

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 348
SENATE BILL 875

AN ACT TO REGULATE INTERBASIN TRANSFERS.

The General Assembly of North Carolina enacts:

Section 1. Part 2A of Article 21 of Chapter 143 of the General Statutes reads as rewritten:

"Part 2A. Registration of Water Withdrawals and ~~Transfers~~. Transfers; Regulation of Surface Water Transfers.

"§ 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:
 - 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.
 - u. 9-3 Waccamaw River.
 - v. 9-4 Shallotte River.
 - w. 10-1 Neuse River.

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

- (2) 'Surface water' means any of the waters of the State located on the land surface that are not derived by pumping from groundwater.
- (3) 'Transfer' means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin. However, notwithstanding the basin definitions in G.S. 143-215.22G(1), the following are not transfers under this Part:
 - a. The discharge of water upstream from the point where it is withdrawn.
 - b. The discharge of water downstream from the point where it is withdrawn.

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

(a) Any person who withdraws 1,000,000 gallons per day or more of water from the surface waters of the State or who transfers 1,000,000 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 millions 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.

(b) Any person initiating a new surface water withdrawal or transfer of 1,000,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than six 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.

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

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

- (1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.
- (2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2,000,000 gallons or more per day.
- (3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993.

(c) An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include the following:

- (1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.
- (2) A description of the proposed uses of the water to be transferred.
- (3) The water conservation measures to be used by the applicant to assure efficient use of the water and avoidance of waste.
- (4) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(d) Upon receipt of the petition, the Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice of the hearing as follows:

- (1) By publishing notice in the North Carolina Register.
- (2) By publishing notice in a newspaper of general circulation in the area of the river basin downstream from the point of withdrawal.
- (3) By giving notice by first-class mail to each of the following:
 - a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.
 - b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.
 - c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.
 - d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.

e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.

(e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.

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

- (1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.
- (2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation.
- (3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.
- (4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.
- (5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.
- (6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.
- (7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(g) A certificate shall be granted for a water transfer unless the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that the potential detriments of the proposed transfer outweigh the benefits of the transfer.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall indicate

the maximum amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

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

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

Sec. 2. G.S. 143-215.6A(a) reads as rewritten:

"(a) A civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Secretary against any person who:

- (1) Violates any classification, standard, limitation, or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.
- (2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit or any other permit or certification issued pursuant to authority conferred by this Part, including pretreatment permits issued by local governments and laboratory certifications.
- (3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.
- (4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Article or G.S. 143-355(k) relating to water use information.

- (5) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.
- (6) Violates a rule of the Commission implementing this ~~Part~~ Part, Part 2A of this Article, or G.S. 143-355(k).
- (7) Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.
- (8) Violates the offenses set out in G.S. 143-215.6B.
- (9) Is required, but fails, to apply for or to secure a certificate required by G.S. 143-215.22I, or who violates or fails to act in accordance with the terms, conditions, or requirements of the certificate."

Sec. 3. G.S. 143B-282(a)(2) reads as rewritten:

- "(2) The Environmental Management Commission shall adopt rules:
- a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107;
 - b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215;
 - c. To implement water and air quality reporting pursuant to G.S. 143-215.68;
 - d. To be applied in capacity use areas pursuant to G.S. 143-215.14;
 - e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.20;
 - f. Repealed by Session Laws 1983, c. 222, s. 3, effective April 25, 1983;
 - g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.
 - h. Governing underground tanks used for the storage of hazardous substances or oil pursuant to Article 21 or Article 21A of Chapter 143 of the General Statutes.
 - i. To implement the provisions of Part 2A of Article 21 of Chapter 143 of the General Statutes."

Sec. 4. G.S. 153A-285 is repealed.

Sec. 5. G.S. 153A-287 is repealed.

Sec. 6. G.S. 162A-7 is repealed.

Sec. 7. This act becomes effective January 1, 1994. However, a certificate shall not be required under the provisions of this act for any project that the Department of Administration has determined to have completed the review process under the North Carolina Environmental Policy Act of 1971, Article 1 of Chapter 113A of the General Statutes, prior to January 1, 1994.

In the General Assembly read three times and ratified this the 15th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives