission on its progress in developing the guidelines no later than January
34 1, 2009.

35 **SECTION 14.** The Department of Environment and Natural Resources shall
36 develop recommendations for water efficiency standards for water-using fixtures in
37 residential and commercial building and in-ground irrigation systems. The Department
38 shall also develop recommendations for efficient metering of water use by local
39 government and large community water systems. The Department shall submit its
40 recommendations to the Commissioner of Insurance, the Chair of the Building Code
41 Council, and the Environmental Review Commission no later than January 1, 2009.

42 **SECTION 15.** Section 5 of this act becomes effective when the act becomes
43 law and applies to local water supply plans due after that date. Sections 1, 3, 6, and 9 of
44 this act become effective October 1, 2008. Section 8 of this act becomes effective

1 December 1, 2008, and applies to offenses committed on or after that date. Section 7 of
2 this act is effective July 1, 2009. All other sections of this act become effective when
3 this act becomes law.