

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 341

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/30/13

Short Title: Amend Interbasin Transfer Law.

(Public)

Sponsors:

Referred to:

March 19, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN EXPEDITED PROCESS FOR THE MODIFICATION OF INTERBASIN TRANSFER CERTIFICATES AND FOR THE ISSUANCE OF INTERBASIN TRANSFER CERTIFICATES IN THE CENTRAL COASTAL PLAIN CAPACITY USE AREA AND THE COASTAL AREA COUNTIES.

The General Assembly of North Carolina enacts:

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

"§ 143-215.22G. Definitions.

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

(1) "River basin" means any of the following river basins designated on the map entitled "Major River Basins and Sub-basins in North Carolina" and filed in the Office of the Secretary of State on 16 April 1991. The term "river basin" includes any portion of the river basin that extends into another state. Any area outside North Carolina that is not included in one of the river basins listed in this subdivision comprises a separate river basin.

- a. 1-1 Broad River.
- b. 2-1 Haw River.
- c. 2-2 Deep River.
- d. 2-3 Cape Fear River.
- e. 2-4 South River.
- f. 2-5 Northeast Cape Fear River.
- g. 2-6 New River.
- h. 3-1 Catawba River.
- i. 3-2 South Fork Catawba River.
- j. 4-1 Chowan River.
- k. 4-2 Meherrin River.
- l. 5-1 Nolichucky River.
- m. 5-2 French Broad River.
- n. 5-3 Pigeon River.
- o. 6-1 Hiwassee River.
- p. 7-1 Little Tennessee River.
- q. 7-2 Tuskasegee (Tuckasegee) River.
- r. 8-1 Savannah River.
- s. 9-1 Lumber River.
- t. 9-2 Big Shoe Heel Creek.



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1	u.	9-3	Waccamaw River.
2	v.	9-4	Shalotte River.
3	w.	10-1	Neuse River.
4	x.	10-2	Contentnea Creek.
5	y.	10-3	Trent River.
6	z.	11-1	New River.
7	aa.	12-1	Albemarle Sound.
8	bb.	13-1	Ocoee River.
9	cc.	14-1	Roanoke River.
10	dd.	15-1	Tar River.
11	ee.	15-2	Fishing Creek.
12	ff.	15-3	Pamlico River and Sound.
13	gg.	16-1	Watauga River.
14	hh.	17-1	White Oak River.
15	ii.	18-1	Yadkin (Yadkin-Pee Dee) River.
16	jj.	18-2	South Yadkin River.
17	kk.	18-3	Uwharrie River.
18	ll.	18-4	Rocky River.

19 (2) "Surface water" means any of the waters of the State located on the land
20 surface that are not derived by pumping from groundwater.

21 (3) "Transfer" means the withdrawal, diversion, or pumping of surface water
22 from one river basin and discharge of all or any part of the water in a river
23 basin different from the origin. However, notwithstanding the basin
24 definitions in G.S. 143-215.22G(1), the following are not transfers under this
25 Part:

26 a. The discharge of water upstream from the point where it is
27 withdrawn.

28 b. The discharge of water downstream from the point where it is
29 withdrawn.

30 (4) "Public water system" means any unit of local government or large
31 community water system subject to the requirements of G.S. 143-355(l).

32 (5) "Mainstem" means that portion of a river having the same name as a river
33 basin defined in subdivision (1) of this section. "Mainstem" does not include
34 named or unnamed tributaries."

35 **SECTION 2.** G.S. 143-215.22L reads as rewritten:

36 **"§ 143-215.22L. Regulation of surface water transfers.**

37 (a) Certificate Required. – No person, without first obtaining a certificate from the
38 Commission, may:

39 (1) Initiate a transfer of 2,000,000 gallons of water or more per ~~day~~day,
40 calculated as a daily average of a calendar month and not to exceed
41 5,000,000 gallons per day in any one day, from one river basin to another.

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

46 (3) Increase an existing transfer of water from one river basin to another above
47 the amount approved by the Commission in a certificate issued under
48 G.S. 162A-7 prior to 1 July 1993.

49 (b) Exception. – Notwithstanding the provisions of subsection (a) of this section, a
50 certificate shall not be required to transfer water from one river basin to another up to the full

1 capacity of a facility to transfer water from one basin to another if the facility was in existence
2 or under construction on 1 July 1993.

3 (c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of intent to
4 file a petition that includes a nontechnical description of the applicant's request and an
5 identification of the proposed water source. Within 90 days after the applicant files a notice of
6 intent to file a petition, the applicant shall hold at least one public meeting in the source river
7 basin upstream from the proposed point of withdrawal, at least one public meeting in the source
8 river basin downstream from the proposed point of withdrawal, and at least one public meeting
9 in the receiving river basin to provide information to interested parties and the public regarding
10 the nature and extent of the proposed transfer and to receive comment on the scope of the
11 environmental documents. Written notice of the public meetings shall be provided at least 30
12 days before the public meetings. At the time the applicant gives notice of the public meetings,
13 the applicant shall request comment on the alternatives and issues that should be addressed in
14 the environmental documents required by this section. The applicant shall accept written
15 comment on the scope of the environmental documents for a minimum of 30 days following
16 the last public meeting. Notice of the public meetings and opportunity to comment on the scope
17 of the environmental documents shall be provided as follows:

18 (1) By publishing notice in the North Carolina Register.

19 (2) By publishing notice in a newspaper of general circulation in:

- 20 a. Each county in this State located in whole or in part of the area of the
21 source river basin upstream from the proposed point of withdrawal.
22 b. Each city or county located in a state located in whole or in part of
23 the surface drainage basin area of the source river basin that also falls
24 within, in whole or in part, the area denoted by one of the following
25 eight-digit cataloging units as organized by the United States
26 Geological Survey:

27 03050105 (Broad River: NC and SC);

28 03050106 (Broad River: SC);

29 03050107 (Broad River: SC);

30 03050108 (Broad River: SC);

31 05050001 (New River: NC and VA);

32 05050002 (New River: VA and WV);

33 03050101 (Catawba River: NC and SC);

34 03050103 (Catawba River: NC and SC);

35 03050104 (Catawba River: SC);

36 03010203 (Chowan River: NC and VA);

37 03010204 (Chowan River: NC and VA);

38 06010105 (French Broad River: NC and TN);

39 06010106 (French Broad River: NC and TN);

40 06010107 (French Broad River: TN);

41 06010108 (French Broad River: NC and TN);

42 06020001 (Hiwassee River: AL, GA, TN);

43 06020002 (Hiwassee River: GA, NC, TN);

44 06010201 (Little Tennessee River: TN);

45 06010202 (Little Tennessee River: TN, GA, and NC);

46 06010204 (Little Tennessee River: NC and TN);

47 03060101 (Savannah River: NC and SC);

48 03060102 (Savannah River: GA, NC, and SC);

49 03060103 (Savannah River: GA and SC);

50 03060104 (Savannah River: GA);

51 03060105 (Savannah River: GA);

- 1 03040203 (Lumber River: NC and SC);
2 03040204 (Lumber River: NC and SC);
3 03040206 (Lumber River: NC and SC);
4 03040207 (Lumber River: NC and SC);
5 03010205 (Albemarle Sound: NC and VA);
6 06020003 (Ocoee River: GA, NC, and TN);
7 03010101 (Roanoke River: VA);
8 03010102 (Roanoke River: NC and VA);
9 03010103 (Roanoke River: NC and VA);
10 03010104 (Roanoke River: NC and VA);
11 03010105 (Roanoke River: VA);
12 03010106 (Roanoke River: NC and VA);
13 06010102 (Watauga River: TN and VA);
14 06010103 (Watauga River: NC and TN);
15 03040101 (Yadkin River: VA and NC);
16 03040104 (Yadkin River: NC and SC);
17 03040105 (Yadkin River: NC and SC);
18 03040201 (Yadkin River: NC and SC);
19 03040202 (Yadkin River: NC and SC).
- 20 c. Each county in this State located in whole or in part of the area of the
21 source river basin downstream from the proposed point of
22 withdrawal.
- 23 d. Any area in the State in a river basin for which the source river basin
24 has been identified as a future source of water in a local water supply
25 plan prepared pursuant to G.S. 143-355(l).
- 26 e. Each county in the State located in whole or in part of the receiving
27 river basin.
- 28 (3) By giving notice by first-class mail or electronic mail to each of the
29 following:
- 30 a. The board of commissioners of each county in this State or the
31 governing body of any county or city that is politically independent
32 of a county in any state that is located entirely or partially within the
33 source river basin of the proposed transfer and that also falls within,
34 in whole or in part, the area denoted by one of the eight-digit
35 cataloging units listed in sub-subdivision b. of subdivision (2) of this
36 subsection.
- 37 b. The board of commissioners of each county in this State or the
38 governing body of any county or city that is politically independent
39 of a county in any state that is located entirely or partially within the
40 receiving river basin of the proposed transfer and that also falls
41 within, in whole or in part, the area denoted by one of the eight-digit
42 cataloging units listed in sub-subdivision b. of subdivision (2) of this
43 subsection.
- 44 c. The governing body of any public water ~~supply~~ system that
45 withdraws water upstream or downstream from the withdrawal point
46 of the proposed transfer.
- 47 d. If any portion of the source or receiving river basins is located in
48 another state, all state water management or use agencies,
49 environmental protection agencies, and the office of the governor in
50 that state upstream or downstream from the withdrawal point of the
51 proposed transfer.

- 1 e. All persons who have registered a water withdrawal or transfer from
2 the proposed source river basin under this Part or under similar law
3 in an another state.
- 4 f. All persons who hold a certificate for a transfer of water from the
5 proposed source river basin under this Part or under similar law in an
6 another state.
- 7 g. All persons who hold a National Pollutant Discharge Elimination
8 System (NPDES) wastewater discharge permit for a discharge of
9 100,000 gallons per day or more upstream or downstream from the
10 proposed point of withdrawal.
- 11 h. To any other person who submits to the applicant a written request to
12 receive all notices relating to the petition.

13 (d) Environmental Documents. – The definitions set out in G.S. 113A-9 apply to this
14 section. The Department shall conduct a study of the environmental impacts of any proposed
15 transfer of water for which a certificate is required under this section. The study shall meet all
16 of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. An
17 environmental assessment shall be prepared for any petition for a certificate under this section.
18 The determination of whether an environmental impact statement shall also be required shall be
19 made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes;
20 except that an environmental impact statement shall be prepared for every proposed transfer of
21 water from one major river basin to another for which a certificate is required under this
22 section. The applicant who petitions the Commission for a certificate under this section shall
23 pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the
24 General Statutes. An environmental impact statement prepared pursuant to this subsection shall
25 include all of the following:

- 26 (1) A comprehensive analysis of the impacts that would occur in the source river
27 basin and the receiving river basin if the petition for a certificate is granted.
- 28 (2) An evaluation of alternatives to the proposed interbasin transfer, including
29 water supply sources that do not require an interbasin transfer and use of
30 water conservation measures.
- 31 (3) A description of measures to mitigate any adverse impacts that may arise
32 from the proposed interbasin transfer.

33 (e) Public Hearing on the Draft Environmental Document. – The Commission shall
34 hold a public hearing on the draft environmental document for a proposed interbasin transfer
35 after giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as
36 provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate
37 where a copy of the environmental document can be reviewed and the procedure to be followed
38 by anyone wishing to submit written comments and questions on the environmental document.
39 The Commission shall prepare a record of all comments and written responses to questions
40 posed in writing. The record shall include complete copies of scientific or technical comments
41 related to the potential impact of the interbasin transfer. The Commission shall accept written
42 comment on the draft environmental document for a minimum of 30 days following the last
43 public hearing. The applicant who petitions the Commission for a certificate under this section
44 shall pay the costs associated with the notice and public hearing on the draft environmental
45 document.

46 (f) Determination of Adequacy of Environmental Document. – The Commission shall
47 not act on any petition for an interbasin transfer until the Commission has determined that the
48 environmental document is complete and adequate. A decision on the adequacy of the
49 environmental document is subject to review in a contested case on the decision of the
50 Commission to issue or deny a certificate under this section.

- 1 (g) Petition. – An applicant for a certificate shall petition the Commission for the
2 certificate. The petition shall be in writing and shall include all of the following:
- 3 (1) A general description of the facilities to be used to transfer the water,
4 ~~including the location and capacity of water intakes, pumps, pipelines, and~~
5 ~~other facilities including current and projected areas to be served by the~~
6 transfer, current and projected capacities of intakes, and other relevant
7 facilities.
 - 8 (2) A description of all the proposed consumptive and nonconsumptive uses of
9 the water to be transferred.
 - 10 (3) A description of the water quality of the source river and receiving river,
11 including information on aquatic habitat for rare, threatened, and endangered
12 species; in-stream flow data for segments of the source and receiving rivers
13 that may be affected by the transfer; and any waters that are impaired
14 pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. §
15 1313(d)).
 - 16 (4) A description of the water conservation measures used by the applicant at
17 the time of the petition and any additional water conservation measures that
18 the applicant will implement if the certificate is granted.
 - 19 (5) A description of all sources of water within the receiving river basin,
20 including surface water impoundments, groundwater wells, reinjection
21 storage, and purchase of water from another source within the river basin,
22 that is a practicable alternative to the proposed transfer that would meet the
23 applicant's water supply needs. The description of water sources shall
24 include sources available at the time of the petition for a certificate and any
25 planned or potential water sources.
 - 26 (6) A description of water transfers and withdrawals registered under
27 G.S. 143-215.22H or included in a local water supply plan prepared pursuant
28 to G.S. 143-355(l) from the source river basin, including transfers and
29 withdrawals at the time of the petition for a certificate and any planned or
30 reasonably foreseeable transfers or withdrawals by a public water system
31 with service area located within the source river basin.
 - 32 (7) A demonstration that the proposed transfer, if added to all other transfers and
33 withdrawals required to be registered under G.S. 143-215.22H or included in
34 any local water supply plan prepared by a public water system with service
35 area located within the source basin pursuant to G.S. 143-355(l) from the
36 source river basin at the time of the petition for a certificate, would not
37 reduce the amount of water available for use in the source river basin to a
38 degree that would impair existing uses, pursuant to the antidegradation
39 policy set out in 40 Code of Federal Regulation § 131.12 (Antidegradation
40 Policy) (1 July 2006 Edition) and the statewide antidegradation policy
41 adopted pursuant thereto, or existing and planned consumptive and
42 nonconsumptive uses of the water in the source river basin. If the proposed
43 transfer would impact a reservoir within the source river basin, the
44 demonstration must include a finding that the transfer would not result in a
45 water level in the reservoir that is inadequate to support existing uses of the
46 reservoir, including recreational uses.
 - 47 (8) The applicant's future water supply needs and the present and reasonably
48 foreseeable future water supply needs for public water systems with service
49 area located within the source river basin. The analysis of future water
50 supply needs shall include agricultural, recreational, and industrial uses, and
51 electric power generation. Local water supply plans prepared pursuant to

1 G.S. 143-355(l) for water systems with service area located within the
2 source river basin shall be used to evaluate the projected future water needs
3 in the source river basin that will be met by public water systems.

4 (9) The applicant's water supply plan prepared pursuant to G.S. 143-355(l). If
5 the applicant's water supply plan is more than two years old at the time of
6 the petition, then the applicant shall include with the petition an updated
7 water supply plan.

8 (10) Any other information deemed necessary by the Commission for review of
9 the proposed water transfer.

10 (h) Settlement Discussions. – Upon the request of the applicant, any interested party, or
11 the Department, or upon its own motion, the Commission may appoint a mediation officer. The
12 mediation officer may be a member of the Commission, an employee of the Department, or a
13 neutral third party but shall not be a hearing officer under subsections (e) or (j) of this section.
14 The mediation officer shall make a reasonable effort to initiate settlement discussions between
15 the applicant and all other interested parties. Evidence of statements made and conduct that
16 occurs in a settlement discussion conducted under this subsection, whether attributable to a
17 party, a mediation officer, or other person shall not be subject to discovery and shall be
18 inadmissible in any subsequent proceeding on the petition for a certificate. The Commission
19 may adopt rules to govern the conduct of the mediation process.

20 (i) Draft Determination. – Within 90 days after the Commission determines that the
21 environmental document prepared in accordance with subsection (d) of this section is adequate
22 or the applicant submits its petition for a certificate, whichever occurs later, the Commission
23 shall issue a draft determination on whether to grant the certificate. The draft determination
24 shall be based on the criteria set out in this section and shall include the conditions and
25 limitations, findings of fact, and conclusions of law that would be required in a final
26 determination. Notice of the draft determination shall be given as provided in subsection (c) of
27 this section.

28 (j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the
29 draft determination as provided in subsection (i) of this section, the Commission shall hold
30 public hearings on the draft determination. At least one hearing shall be held in the affected
31 area of the source river basin, and at least one hearing shall be held in the affected area of the
32 receiving river basin. In determining whether more than one public hearing should be held
33 within either the source or receiving river basins, the Commission shall consider the differing
34 or conflicting interests that may exist within the river basins, including the interests of both
35 upstream and downstream parties potentially affected by the proposed transfer. The public
36 hearings shall be conducted by one or more hearing officers appointed by the Chair of the
37 Commission. The hearing officers may be members of the Commission or employees of the
38 Department. The Commission shall give at least 30 days' written notice of the public hearing as
39 provided in subsection (c) of this section. The Commission shall accept written comment on the
40 draft determination for a minimum of 30 days following the last public hearing. The
41 Commission shall prepare a record of all comments and written responses to questions posed in
42 writing. The record shall include complete copies of scientific or technical comments related to
43 the potential impact of the interbasin transfer. The applicant who petitions the Commission for
44 a certificate under this section shall pay the costs associated with the notice and public hearing
45 on the draft determination.

46 (k) Final Determination: Factors to be Considered. – In determining whether a
47 certificate may be issued for the transfer, the Commission shall specifically consider each of
48 the following items and state in writing its findings of fact and conclusions of law with regard
49 to each item:

50 (1) The necessity and reasonableness of the amount of surface water proposed to
51 be transferred and its proposed uses.

- 1 (2) The present and reasonably foreseeable future detrimental effects on the
2 source river basin, including present and future effects on public, industrial,
3 economic, recreational, and agricultural water supply needs, wastewater
4 assimilation, water quality, fish and wildlife habitat, electric power
5 generation, navigation, and recreation. Local water supply plans for public
6 water systems with service area located within the source river basin
7 prepared pursuant to G.S. 143-355(l) shall be used to evaluate the projected
8 future water needs in the source river basin that will be met by public water
9 systems. Information on projected future water needs for public water
10 systems with service area located within the source river basin that is more
11 recent than the local water supply plans may be used if the Commission
12 finds the information to be reliable. The determination shall include a
13 specific finding as to measures that are necessary or advisable to mitigate or
14 avoid detrimental impacts on the source river basin.
- 15 (3) The cumulative effect on the source major river basin of any water transfer
16 or consumptive water use that, at the time the Commission considers the
17 petition for a certificate is occurring, is authorized under this section, or is
18 projected in any local water supply plan for public water systems with
19 service area located within the source river basin that has been submitted to
20 the Department in accordance with G.S. 143-355(l).
- 21 (4) The present and reasonably foreseeable future beneficial and detrimental
22 effects on the receiving river basin, including present and future effects on
23 public, industrial, economic, recreational, and agricultural water supply
24 needs, wastewater assimilation, water quality, fish and wildlife habitat,
25 electric power generation, navigation, and recreation. Local water supply
26 plans prepared pursuant to G.S. 143-355(l) that affect the receiving river
27 basin shall be used to evaluate the projected future water needs in the
28 receiving river basin that will be met by public water systems. Information
29 on projected future water needs that is more recent than the local water
30 supply plans may be used if the Commission finds the information to be
31 reliable. The determination shall include a specific finding as to measures
32 that are necessary or advisable to mitigate or avoid detrimental impacts on
33 the receiving river basin.
- 34 (5) The availability of reasonable alternatives to the proposed transfer, including
35 the potential capacity of alternative sources of water, the potential of each
36 alternative to reduce the amount of or avoid the proposed transfer, probable
37 costs, and environmental impacts. In considering alternatives, the
38 Commission is not limited to consideration of alternatives that have been
39 proposed, studied, or considered by the applicant. The determination shall
40 include a specific finding as to why the applicant's need for water cannot be
41 satisfied by alternatives within the receiving basin, including unused
42 capacity under a transfer for which a certificate is in effect or that is
43 otherwise authorized by law at the time the applicant submits the petition.
44 The determination shall consider the extent to which access to potential
45 sources of surface water or groundwater within the receiving river basin is
46 no longer available due to depletion, contamination, or the declaration of a
47 capacity use area under Part 2 of Article 21 of Chapter 143 of the General
48 Statutes. The determination shall consider the feasibility of the applicant's
49 purchase of water from other water suppliers within the receiving basin and
50 of the transfer of water from another sub-basin within the receiving major
51 river basin. Except in circumstances of technical or economic infeasibility or

1 adverse environmental impact, the Commission's determination as to
2 reasonable alternatives shall give preference to alternatives that would
3 involve a transfer from one sub-basin to another within the major receiving
4 river basin over alternatives that would involve a transfer from one major
5 river basin to another major river basin.

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

10 (7) If the water to be withdrawn or transferred is stored in a multipurpose
11 reservoir constructed by the United States Army Corps of Engineers, the
12 purposes and water storage allocations established for the reservoir at the
13 time the reservoir was authorized by the Congress of the United States.

14 (8) Whether the service area of the applicant is located in both the source river
15 basin and the receiving river basin.

16 (9) Any other facts and circumstances that are reasonably necessary to carry out
17 the purposes of this Part.

18 (l) Final Determination: Information to be Considered. – In determining whether a
19 certificate may be issued for the transfer, the Commission shall consider all of the following
20 sources of information:

21 (1) The petition.

22 (2) The environmental document prepared pursuant to subsection (d) of this
23 section.

24 (3) All oral and written comment and all accompanying materials or evidence
25 submitted pursuant to subsections (e) and (j) of this section.

26 (4) Information developed by or available to the Department on the water
27 quality of the source river basin and the receiving river basin, including
28 waters that are identified as impaired pursuant to section 303(d) of the
29 federal Clean Water Act (33 U.S.C. § 1313(d)), that are subject to a total
30 maximum daily load (TMDL) limit under subsections (d) and (e) of section
31 303 of the federal Clean Water Act, or that would have their assimilative
32 capacity impaired if the certificate is issued.

33 (5) Any other information that the Commission determines to be relevant and
34 useful.

35 (m) Final Determination: Burden and Standard of Proof; Specific Findings. – The
36 Commission shall grant a certificate for a water transfer if the Commission finds that the
37 applicant has established by a preponderance of the evidence all of the following:

38 (1) The benefits of the proposed transfer outweigh the detriments of the
39 proposed transfer. In making this determination, the Commission shall be
40 guided by the approved environmental document and the policy set out in
41 subsection (t) of this section.

42 (2) The detriments have been or will be mitigated to the maximum degree
43 practicable.

44 (3) The amount of the transfer does not exceed the amount of the projected
45 shortfall under the applicant's water supply plan after first taking into
46 account all other sources of water that are available to the applicant.

47 (4) There are no reasonable alternatives to the proposed transfer.

48 (n) Final Determination: Certificate Conditions and Limitations. – The Commission
49 may grant the certificate in whole or in part, or deny the certificate. The Commission may
50 impose any conditions or limitations on a certificate that the Commission finds necessary to
51 achieve the purposes of this Part including a limit on the period for which the certificate is

1 valid. The conditions and limitations shall include any mitigation measures proposed by the
2 applicant to minimize any detrimental effects within the source and receiving river basins. In
3 addition, the certificate shall require all of the following conditions and limitations:

- 4 (1) A water conservation plan that specifies the water conservation measures
5 that will be implemented by the applicant in the receiving river basin to
6 ensure the efficient use of the transferred water. Except in circumstances of
7 technical or economic infeasibility or adverse environmental impact, the
8 water conservation plan shall provide for the mandatory implementation of
9 water conservation measures by the applicant that equal or exceed the most
10 stringent water conservation plan implemented by a ~~community water~~
11 ~~system, as defined in G.S. 143-355(1),~~ public water system that withdraws
12 water from the source river basin.
- 13 (2) A drought management plan that specifies how the transfer shall be managed
14 to protect the source river basin during drought conditions or other
15 emergencies that occur within the source river basin. Except in
16 circumstances of technical or economic infeasibility or adverse
17 environmental impact, this drought management plan shall include
18 mandatory reductions in the permitted amount of the transfer based on the
19 severity and duration of a drought occurring within the source river basin
20 and shall provide for the mandatory implementation of a drought
21 management plan by the applicant that equals or exceeds the most stringent
22 water conservation plan implemented by a ~~community water system, as~~
23 ~~defined in G.S. 143-355(1),~~ public water system that withdraws water from
24 the source river basin.
- 25 (3) The maximum amount of water that may be ~~transferred on a daily~~
26 ~~basis, transferred, calculated as a daily average of a calendar month,~~ and
27 methods or devices required to be installed and operated that measure the
28 amount of water that is transferred.
- 29 (4) A provision that the Commission may amend a certificate to reduce the
30 maximum amount of water authorized to be transferred whenever it appears
31 that an alternative source of water is available to the certificate holder from
32 within the receiving river basin, including, but not limited to, the purchase of
33 water from another water supplier within the receiving basin or to the
34 transfer of water from another sub-basin within the receiving major river
35 basin.
- 36 (5) A provision that the Commission shall amend the certificate to reduce the
37 maximum amount of water authorized to be transferred if the Commission
38 finds that the applicant's current projected water needs are significantly less
39 than the applicant's projected water needs at the time the certificate was
40 granted.
- 41 (6) A requirement that the certificate holder report the quantity of water
42 transferred during each calendar quarter. The report required by this
43 subdivision shall be submitted to the Commission no later than 30 days after
44 the end of the quarter.
- 45 (7) Except as provided in this subdivision, a provision that the applicant will not
46 resell the water that would be transferred pursuant to the certificate to
47 another public water ~~supply~~-system. This limitation shall not apply in the
48 case of a proposed resale or transfer among public water ~~supply~~-systems
49 within the receiving river basin as part of an interlocal agreement or other
50 regional water supply arrangement, provided that each participant in the
51 interlocal agreement or regional water supply arrangement is a co-applicant

1 for the certificate and will be subject to all the terms, conditions, and
2 limitations made applicable to any lead or primary applicant.

3 (o) Administrative and Judicial Review. – Administrative and judicial review of a final
4 decision on a petition for a certificate under this section shall be governed by Chapter 150B of
5 the General Statutes.

6 (p) Certain Preexisting Transfers. – In cases where an applicant requests approval to
7 increase a transfer that existed on 1 July 1993, the Commission may approve or disapprove
8 only the amount of the increase. If the Commission approves the increase, the certificate shall
9 be issued for the amount of the preexisting transfer plus any increase approved by the
10 Commission. A certificate for a transfer approved by the Commission under G.S. 162A-7 shall
11 remain in effect as approved by the Commission and shall have the same effect as a certificate
12 issued under this Part. A certificate for the increase of a preexisting transfer shall contain all of
13 the conditions and limitations required by subsection (m) of this section.

14 (q) Emergency Transfers. – In the case of water supply problems caused by drought, a
15 pollution incident, temporary failure of a water plant, or any other temporary condition in
16 which the public health, safety, or welfare requires a transfer of water, the Secretary of
17 Environment and Natural Resources may grant approval for a temporary transfer. Prior to
18 approving a temporary transfer, the Secretary shall consult with those parties listed in
19 subdivision (3) of subsection (c) of this section that are likely to be affected by the proposed
20 transfer. However, the Secretary shall not be required to satisfy the public notice requirements
21 of this section or make written findings of fact and conclusions of law in approving a temporary
22 transfer under this subsection. If the Secretary approves a temporary transfer under this
23 subsection, the Secretary shall specify conditions to protect other water users. A temporary
24 transfer shall not exceed six months in duration, but the approval may be renewed for a period
25 of six months by the Secretary based on demonstrated need as set forth in this subsection.

26 (r) Relationship to Federal Law. – The substantive restrictions, conditions, and
27 limitations upon surface water transfers authorized in this section may be imposed pursuant to
28 any federal law that permits the State to certify, restrict, or condition any new or continuing
29 transfers or related activities licensed, relicensed, or otherwise authorized by the federal
30 government. This section shall govern the transfer of water from one river basin to another
31 unless preempted by federal law.

32 (s) Planning Requirements. – When any transfer for which a certificate was issued
33 under this section equals or exceeds eighty percent (80%) of the maximum amount authorized
34 in the certificate, the applicant shall submit to the Department a detailed plan that specifies how
35 the applicant intends to address future foreseeable water needs. If the applicant is required to
36 have a local water supply plan, then this plan shall be an amendment to the local water supply
37 plan required by G.S.143-355(l). When the transfer equals or exceeds ninety percent (90%) of
38 the maximum amount authorized in the certificate, the applicant shall begin implementation of
39 the plan submitted to the Department.

40 (t) Statement of Policy. – It is the public policy of the State to maintain, protect, and
41 enhance water quality within North Carolina. It is the public policy of this State that the
42 reasonably foreseeable future water needs of a public water system with its service area located
43 primarily in the receiving river basin are subordinate to the reasonably foreseeable future water
44 needs of a public water system with its service area located primarily in the source river basin.
45 Further, it is the public policy of the State that the cumulative impact of transfers from a source
46 river basin shall not result in a violation of the antidegradation policy set out in 40 Code of
47 Federal Regulations § 131.12 (1 July 2006 Edition) and the statewide antidegradation policy
48 adopted pursuant thereto.

49 ~~(u) Renewal of Certificate. – A petition to extend or renew a certificate shall be treated~~
50 ~~as a new petition.~~

- 1 (v) Modification of Certificate. – A certificate may be modified as provided in this
2 subsection.
- 3 (1) The Commission or the Department may make any of the following
4 modifications to a certificate after providing electronic notice to persons who
5 have identified themselves in writing as interested parties:
- 6 a. Correction of typographical errors.
7 b. Clarification of existing conditions or language.
8 c. Updates, requested by the certificate holder, to a conservation plan,
9 drought management plan, or compliance and monitoring plan.
10 d. Modifications requested by the certificate holder to reflect altered
11 requirements due to the amendment of this section.
- 12 (2) A person who holds a certificate for an interbasin transfer of water may
13 request that the Commission modify the certificate. The request shall be
14 considered and a determination made according to the following procedures:
- 15 a. The certificate must have been issued pursuant to
16 G.S. 162A-7, 143-215.22I, or 143-215.22L and the certificate holder
17 must be in substantial compliance with the certificate.
- 18 b. The certificate holder shall file a notice of intent to file a request for
19 modification that includes a nontechnical description of the
20 certificate holder's request and identification of the proposed water
21 source.
- 22 c. The certificate holder shall prepare an environmental document
23 pursuant to subsection (d) of this section, except that an
24 environmental impact statement shall not be required for the
25 modification of a certificate unless it would otherwise be required by
26 Article 1 of Chapter 113A of the General Statutes.
- 27 d. Upon determining that the documentation submitted by the certificate
28 holder is adequate to satisfy the requirements of this subsection, the
29 Department shall publish a notice of the request for modification in
30 the North Carolina Register and shall hold a public hearing at a
31 location convenient to both the source and receiving river basins. The
32 Department shall provide written notice of the request for the
33 modification and the public hearing in the Environmental Bulletin, a
34 newspaper of general circulation in the source river basin, a
35 newspaper of general circulation in the receiving river basin, and as
36 provided in subdivision (3) of subsection (c) of this section. The
37 certificate holder who petitions the Commission for a modification
38 under this subdivision shall pay the costs associated with the notice
39 and public hearing.
- 40 e. The Department shall accept comments on the requested
41 modification for a minimum of 30 days following the public hearing.
- 42 f. The Commission or the Department may require the certificate
43 holder to provide any additional information or documentation it
44 deems reasonably necessary in order to make a final determination.
- 45 g. The Commission shall make a final determination whether to grant
46 the requested modification based on the factors set out in subsection
47 (k) of this section, information provided by the certificate holder, and
48 any other information the Commission deems relevant. The
49 Commission shall state in writing its findings of fact and conclusions
50 of law with regard to each factor.

- 1 h. The Commission shall grant the requested modification if it finds that
2 the certificate holder has established by a preponderance of the
3 evidence that the requested modification satisfies the requirements of
4 subsection (m) of this section. The Commission may grant the
5 requested modification in whole or in part, or deny the request, and
6 may impose such limitations and conditions on the modified
7 certificate as it deems necessary and relevant to the modification.
8 i. The Commission shall not grant a request for modification if the
9 modification would result in the transfer of water to an additional
10 major river basin.
11 j. The Commission shall not grant a request for modification if the
12 modification would be inconsistent with the December 3, 2010
13 Settlement Agreement entered into between the State of North
14 Carolina, the State of South Carolina, Duke Energy Carolinas, and
15 the Catawba River Water Supply Project.

16 (w) Requirements for Coastal Counties. – A petition for a certificate to transfer surface
17 water to supplement ground water supplies in the 15 counties designated as the Central
18 Capacity Use Area under 15A NCAC 2E .0501, or to transfer surface water withdrawn from
19 the mainstem of a river to provide service to one of the coastal area counties designated
20 pursuant to G.S. 113A-103, shall be considered and a determination made according to the
21 following procedures:

- 22 (1) The applicant shall file a notice of intent that includes a nontechnical
23 description of the applicant's request and identification of the proposed water
24 source.
25 (2) The applicant shall prepare an environmental document pursuant to
26 subsection (d) of this section, except that an environmental impact statement
27 shall not be required unless it would otherwise be required by Article 1 of
28 Chapter 113A of the General Statutes.
29 (3) Upon determining that the documentation submitted by the applicant is
30 adequate to satisfy the requirements of this subsection, the Department shall
31 publish a notice of the petition in the North Carolina Register and shall hold
32 a public hearing at a location convenient to both the source and receiving
33 river basins. The Department shall provide written notice of the petition and
34 the public hearing in the Environmental Bulletin, a newspaper of general
35 circulation in the source river basin, a newspaper of general circulation in
36 the receiving river basin, and as provided in subdivision (3) of subsection (c)
37 of this section. The applicant who petitions the Commission for a certificate
38 under this subdivision shall pay the costs associated with the notice and
39 public hearing.
40 (4) The Department shall accept comments on the petition for a minimum of 30
41 days following the public hearing.
42 (5) The Commission or the Department may require the applicant to provide any
43 additional information or documentation it deems reasonably necessary in
44 order to make a final determination.
45 (6) The Commission shall make a final determination whether to grant the
46 certificate based on the factors set out in subsection (k) of this section,
47 information provided by the applicant, and any other information the
48 Commission deems relevant. The Commission shall state in writing its
49 findings of fact and conclusions of law with regard to each factor.
50 (7) The Commission shall grant the certificate if it finds that the applicant has
51 established by a preponderance of the evidence that the petition satisfies the

1 requirements of subsection (m) of this section. The Commission may grant
2 the certificate in whole or in part, or deny the request, and may impose such
3 limitations and conditions on the certificate as it deems necessary and
4 relevant."

5 **SECTION 3.(a)** Section 1 of S.L. 2011-298 reads as rewritten:

6 "SECTION 1. Notwithstanding G.S. 143-215.22I and G.S. 143-215.22L, a certificate
7 issued pursuant to G.S. 143-215.22L is not required for a transfer of water from one river basin
8 to another river basin to supplement groundwater supplies in the 15 counties designated as the
9 Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501."

10 **SECTION 3.(b)** Section 4 of S.L. 2011-298 reads as rewritten:

11 "SECTION 4.(a) This act is effective when it becomes law and applies to any transfer of
12 water from one river basin to another river basin to supplement groundwater supplies in the 15
13 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501
14 initiated on or after August 31, 2007.

15 "SECTION 4.(b) Section 1 of this act shall expire if the cumulative volume of water
16 ~~transfers~~ transfers, by public water supply systems sharing a single intake, from one river basin
17 to another river basin to supplement groundwater supplies in the 15 counties designated as the
18 Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated on or after
19 August 31, 2007, by any person that does not hold a certificate for an interbasin transfer on or
20 before the effective date of this act, exceeds 8,000,000 gallons per day.

21 "SECTION 4.(c) Any transfer of water from one river basin to another river basin to
22 supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain
23 Capacity Use Area under 15A NCAC 2E .0501 initiated while Section 1 of this act is effective
24 shall not require certification pursuant to G.S. 143-215.22L upon expiration of Section 1 of this
25 act."

26 **SECTION 3.(c)** Section 7 of S.L. 2007-518, as amended by Section 4 of S.L.
27 2010-155 and Section 2 of S.L. 2011-298, reads as rewritten:

28 ~~"SECTION 7.(a) Except as provided in subsections (b), (c) and (d) of this section, this~~
29 **SECTION 7.** This act becomes effective when it becomes law and applies to any petition for a
30 certificate for a transfer of surface water from one river basin to another river basin first made
31 on or after that date.

32 ~~"SECTION 7.(c) For purposes of this subsection, "isolated river basin" means each of the~~
33 ~~following river basins set out in G.S. 143-215.22G(1):~~

34	g.	2-6	New River.
35	v.	9-4	Shalotte River.
36	aa.	12-1	Albemarle Sound.
37	hh.	17-1	White Oak River.

38 For a petition for a certificate for transfer of surface water from a river basin to an isolated
39 river basin, this act becomes effective 1 July 2020. Prior to 1 July 2020, a petition for a
40 certificate for transfer of surface water from a river basin to an isolated river basin shall be
41 considered and acted upon by the Environmental Management Commission pursuant to the
42 procedures and standards set out in G.S. 143-215.22I on 1 July 2007.

43 ~~"SECTION 7.(d) Notwithstanding subsection (c) of this section, an applicant for a~~
44 ~~certificate for transfer of surface water from a river basin to an isolated river basin may request~~
45 ~~that the applicant be subject to the certification process that would apply if the transfer was not~~
46 ~~into an isolated river basin."~~

47 **SECTION 4.** This act is effective when it becomes law.