

## **Chapter 77.**

### **Rivers, Creeks, and Coastal Waters.**

#### **Article 1.**

##### **Commissioners for Opening and Clearing Streams.**

###### **§ 77-1. County commissioners to appoint commissioners.**

Where any inland river or stream runs through the county, or is a line of their county, the boards of commissioners of the several counties may appoint commissioners to view such river or stream, and make out a scale of the expense of labor with which the opening and clearing thereof will be attended; and if the same is deemed within the ability of the county, and to be expedient, they may appoint and authorize the commissioners to proceed in the most expeditious manner in opening and clearing the same. (Code, s. 3706; 1887, c. 370; Rev., s. 5297; C.S., s. 7363.)

###### **§ 77-2. Flats and appurtenances procured.**

The board of county commissioners appointing the commissioners may direct them to purchase or hire a flat with a windlass and the appurtenances necessary to remove loose rock and other things, which may by such means be more easily removed, and allow the same to be paid for out of the county funds. (1785, c. 242, s. 2; R.C., c. 100, s. 3; Code, s. 3708; Rev., s. 5299; C. S., s. 7365.)

###### **§ 77-3. Laid off in districts; passage for fish.**

The board of county commissioners may appoint commissioners to examine and lay off the rivers and creeks in their county; and where the stream is a boundary between two counties, may lay off the same on their side; in doing so they shall allow three fourths for the owners of the streams for erecting slopes, dams and stands; and one-fourth part, including the deepest part, they shall leave open for the passage of fish, marking and designating the same in the best manner they can; and if mills are built across such stream, and slopes may be necessary, the commissioners shall lay off such slopes, and determine the length of time they shall be kept open; and such commissioners shall return to their respective boards of county commissioners a plan of such slopes, dams, and other parts of streams viewed and surveyed. (1787, c. 272, s. 1; R.C., c. 100, s. 5; Code, s. 3710; Rev., s. 5301; C.S., s. 7367.)

###### **§ 77-4. Gates and slopes on milldams.**

The commissioners appointed by the board of county commissioners to examine and lay off the rivers and creeks within the county, or where the stream is a boundary between counties, shall have power to lay off gates, with slopes attached thereto, upon any milldam built across such stream, of such dimensions and construction as shall be sufficient for the convenient passage of floating logs and other timber, in cases where it may be deemed necessary by the said board of county commissioners; and they shall return to the board of county commissioners appointing them a plan of such gates, slopes, and dams in writing. (1858-9, c. 26, s. 1; Code, s. 3712; Rev., s. 5302; C.S., s. 7368.)

###### **§ 77-5. Owner to maintain gate and slope.**

Upon the confirmation of the report made by the commissioners, and notice thereof given to the owner or keeper of said mill, it shall be his duty forthwith to construct, and thereafter to keep and maintain, at his expense, such gate and slope, for the use of persons floating logs and other timber as aforesaid, so long as said dam shall be kept up, or until otherwise ordered by the board of county commissioners. (1858-9, c. 26, s. 2; Code, s. 3713; Rev., s. 5303; C.S., s. 7369.)

**§ 77-6. Gates and slopes discontinued.**

The commissioners appointed as aforesaid, at any time that they may deem such gate and slope no longer necessary, may report the fact to their respective boards of county commissioners, and said boards of county commissioners may order the same to be discontinued. (1858-9, c. 26, s. 3; Code, s. 3714; Rev., s. 5304; C.S., s. 7370.)

**§ 77-7. Failure of owner of dam to keep gates, etc.**

If any owner or keeper of a mill, whose dam is across any stream, shall fail to build a gate and slope therein, or thereafter to keep and maintain the same as required by commissioners to lay off rivers and creeks, he shall be guilty of a Class 1 misdemeanor. (1858-9, c. 26, s. 4; Code, s. 3715; Rev., s. 3383; C.S., s. 7371; 1993, c. 539, s. 579; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 77-8. Repairing breaks.**

Wherever any stream of water which is used to propel machinery shall be by freshet or otherwise diverted from its usual channel so as to impair its power as used by any person, such person shall have power to repair the banks of such stream at the place where the break occurs, so as to cause the stream to return to its former channel. (1879, c. 53, s. 1; Code, s. 3716; Rev., s. 5305; C.S., s. 7372.)

**§ 77-9. Entry upon lands of another to make repairs.**

In case the break occurs on the lands of a different person from the one utilizing the stream, the person utilizing the stream shall have power to enter upon the lands of such other person to repair the same, and in case such person objects, the clerk of the superior court of the county in which the break occurs shall, upon application of the party utilizing the stream, appoint three disinterested freeholders, neither of whom shall be related to either party, who after being duly sworn shall lay off a road, if necessary, by which said person may pass over the lands of such other person to the break and repair said break from time to time as often as may be necessary, so as to cause the stream to return to its original channel, and assess any damage which may thereby be occasioned: Provided, the party upon whose land the work is proposed to be done shall have five days' notice in writing served on him or left at his place of residence: Provided further, that it shall be the duty of said commissioners to assess the damage of anyone on whose land the road shall be laid off to be paid by the applicant for said road: Provided, also, that either party shall have the right of appeal to the superior court. (1879, c. 53, s. 2; Code, s. 3717; Rev., s. 5306; C.S., s. 7373.)

**§ 77-10. Draws in bridges.**

Whenever the navigation of any river or creek which, in the strict construction of law, might not be considered a navigable stream, shall be obstructed by any bridge across said stream, except

those under the supervision and control of the Board of Transportation, it shall be lawful for any person owning any boat plying on said stream to make a draw in such bridge sufficient for the passage of such boat; and the party owning such boat shall construct and maintain such draw at his own expense, and shall use the same in such manner as to delay travel as little as possible. (1879, c. 279, ss. 1, 2; Code, s. 3719; Rev., s. 5307; C.S., s. 7374; 1965, c. 493; 1973, c. 507, s. 5.)

**§ 77-11. Public landings.**

The board of county commissioners may establish public landings on any navigable stream or watercourse in the county upon petition in writing. Unless it shall appear to the board that the person owning the lands sought to be used for a public landing shall have had 20 days' notice of the intention to file such petition, the same shall be filed in the office of the clerk of the board until the succeeding meeting of the board, and notice thereof shall be posted during the same period at the courthouse door. At said meeting of the board, the allegations of the petition shall be heard, and if sufficient reason be shown, the board shall order the establishment of the public landing. The board shall at that time initiate proceedings under the Chapter entitled Eminent Domain. (1784, c. 206, s. 4; 1789, c. 303; 1790, c. 331, s. 3; 1793, c. 386; 1813, c. 862, s. 1; 1822, c. 1139, s. 2; R.C., c. 60, s. 1; c. 101, ss. 2, 4; 1869, c. 20, s. 8, subsec. 29; 1872-3, c. 189, s. 3; 1879, c. 82, s. 9; Code, ss. 2038, 2040, 2982; Rev., ss. 2684, 2685, 5308; 1917, c. 284, s. 33; 1919, c. 68; C.S., ss. 3667, 3762, 3763, 7375; 1981, c. 919, s. 10.)

Article 2.

Obstructions in Streams.

**§ 77-12. Obstructing passage of boats.**

If any person shall obstruct the free passage of boats along any river or creek, by felling trees, or by any other means whatever, he shall be guilty of a Class 1 misdemeanor. (1796, c. 460, s. 2; R.C., c. 100, s. 6; Code, s. 3711; Rev., s. 3561; C.S., s. 7376; 1993, c. 539, s. 580; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 77-13. Obstructing streams a misdemeanor.**

If any person, firm, or corporation shall fell any tree, or put any obstruction, except for the purposes of utilizing water as a motive power, in any branch, creek, stream, or other natural passage for water, whereby the natural flow of water through such passage is lessened or retarded, or whereby the navigation of such stream may be impeded, delayed, or prevented, the person, firm, or corporation so offending shall be guilty of a Class 2 misdemeanor. In addition to any fine or imprisonment imposed, the court may, in its discretion, order the person, firm, or corporation so offending to remove the obstruction and restore the affected waterway to an undisturbed condition, or allow authorized employees of the enforcing agency to enter upon the property and accomplish the removal of the obstruction and the restoration of the waterway to an undisturbed condition, in which case the costs of the removal and restoration shall be paid to the enforcing agency by the offending party. Nothing in this section shall prevent the erection of fish dams or hedges

across any stream which do not extend across more than two thirds of its width at the point of obstruction. If the fish dams or hedges extend more than two thirds of the width of any stream, the said penalties shall attach. This section may be enforced by marine fisheries inspectors and wildlife protectors. Within the bounds of any county or municipality, this section may also be enforced by any law enforcement officer having territorial jurisdiction, or by the county engineer. This section may also be enforced by specially commissioned forest law-enforcement officers of the Department of Agriculture and Consumer Services for offenses occurring in woodlands. For purposes of this section, the term "woodlands" means all forested areas, including swamp and timber lands, cutover lands, and second-growth stands in previously cultivated sites. (1872-3, c. 107, ss. 1, 2; Code, s. 1123; Rev., s. 3559; C.S., s. 7377; 1975, c. 509; 1977, c. 771, s. 4; 1979, c. 493, s. 1; 1987, c. 641, s. 12; 1989, c. 727, s. 218(19); 1991, c. 152, s. 1; 1993, c. 539, s. 581; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.119(a); 2013-155, s. 3.)

#### **§ 77-14. Obstructions in streams and drainage ditches.**

If any person, firm or corporation shall fell any tree or put any slabs, stumpage, sawdust, shavings, lime, refuse or any other substances in any creek, stream, river or natural or artificial drainage ravine or ditch, or in any other outlet which serves to remove water from any land whatsoever whereby the drainage of said land is impeded, delayed or prevented, the person, firm or corporation so offending shall be guilty of a Class 2 misdemeanor: Provided, however, nothing herein shall prevent the construction of any dam or weir not otherwise prohibited by any valid local or State statute or regulation. In addition to any fine or imprisonment imposed, the court may, in its discretion, order the person, firm, or corporation so offending to remove the obstruction and restore the affected waterway to an undisturbed condition, or allow authorized employees of the enforcing agency to enter upon the property and accomplish the removal of the obstruction and the restoration of the waterway to an undisturbed condition, in which case the costs of the removal and restoration shall be paid to the enforcing agency by the offending party. This section may be enforced by marine fisheries inspectors and wildlife protectors. Within the boundaries of any county or municipality this section may also be enforced by any law enforcement officer having territorial jurisdiction, or by the county engineer. This section may also be enforced by specially commissioned forest law-enforcement officers of the Department of Agriculture and Consumer Services for offenses occurring in woodlands. For purposes of this section, the term "woodlands" means all forested areas, including swamp and timber lands, cutover lands and second-growth stands on previously cultivated sites. (1953, c. 1242; 1957, c. 524; 1959, cc. 160, 1125; 1961, c. 507; 1969, c. 790, s. 1; 1975, c. 509; 1977, c. 771, s. 4; 1979, c. 493, s. 1; 1987, c. 641, s. 13; 1989, c. 727, s. 218(20); 1991, c. 152, s. 2; 1993, c. 539, s. 582; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.119(a); 2013-155, s. 4.)

**§§ 77-15 through 77-19. Reserved for future codification purposes.**

Article 3.

Lands Adjoining Coastal Waters.

**§ 77-20. Seaward boundary of coastal lands.**

(a) The seaward boundary of all property within the State of North Carolina, not owned by the State, which adjoins the ocean, is the mean high water mark. Provided, that this section shall not apply where title below the mean high water mark is or has been specifically granted by the State.

(b) Notwithstanding any other provision of law, no agency shall issue any rule or regulation which adopts as the seaward boundary of privately owned property any line other than the mean high water mark. The mean high water mark also shall be used as the seaward boundary for determining the area of any property when such determination is necessary to the application of any rule or regulation issued by any agency.

(c) For purposes of this Article, "agency" means any part, branch, division, or instrumentality of the State; any county, municipality, or special district; or any commission, committee, council, or board established by the State, or by any county or municipality.

(d) The public having made frequent, uninterrupted, and unobstructed use of the full width and breadth of the ocean beaches of this State from time immemorial, this section shall not be construed to impair the right of the people to the customary free use and enjoyment of the ocean beaches, which rights remain reserved to the people of this State under the common law and are a part of the common heritage of the State recognized by Article XIV, Section 5 of the Constitution of North Carolina. These public trust rights in the ocean beaches are established in the common law as interpreted and applied by the courts of this State.

(e) As used in this section, "ocean beaches" means the area adjacent to the ocean and ocean inlets that is subject to public trust rights. This area is in constant flux due to the action of wind, waves, tides, and storms and includes the wet sand area of the beach that is subject to regular flooding by tides and the dry sand area of the beach that is subject to occasional flooding by tides, including wind tides other than those resulting from a hurricane or tropical storm. The landward extent of the ocean beaches is established by the common law as interpreted and applied by the courts of this State. Natural indicators of the landward extent of the ocean beaches include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line. (1979, c. 618, s. 2; 1998-225, s. 5.1.)

**§§ 77-21 through 77-29. Reserved for future codification purposes.**

Article 4.

Lake Wylie Marine Commission.

**§ 77-30. Definitions.**

For purposes of this article:

- (1) "Board" means the board of commissioners of Mecklenburg and Gaston Counties, North Carolina and the county council of York County, South Carolina.
- (2) "Commission" means the Lake Wylie Marine Commission or its governing board as the case may be.
- (3) "Commissioner" means a member of the governing board of the Lake Wylie Marine Commission.
- (4) "Three counties" means Mecklenburg and Gaston Counties, North Carolina, and York County, South Carolina.
- (5) "Joint ordinance" means an ordinance substantially identical in content adopted separately by the board in each of the three counties.
- (6) "Lake Wylie" means the impounded body of water along the Catawba River in the three counties extending from the base of Mountain Island Dam downstream to the Catawba Dam.
- (7) "Shoreline area" means, except as restricted by a joint ordinance, the area within the three counties lying within 1000 feet of the mean high-water line (570 feet) on Lake Wylie. In addition, the shoreline area includes all islands within Lake Wylie and all peninsulas extending into the waters of Lake Wylie.
- (8) "Wildlife Commission" means the North Carolina Wildlife Resources Commission and the South Carolina Department of Wildlife and Marine Resources. (1987, c. 683, s. 2; 1987 (Reg. Sess., 1988), c. 897, s. 1.)

**§ 77-31. Authority to create and dissolve commission.**

The three counties may by joint ordinance create the Lake Wylie Marine Commission. Upon its creation, the Commission has the powers, duties and responsibilities conferred upon it by joint ordinance subject to the laws of each applicable state. The provisions of any joint ordinance may be modified, amended, or rescinded by a subsequent joint ordinance. A county may unilaterally withdraw from participation as required by any joint ordinance or the provisions of this article, once the commission has been created. Any county may, by ordinance, unilaterally withdraw from the commission at the end of any budget period upon ninety days prior written notice. Upon the effectuation of the withdrawal, the Commission is dissolved and all property of the Commission must be distributed to or divided among the three counties and any other public agency or agencies serving the Lake Wylie area in a manner considered equitable by the Commission by resolution adopted prior to dissolution. (1987, c. 683, s. 2; 1987 (Reg. Sess., 1988), c. 897, s. 2.)

**§ 77-32. Governing body.**

Upon its creation, the commission shall have a governing board of seven. Except as otherwise provided for the first four-year period, each commissioner shall serve either a three or a four-year term, with commissioners to serve overlapping terms so that two commissioner appointments are made each year. Upon creation of the Commission, the Board of Commissioners of Gaston County shall appoint three commissioners and the boards of the other two counties shall appoint two each. These initial appointees shall serve until September thirtieth following their appointment. Thereafter, appointments must be made for terms beginning each October first by the respective boards of the three counties as follows:

- (1) First Year: Three commissioners from Gaston, one appointed for a one-year term, one appointed for a three-year term and one appointed for a four-year term; two commissioners from Mecklenburg, one appointed for a one-year term and one appointed for a two-year term; two commissioners from York, one appointed for a two-year term and one appointed for a three-year term.
- (2) Second Year: Two commissioners from Mecklenburg, one appointed for a three-year term and one appointed for a four-year term.
- (3) Third Year: Two commissioners from York, one appointed for a three-year term and one appointed for a four-year term.
- (4) Fourth Year: Two commissioners from Gaston, one appointed for a three-year term and one appointed for a four-year term.
- (5) Fifth and Succeeding Years: Appointments for one three-year and one four-year term in rotation by county in the order set out above.

On the death of a commissioner, resignation, incapacity or inability to serve, as determined by the board appointing the commissioner, or removal of the commissioner for cause, as determined by the board appointing the commissioner, the board affected may appoint another commissioner to fill the unexpired term. (1987, c. 683, s. 3; 1987 (Reg. Sess., 1988), c. 897, s. 3.)

#### **§ 77-33. Compensation and expenses of commissioners, consultants and staff.**

The joint ordinance shall state the terms relating to compensation to commissioners, if any, compensation of consultants and staff members employed by the Commission, and reimbursement of expenses incurred by commissioners, consultants, and employees. The Commission is governed by these budgetary and accounting procedures as may be specified by joint ordinance. (1987, c. 683, s. 4; 1987 (Reg. Sess., 1988), c. 897, s. 4.)

#### **§ 77-34. Meetings and election of officers; rules and regulations.**

Upon creation of the Commission, its governing board shall meet at a time and place agreed upon by the boards of the three counties concerned. The commissioners shall elect a chairman and such officers as they may choose. All officers shall serve one-year terms. The governing board shall adopt such rules and regulations as it may consider necessary, not inconsistent with the provisions of this act or of any joint ordinance or the laws of the appropriate state, for the proper discharge of its duties and for the governance of the commission. In order to conduct business, a quorum must be present. The chairman may adopt those committees as may be authorized by such rules and regulations. The commission shall meet regularly at those times and places as may be specified in its rules and regulations or in any joint ordinance. However, meetings of the commission must be held in all three counties on a rotating basis so that an equal number of meetings is held in each county. Special meetings may be called as specified in the rules and regulations. As to meetings held within South Carolina, the provisions of Chapter 4 of Title 30, Code of Laws of South Carolina, 1976, (Freedom of Information Act) apply. As to meetings held within North Carolina, the provisions of that State's Open Meetings Law, Article 33C of Chapter 143 of the North Carolina General Statutes apply. (1987, c. 683, s. 5; 1987 (Reg. Sess., 1988), c. 897, s. 5.)

#### **§ 77-35. Powers and duties.**

(a) Within the limits of funds available to it and subject to the provisions of this act and of any joint ordinance the Commission may:

- (1) Hire and fix the compensation of permanent and temporary employees and staff as it may consider necessary in carrying out its duties;
- (2) Contract with consultants for such services as it may require;
- (3) Contract with the States of North Carolina, South Carolina, or the federal government, or any agency, department, or subdivision of them for property or services as may be provided to or by these agencies and carry out the provisions of these contracts;
- (4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern and carry out the provisions of contracts;
- (5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vessels, vehicles, firearms, uniforms, and other supplies and equipment necessary or desirable for carrying out the duties imposed in or under the authority of this article;
- (6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public safety in Lake Wylie and its shoreline area, or protection of property in the shoreline area subject however to the provisions of Title 50 Code of Laws of South Carolina, 1976, or regulations promulgated under that title as to property within South Carolina, and Chapter 113 of the General Statutes of North Carolina and rules promulgated under that Chapter as to property within North Carolina.

(b) The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal government or its agencies or subdivisions, by the States of North Carolina or South Carolina or their agencies or subdivisions, or by private and civic sources.

(c) The governing bodies of the three counties may appropriate funds to the Commission out of surplus funds or funds derived from nontax sources. They may appropriate funds out of tax revenues and may also levy annually taxes for the payments of such appropriation as a special purpose, in addition to any allowed by the Constitution or in North Carolina as provided by G.S. 153A-149.

(d) The Commission is subject to those audit requirements as may be specified in any joint ordinance.

(e) In carrying out its duties and either in addition to or in lieu of exercising various provisions of the above authorization, the Commission may, with the agreement of the governing board of the county concerned, utilize personnel and property of or assign responsibilities to any officer or employee of any of the three counties. Such contribution in kind, if substantial, may with the agreement of the other two counties be considered to substitute in whole or in part for the financial contribution required of that county in support of the Commission.

(f) Unless otherwise specified by joint ordinance, each of the three counties shall annually contribute an equal financial contribution to the Commission in an amount appropriate to support



the activities of the Commission in carrying out its duties. (1987, c. 683, s. 6; 1987 (Reg. Sess., 1988), c. 897, s. 6.)

**§ 77-36. Filing and distribution of certified single ordinance text; effective date of ordinance and admissibility of evidence.**

(a) A copy of the joint ordinance creating the Commission and of any joint ordinance amending or repealing the joint ordinance creating the Commission must be filed with the Executive Director of the North Carolina Wildlife Resources Commission and the Executive Director of the South Carolina Department of Wildlife and Marine Resources. When the Executive Directors receive ordinances that are in substance identical from all three counties concerned, they, in accordance with procedures agreed upon, shall, within 10 days, certify this fact and distribute a certified single ordinance text to the following:

- (1) The Secretary of State of North Carolina and the Secretary of State of South Carolina;
- (2) The clerk to the governing board of each of the three counties;
- (3) The clerk of superior court of Mecklenburg and Gaston Counties and the clerk of court of York County. Upon request, the Executive Directors also shall send a certified single copy of any and all applicable joint ordinances to the chairman of the Commission;
- (4) A newspaper of general circulation in the three counties.

(b) Unless a joint ordinance specifies a later date, it shall take effect when the Executive Directors' certified text has been submitted to the Secretaries of State for filing. Certifications of the Executive Directors under the seal of the Commission as to the text or amended text of any joint ordinance and of the date or dates of submission to the Secretaries of State is admissible in evidence in any court. Certifications by any clerk of superior court or county clerk of court of the text of any certified ordinance filed with him by the Executive Directors is admissible in evidence and the Executive Directors' submission of the ordinance for filing to the clerk shall constitute prima facie evidence that the ordinance was on the date of submission also submitted for filing with the Secretary of State. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court concerning the submission of the certified text of any ordinance by the Executive Directors to any person other than the Secretary of State. (1987, c. 683, s. 7; 1987 (Reg. Sess., 1988), c. 897, s. 7.)

**§ 77-37. Regulations for Lake Wylie and shoreline area.**

(a) Except as limited in subsection (b) of this section, by restrictions in any joint ordinance and by other supervening provisions of law, the Commission may make regulations applicable to Lake Wylie and its shoreline area concerning all matters relating to or affecting the use of Lake Wylie. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of state agencies promulgated under the authority of general law. No regulations adopted under the provisions of this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing in a newspaper of general circulation in the three counties at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to state law and regulations concerning the operation of vessels on Lake Wylie, the Commission may, after public notice, request that the North Carolina Wildlife Resources

Commission and the South Carolina Department of Wildlife and Marine Resources pass local regulations on this subject in accordance with the procedure established by appropriate state law.

(b) Violation of any regulation of the Commission commanding or prohibiting an act is a Class 3 misdemeanor.

(c) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Lake Wylie or its shoreline area. Adequate notice as to a regulation affecting only a particular location may be by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to Lake Wylie or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area and it must be printed in a newspaper of general circulation in the three counties.

(d) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:

- (1) The Secretaries of State of North and South Carolina;
- (2) The clerk of superior court of Mecklenburg and Gaston Counties and the clerk of court of York County;
- (3) The Executive Directors of the Wildlife Resources Commission of North Carolina and South Carolina Wildlife and Marine Resources Department.

(e) Any official designated in subsection (d) above may issue certified copies of regulations filed with him under the seal of his office. These certified copies may be received in evidence in any proceeding.

(f) Publication and filing of regulations promulgated under this section as required above is for informational purposes and is not a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of regulations, a copy of the text of all regulations is in fact available to any person who may be affected and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Commission under the provisions of other sections of this article relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker or the making of other communication is essential to the validity of a regulation duly promulgated, it is presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation. (1987, c. 683, s. 8; 1987 (Reg. Sess., 1988), c. 897, s. 8; 1993, c. 539, s. 583; 1994, Ex. Sess., c. 24, s. 14(c).)

### **§ 77-38. Authority of law enforcement officers and special officers.**

(a) Where a joint ordinance so provides, all law enforcement officers, or those officers as may be designated in the joint ordinance, with territorial jurisdiction as to any part of Lake Wylie or its shoreline area, within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of Lake Wylie and its shoreline area.

(b) Where a joint ordinance provides it, the Commission may hire special officers to patrol and enforce the laws on Lake Wylie and its shoreline area. These special officers have and may exercise all the powers of peace officers generally within the area in question and shall take the oaths and are subject to all provisions of law relating to law enforcement officers.

(c) Every criminal violation must be tried in the county where it occurred. However, a certificate of training by the South Carolina Criminal Justice Academy, or a similar certificate issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission will suffice for certification in both states for the purposes of this article.

(d) Where a law enforcement officer with jurisdiction over any part of Lake Wylie or its shoreline area is performing duties relating to the enforcement of the laws on Lake Wylie or in its shoreline area, he has such extraterritorial jurisdiction as may be necessary to perform his duties. These duties include investigation of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of this area to another although across territory not within the boundaries of Lake Wylie and its shoreline area; conducting prisoners in custody to a court or detention facilities as may be authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that this process may not be executed by virtue of this provision beyond the boundaries of the three counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

(e) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this is considered an extension of the duties of the office held and no officer shall take any additional oath or title of office. (1987, c. 683, s. 9; 1987 (Reg. Sess., 1988), c. 897, s. 9.)

**§§ 77-39 through 77-49. Reserved for future codification purposes.**

## Article 5.

### High Rock Lake Marine Commission.

#### **§ 77-50. Definitions.**

For purposes of this Article:

- (1) "Boards" means the Boards of Commissioners of Davidson and Rowan Counties.
- (2) "Commission" means the High Rock Lake Marine Commission or its governing board, as the case may be.
- (3) "Commissioner" means a member of the governing board of the High Rock Lake Marine Commission.
- (4) High Rock Reservoir, known for purposes of this Article as "High Rock Lake", means the impounded body of water along the Yadkin River in the two counties extending from High Rock Dam, located at mile 253 on the Yadkin River, upstream approximately 19 miles.
- (5) "Joint ordinance" means an ordinance substantially identical in content adopted separately by the board in each of the two counties.
- (6) "Shoreline area" means, except as restricted by a joint ordinance, the area within the two counties lying within 500 feet of the normal full pool elevation of 655 (Yadkin, Inc. datum) on High Rock Lake. In addition, the shoreline area shall

include all islands within High Rock Lake and all peninsulas extending into the waters of High Rock Lake.

- (7) "Two counties" means Davidson and Rowan Counties.
- (8) "Wildlife Commission" means the North Carolina Wildlife Resources Commission. (1993, c. 355, s. 1.)

**§ 77-51. Creation of Commission authorized.**

The two counties may by joint ordinance create the High Rock Lake Marine Commission. The Boards shall hold a public hearing on the joint ordinance to create the Commission. The location of the public hearing shall be determined by the Boards and established by resolution. The Boards shall cause notice of the hearing to be published once a week for two successive calendar weeks in a newspaper of general circulation in each county. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. Upon its creation the Commission shall enjoy the powers and have the duties and responsibilities conferred upon it by joint ordinance, subject to the provisions of this Article and the laws of the State of North Carolina. The provisions of any joint ordinance may be modified, amended, or rescinded by a subsequent joint ordinance. A county may unilaterally withdraw from participation as required by any joint ordinance or the provisions of this Article, once the Commission has been created. Any county may unilaterally withdraw from the Commission at the end of its fiscal year, by written notification to the other county and the Commission of its intent to withdraw, with notification 90 days prior to the end of the fiscal year. Upon the effectuation of the withdrawal, the Commission is dissolved, and all property of the Commission shall be distributed to or divided among the two counties and any other public agency or agencies serving the High Rock Lake area in a manner considered equitable by the Commission by resolution adopted prior to dissolution. (1993, c. 355, s. 2.)

**§ 77-52. Terms of members.**

Upon its creation, the Commission shall have a governing board of nine commissioners. Except as otherwise provided for the first three-year period, each commissioner shall serve a three-year term, with commissioners to serve overlapping terms. Upon creation of the Commission, the Boards shall appoint four commissioners each. Another alternating commissioner shall serve two-year terms. This alternating commissioner shall initially be appointed by the Davidson County Board of Commissioners, then by the Rowan County Board of Commissioners, and thereafter shall alternate between the two Boards.

These appointees shall serve until December 31 following their appointment. Thereafter, appointments shall be made for terms beginning each January 1 by the respective Boards of the two counties as follows:

Initial appointments: Four commissioners from Davidson County, one appointed for a one-year term, one appointed for a two-year term, and two appointed for three-year terms; four commissioners from Rowan County, one appointed for a one-year term, two appointed for two-year terms, and one appointed for a three-year term. Subsequent appointees shall serve three-year terms. The alternating commissioner, to be initially appointed by Davidson County, shall initially serve a one-year term and thereafter serve a two-year term. (1993, c. 355, s. 3.)

**§ 77-53. Compensation; budgetary and accounting procedures.**

The joint ordinance shall state the terms relating to compensation to commissioners, if any, compensation of consultants and staff members employed by the Commission, and reimbursement of expenses incurred by commissioners, consultants, and employees. The Commission shall be governed by these budgetary and accounting procedures as may be specified by joint ordinance and the applicable laws of North Carolina. (1993, c. 355, s. 4.)

**§ 77-54. Organization and meetings.**

Upon creation of the Commission, its governing board shall meet at a time and place agreed upon by the Boards. The commissioners shall elect a chairman and such other officers as they may choose. All officers shall serve one-year terms. The governing board shall adopt such rules and regulations as it may consider necessary, not inconsistent with the provisions of this Article or of any joint ordinance or the laws of the State of North Carolina, for the proper discharge of its duties and for the governance of the Commission. In order to conduct business, a quorum must be present. The chairman may appoint those committees as may be authorized by such rules and regulations. The Commission shall meet regularly at those times and places as may be specified in its rules and regulations or in any joint ordinance. However, meetings of the Commission shall be held in the two counties on a rotating basis so that an equal number of meetings is held in each county. Special meetings may be called as specified in the rules and regulations. The provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes apply. (1993, c. 355, s. 5.)

**§ 77-55. Powers of Commission; administrative provision.**

(a) Within the limits of funds available to it and subject to the provisions of this Article and of any joint ordinance the Commission may:

- (1) Hire and fix the compensation of permanent and temporary employees and staff as it may consider necessary in carrying out its duties;
- (2) Contract with consultants for such services as it may require;
- (3) Contract with the State of North Carolina or the federal government, or any agency or department or subdivision of them, for property or services as may be provided to or by these agencies, and carry out the provisions of such contracts;
- (4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern, and carry out the provisions of such contracts;
- (5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vehicles, uniforms, and other supplies and equipment necessary or desirable for carrying out the duties imposed in or under the authority of this Article; and
- (6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public recreation, public safety in High Rock Lake and its shoreline area, or protection of property in the shoreline area,

subject, however, to the provisions of Chapter 113 of the General Statutes and rules promulgated under that Chapter as to property within North Carolina.

(b) The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal government or its agencies or subdivisions, or by private and civic sources.

(c) The Boards may appropriate funds to the Commission out of surplus funds or funds derived from nontax sources. They may appropriate funds out of tax revenues and may also levy annually taxes for the payment of such appropriation as a special purpose, in addition to any allowed by the North Carolina Constitution or as provided by G.S. 153A-149.

(d) The Commission shall be subject to such audit requirements as may be specified in any joint ordinance.

(e) In carrying out its duties, and either in addition to or in lieu of exercising various provisions of the above authorizations, the Commission may, with the agreement of the Board of Commissioners of the county concerned, utilize personnel and property of or assign responsibilities to any officer or employee of any of the two counties. Such contribution in kind, if substantial, may with the agreement of the other county be considered to substitute in whole or in part for the financial contribution required of such county in support of the Commission.

(f) Unless otherwise specified by joint ordinance, each of the two counties shall annually contribute an equal financial contribution to the Commission in an amount appropriate to support the activities of the Commission in carrying out its duties. (1993, c. 355, s. 6.)

#### **§ 77-56. Filing and publication of joint ordinances.**

(a) A copy of the joint ordinance creating the Commission and of any joint ordinance amending or repealing the joint resolution creating the Commission shall be filed with the Executive Director of the Wildlife Commission. When the Executive Director receives ordinances that are in substance identical from the two counties concerned, the Executive Director shall, within 10 days, certify this fact and distribute a certified single ordinance text to the following:

- (1) The Secretary of State.
- (2) The clerk to the governing board of each of the two counties.
- (3) The clerk of superior court of Davidson and Rowan Counties. Upon request, the Executive Director shall also send a certified single copy of any and all applicable joint ordinances to the chairman of the Commission.
- (4) A newspaper of general circulation in the two counties.

(b) Unless a joint ordinance specifies a later date, it shall take effect when the Executive Director's certified text has been submitted to the Secretary of State for filing. Certifications of the Executive Director under the seal of the Commission as to the text or amended text of any joint ordinance and of the date or dates of submission to the Secretary of State shall be admissible in evidence in any court. Certifications by any clerk of superior court of the text of any certified ordinance filed with him by the Executive Director is admissible in evidence and the Executive Director's submission of the resolution for filing to the clerk shall constitute prima facie evidence that such resolution was on the date of submission also submitted for filing with the Secretary of State. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court concerning the submission of the certified text of any ordinance by the Executive Director to any person other than the Secretary of State. (1993, c. 355, s. 7.)

**§ 77-57. Regulatory authority.**

(a) Except as limited in subsection (b) below, by restrictions in any joint ordinance, and by other supervening provisions of law, the Commission may make regulations applicable to High Rock Lake and its shoreline area concerning all matters relating to or affecting the use of High Rock Lake. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of State agencies promulgated under the authority of general law. No regulations adopted under the provisions of this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing in a newspaper of general circulation in the two counties at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to State law and regulations concerning the operation of vessels on High Rock Lake, the Commission may, after public notice, request that the Wildlife Resources Commission pass local regulations on this subject in accordance with the procedure established by appropriate State law.

(b) Violation of any regulation of the Commission commanding or prohibiting an act shall be a Class 3 misdemeanor.

(c) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on High Rock Lake or its shoreline area. Ordinances providing regulations for specific areas shall clearly establish the boundaries of the affected area by including a map of the regulated area, with the boundaries clearly drawn, or by setting out the boundaries in a written description, or by a combination of these techniques. Adequate notice as to a regulation affecting only a particular location shall be given in the following manner. When an ordinance providing regulations for a specific area is proposed, owners of the parcel of land involved as shown on the county tax listing, and the owners of land within 500 feet of the proposed area to be regulated, as shown on the county tax listing, shall be mailed a notice of the proposed classification by first-class mail at the last addresses listed for such owners on the county tax abstracts. This mailing requirement does not apply in regulations affecting the entire lake. Notice shall also be given by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to High Rock Lake or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it shall be printed in a newspaper of general circulation in the two counties.

(d) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:

- (1) The Secretary of State;
- (2) The clerks of superior court of Davidson and Rowan Counties;
- (3) The Executive Director of the Wildlife Resources Commission; and
- (4) The federal Energy Regulatory Commission licensee for High Rock Lake.

(e) Any official designated in subsection (d) above may issue certified copies of regulations filed with the official under the seal of the official's office. Such certified copies may be received in evidence in any proceeding.

(f) Publication and filing of regulations promulgated under this section as required above are for informational purposes and is not a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of the regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any

proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Commission under the provisions of other sections of this Article relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker, or the making of other communication is essential to the validity of a regulation duly promulgated, it is presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation. (1993, c. 355, s. 8; 1993 (Reg. Sess., 1994), c. 767, s. 27.)

#### **§ 77-58. Enforcement.**

(a) Where a joint ordinance so provides, all law enforcement officers, or those officers as may be designated in the joint ordinance, with territorial jurisdiction as to any part of High Rock Lake or its shoreline area within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of High Rock Lake and its shoreline area. A certificate of training issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission will suffice for certification for the purposes of this Article.

(b) Every criminal violation shall be tried in the county where it occurred.

(c) Where a law enforcement officer with jurisdiction over any part of High Rock Lake or its shoreline area is performing duties relating to the enforcement of the laws on High Rock Lake or in its shoreline area, the officer shall have such extraterritorial jurisdiction as may be necessary to perform the officer's duties. These duties include investigations of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of this area to another although across territory not within the boundaries of High Rock Lake and its shoreline area; conducting prisoners in custody to a court or to detention facilities as may be authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that this process may not be executed by virtue of this provision beyond the boundaries of the two counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

(d) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be considered an extension of the duties of the office held and no officer shall take any additional oath or title of office. (1993, c. 355, s. 9.)

#### **§§ 77-59 through 77-69. Reserved for future codification purposes.**

### Article 6.

#### Mountain Island Lake Marine Commission.

#### **§ 77-70. Definitions.**

For purposes of this Article:

- (1) "Board" means the board of commissioners of one of the three counties.



- (2) "Commission" means the Mountain Island Lake Marine Commission or its governing board, as the case may be.
- (3) "Commissioner" means a member of the governing board of the Mountain Island Lake Marine Commission.
- (4) "Joint resolution" means a resolution or ordinance substantially identical in content adopted separately by the governing boards in each of the three counties.
- (5) "Mountain Island Lake" means the impounded body of water along the Catawba River in the three counties extending from the Cowans Ford Dam downstream to the Mountain Island Dam.
- (6) "Shoreline area" means, except as modified by a joint resolution, the area within the three counties lying within 1,000 feet of the full pond elevation contour on Mountain Island Lake. In addition, the shoreline area includes all islands within Mountain Island Lake and all peninsulas extending into the waters of Mountain Island Lake.
- (7) "Three counties" means Gaston, Lincoln, and Mecklenburg Counties.
- (8) "Wildlife Commission" means the North Carolina Wildlife Resources Commission. (1997-257, s. 1.)

**§ 77-71. Authority to create Commission; withdrawal from and dissolution of Commission.**

The three counties may by joint resolution create the Mountain Island Lake Marine Commission. Upon its creation the Commission has the powers, duties, and responsibilities conferred upon it by joint resolution, subject to the provisions of this Article. The provisions of any joint resolution may be modified, amended, or rescinded by a subsequent joint resolution. A county may unilaterally withdraw from participation as provided by any joint resolution or the provisions of this Article, once the Commission has been created, and any county may unilaterally withdraw from the Commission at the end of any budget period upon 90 days prior written notice. Upon the effectuation of the withdrawal, the Commission is dissolved, and all property of the Commission must be distributed to or divided among the three counties and any other public agency or agencies serving the Mountain Island Lake area in a manner considered equitable by the Commission by resolution adopted by it prior to dissolution. (1997-257, s. 1.)

**§ 77-72. Membership; terms.**

Upon its creation, the Commission shall have a governing board of seven. Except as otherwise provided for the initial appointees, each commissioner shall serve a three-year term. Upon creation of the Commission, the Boards of Commissioners of Gaston County and Mecklenburg County shall appoint three commissioners each, and the Board of Commissioners of Lincoln County shall appoint one commissioner. Of the initial appointees:

- (1) One commissioner appointed by Gaston County and one member appointed by Mecklenburg County shall serve one-year terms;
- (2) One commissioner appointed by Gaston County and one member appointed by Mecklenburg County shall serve two-year terms; and
- (3) One member appointed by Gaston County, one member appointed by Mecklenburg County, and the member appointed by Lincoln County shall serve three-year terms.

Any commissioner who has served two consecutive terms, including any initial term of less than three years, may not be reappointed to a third consecutive term. Such a member may, however, be appointed to serve again after the expiration of the term of the member's successor.

On the death of a commissioner, resignation, incapacity, or inability to serve, as determined by the board appointing that commissioner, or removal of the commissioner for cause, as determined by the board appointing that commissioner, the board affected may appoint another commissioner to fill the unexpired term. (1997-257, s. 3.)

#### **§ 77-73. Compensation; budget.**

The joint resolution of the three counties shall state the terms relating to compensation to commissioners, if any, compensation of consultants and staff members employed by the Commission, and reimbursement of expenses incurred by commissioners, consultants, and employees. The Commission shall be governed by those budgetary and accounting procedures specified by joint resolution. (1997-257, s. 4.)

#### **§ 77-74. Organization and meetings.**

Upon creation of the Commission, its governing board shall meet at a time and place agreed upon by the boards of the three counties concerned. The commissioners shall elect a chairman and officers as they choose. All officers shall serve one-year terms. The governing board shall adopt rules and regulations as it deems necessary, not inconsistent with the provisions of this Article or of any joint resolution, for the proper discharge of its duties and for the governance of the Commission. In order to conduct business, a quorum must be present. The chairman may adopt those committees as authorized by those rules and regulations. The Commission shall meet regularly at times and places as specified in its rules and regulations or in any joint resolution. However, meetings of the Commission must be held in all three counties on a rotating basis so that an equal number of meetings is held in each county. Special meetings may be called as specified in the rules and regulations. The provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes, shall apply. (1997-257, s. 5.)

#### **§ 77-75. Powers of the Commission; administration and funding.**

(a) Within the limits of funds available to it and subject to the provisions of this Article and of any joint resolution, the Commission may:

- (1) Hire and fix the compensation of permanent and temporary employees and staff as it may deem necessary in carrying out its duties;
- (2) Contract with consultants for services it requires;
- (3) Contract with the State of North Carolina or the federal government, or any agency or department, or subdivision of them, for property or services as may be provided to or by these agencies and carry out the provisions of these contracts;
- (4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern, and carry out the provisions of contracts;
- (5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vessels, vehicles, firearms, uniforms, and other supplies and

equipment necessary or desirable for carrying out the duties imposed in or under the authority of this Article; and

- (6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public safety in Mountain Island Lake and its shoreline area, or protection of property in the shoreline area subject however to Chapter 113 of the General Statutes and rules promulgated under that Chapter.

(b) The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal government or its agencies or subdivisions, by the State of North Carolina or its agencies or subdivisions, or by private and civic sources.

(c) The governing boards of the three counties may appropriate funds to the Commission out of surplus funds or funds derived from nontax sources. They may appropriate funds out of tax revenues and may also levy annually property taxes for the payments of such appropriation as a special purpose, in addition to any allowed by the Constitution, or as provided by G.S. 153A-149.

(d) The Commission shall be subject to those audit requirements as may be specified in any joint resolution.

(e) In carrying out its duties and either in addition to or in lieu of exercising various provisions of the above authorization, the Commission may, with the agreement of the governing board of the county concerned, utilize personnel and property of or assign responsibilities to any officer or employee of any of the three counties. Such contribution in kind, if substantial, may with the agreement of the other two counties be deemed to substitute in whole or in part for the financial contribution required of that county in support of the Commission.

(f) Unless otherwise specified by joint resolution, each of the three counties shall annually contribute an equal financial contribution to the Commission in an amount appropriate to support the activities of the Commission in carrying out its duties. (1997-257, s. 6.)

#### **§ 77-76. Filing and publication of joint ordinances.**

(a) A copy of the joint resolution creating the Commission and of any joint resolution amending or repealing the joint resolution creating the Commission shall be filed with the Executive Director of the Wildlife Commission. When the Executive Director receives resolutions that are in substance identical from all three counties concerned, the Executive Director shall within 10 days so certify and distribute a certified single resolution text to the following:

- (1) The Secretary of State;
- (2) The clerk to the governing board of each of the three counties;
- (3) The clerks of Superior Court of Lincoln, Mecklenburg, and Gaston Counties. Upon request, the Executive Director also shall send a certified single copy of any and all applicable joint resolutions to the chairman of the Commission; and
- (4) A newspaper of general circulation in the three counties.

(b) Unless a joint resolution specifies a later date, it shall take effect when the Executive Director's certified text has been submitted to the Secretary of State for filing. Certifications of

the Executive Director under the seal of the Commission as to the text or amended text of any joint resolution and of the date or dates of submission to the Secretary of State shall be admissible in evidence in any court. Certifications by any clerk of superior court of the text of any certified resolution filed with him by the Executive Director is admissible in evidence and the Executive Director's submission of the resolution for filing to the clerk shall constitute prima facie evidence that that resolution was on the date of submission also submitted for filing with the Secretary of State. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court concerning the submission of the certified text of any resolution by the Executive Director to any person other than the Secretary of State. (1997-257, s. 7.)

**§ 77-77. Regulatory authority.**

(a) Except as limited in subsection (b) of this section, by restrictions in any joint resolution, and by other supervening provisions of law, the Commission may make regulations applicable to Mountain Island Lake and its shoreline area concerning all matters relating to or affecting the use of Mountain Island Lake. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of State agencies promulgated under the authority of general law. No regulations adopted under this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing being given in a newspaper of general circulation in the three counties at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to State law and regulations concerning the operation of vessels on Mountain Island Lake, the Commission may, after public notice, request that the Wildlife Commission pass local regulations on this subject in accordance with the procedure established by appropriate State law.

(b) Violation of any regulation of the Commission commanding or prohibiting an act shall be a Class 3 misdemeanor.

(c) The regulations promulgated under this section take effect upon passage or upon dates as stipulated in the regulations, except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Mountain Island Lake or its shoreline area. Adequate notice as to a regulation affecting only a particular location may be by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to Mountain Island Lake or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it must be printed in a newspaper of general circulation in the three counties.

(d) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:

- (1) The Secretary of State;
- (2) The clerks of Superior Court of Gaston, Lincoln, and Mecklenburg Counties;  
and
- (3) The Executive Director of the Wildlife Commission.

(e) Any official designated in subsection (d) above may issue certified copies of regulations filed with him under the seal of his office. Those certified copies may be received in evidence in any proceeding.

(f) Publication and filing of regulations promulgated under this section as required above is for informational purposes and shall not be a prerequisite to their validity if they in fact have

been duly promulgated, the public has been notified as to the substance of regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Commission under the provisions of other sections of this Article relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker or the making of other communication is essential to the validity of a regulation duly promulgated, it shall be presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation. (1997-257, s. 8.)

**§ 77-78. Enforcement.**

(a) Where a joint resolution so provides, all law enforcement officers, or those officers as may be designated in the joint resolution, with territorial jurisdiction as to any part of Mountain Island Lake or its shoreline area shall, within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of Mountain Island Lake and its shoreline area.

(b) Where a joint resolution provides it, the Commission may hire special officers to patrol and enforce the laws on Mountain Island Lake and its shoreline area. These special officers have and exercise all the powers of peace officers generally within the area in question and shall take the oaths and be subject to all provisions of law relating to law enforcement officers.

(c) Unless a joint resolution provides otherwise, all courts in the three counties within the limits of their subject matter jurisdiction shall have concurrent jurisdiction as to all criminal offenses arising within the boundaries of Mountain Island Lake and its shoreline area.

(d) Where a law enforcement officer with jurisdiction over any part of Mountain Island Lake or its shoreline area is performing duties relating to the enforcement of the laws on Mountain Island Lake or in its shoreline area, the officer has the extraterritorial jurisdiction necessary to perform his duties. These duties include investigation of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of that area to another although across territory not within the boundaries of Mountain Island Lake and its shoreline area; conducting prisoners in custody to court or detention facilities as authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that such process may not be executed by virtue of this provision beyond the boundaries of the three counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

(e) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be deemed an extension of the duties of the office held, and no officer shall take any additional oath or title of office. (1997-257, s. 9.)

**§ 77-79:** Reserved for future codification purposes.

Article 6A.

Lake Lure Marine Commission.

**§ 77-80. Definitions.**

For purposes of this Article:

- (1) "Board" means the Board of Commissioners of the Town of Lake Lure.
- (2) "Commission" means the Lake Lure Marine Commission or its governing board, as the case may be.
- (3) "Commissioner" means a member of the governing board of the Lake Lure Marine Commission.
- (4) Lake Lure Reservoir, known for purposes of this Article as "Lake Lure" or "the waters of Lake Lure", means the body of water along the Broad River in Rutherford County, impounded by the dam at Tumbling Shoals, and lying below the 995-foot contour line above sea level.
- (5) "Shoreline area" means the area submerged by the dam at Tumbling Shoals, lying below 955 feet above mean sea level of the normal full pond elevation of 992 feet above mean sea level, on Lake Lure.
- (6) "Wildlife Commission" means the North Carolina Wildlife Resources Commission. (2003-332, s. 1.)

**§ 77-81. Creation of Commission authorized.**

The Board of Commissioners of the Town of Lake Lure may by ordinance create the Lake Lure Marine Commission. The Board shall hold a public hearing on the ordinance to create the Commission. The location of the public hearing shall be determined by the Boards and established by resolution. The Board shall cause notice of the hearing to be published once a week for two successive calendar weeks in a newspaper of general circulation in Rutherford County. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. Upon its creation the Commission shall enjoy the powers and have the duties and responsibilities conferred upon it by the Lake Lure municipal ordinance, subject to the provisions of this Article and the laws of the State of North Carolina. The provisions of any ordinance may be modified, amended, or rescinded by a subsequent ordinance. (2003-332, s. 1.)

**§ 77-82. Governing board.**

Upon its creation, the Commission shall have a governing board. The governing board shall, unless otherwise stated by ordinance, be the Board of Commissioners of the Town of Lake Lure. (2003-332, s. 1.)

**§ 77-83. Compensation; budgetary and accounting procedures.**

The municipal ordinance shall state the terms relating to compensation to commissioners, if any, compensation of consultants and staff members employed by the Commission, and reimbursement of expenses incurred by commissioners, consultants, and employees. The Commission shall be governed by these budgetary and accounting procedures as may be specified by the municipal ordinance and the applicable laws of North Carolina. (2003-332, s. 1.)

**§ 77-84. Organization and meetings.**

Upon creation of the Commission, its governing board shall meet at a time and place set by the Town of Lake Lure ordinance. Unless otherwise stated in the ordinance, the mayor of the Town of Lake Lure shall act as the presiding officer. The governing board shall adopt such rules and regulations as it may consider necessary, not inconsistent with the provisions of this Article or of any ordinance of the Town of Lake Lure or the laws of the State of North Carolina, for the proper discharge of its duties and for the governance of the Commission. In order to conduct business, a quorum must be present. The presiding officer may appoint those committees as may be authorized by such rules and regulations. The Commission shall meet regularly at those times and places as may be specified in its rules and regulations or in the Town of Lake Lure municipal ordinance. Special meetings may be called as specified in the rules and regulations. The provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes, apply. (2003-332, s. 1.)

**§ 77-85. Powers of Commission; administrative provision.**

(a) Within the limits of funds available to it, and subject to the provisions of this Article and of the Town of Lake Lure municipal ordinance, the Commission may:

- (1) Hire and fix the compensation of permanent and temporary employees and staff as it may consider necessary in carrying out its duties;
- (2) Contract with consultants for such services as it may require;
- (3) Contract with the State of North Carolina or the federal government, or any agency or department or subdivision of them, for property or services as may be provided to or by these agencies, and carry out the provisions of such contracts;
- (4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern, and carry out the provisions of such contracts;
- (5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vehicles, uniforms, and other supplies and equipment necessary or desirable for carrying out the duties imposed in or under the authority of this Article; and
- (6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public recreation, public safety on the waters of Lake Lure and its shoreline area, or protection of property in the shoreline area, subject, however, to the provisions of Chapter 113 of the General Statutes and rules promulgated under that Chapter as to property within North Carolina.

(b) The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal government or its agencies or subdivisions, or by private and civic sources.

(c) The Board of Commissioners of the Town of Lake Lure may appropriate funds to the Commission out of surplus funds or funds derived from nontax sources. It may appropriate funds out of tax revenues and may also levy annually taxes for the payment of such appropriation as a special purpose, in addition to any allowed by the North Carolina Constitution or as provided by G.S. 160A-209.

(d) The Commission shall be subject to such audit requirements as may be specified in the municipal ordinance.

(e) In carrying out its duties, and either in addition to or in lieu of exercising various provisions of the above authorizations, the Commission may, with the agreement of the Board of Commissioners of the Town of Lake Lure, utilize personnel and property of or assign responsibilities to any officer or employee of the Town of Lake Lure. Such contribution in kind, if substantial, may with agreement between the Board and the Commission be considered to substitute in whole or in part for the financial contribution required of the Town in support of the Commission. (2003-332, s. 1.)

**§ 77-86. Filing and publication of applicable municipal ordinances.**

(a) A copy of the initial municipal ordinance creating the Commission and of any ordinance amending or repealing the resolution creating the Commission shall be filed with:

- (1) The Executive Director of the Wildlife Commission.
- (2) The Secretary of State.
- (3) The clerk to the Town of Lake Lure.
- (4) The clerk of superior court of Rutherford County. Upon request, the Executive Director shall also send a certified single copy of any and all applicable ordinances to the chairman of the Commission.
- (5) A newspaper of general circulation in Rutherford County.

(b) Unless the municipal ordinance specifies a later date, it shall take effect when the text has been submitted to the Secretary of State for filing. Certifications of the Board under the seal of the Commission as to the text or amended text of any municipal ordinance and of the date or dates of submission to the Secretary of State shall be admissible in evidence in any court. Certifications by the clerk of superior court of Rutherford County of the text of any certified ordinance filed with the clerk by the Board is admissible in evidence and the Board's submission of the resolution for filing to the clerk shall constitute prima facie evidence that such resolution was on the date of submission also submitted for filing with the Secretary of State. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court concerning the submission of the certified text of any ordinance by the Board to any person other than the Secretary of State. (2003-332, s. 1.)

**§ 77-87. Regulatory authority.**

(a) Except as limited in subsection (b) of this section, by restrictions in any municipal ordinance, and by other supervening provisions of law, the Commission may make regulations applicable to Lake Lure and its shoreline area concerning all matters relating to or affecting the use of Lake Lure. These regulations may not conflict with provisions of general or special acts or of regulations of State agencies promulgated under the authority of general law. No regulations adopted under the provisions of this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing in a newspaper of general circulation in Rutherford County at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to State law and regulations concerning the operation of vessels on Lake Lure, the Commission may, after public notice, request that the Wildlife Resources Commission pass local regulations on this subject in accordance with the procedure established by appropriate State law.



(b) Violation of any regulation of the Commission commanding or prohibiting an act shall be a Class 3 misdemeanor.

(c) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Lake Lure or its shoreline area. Ordinances providing regulations for specific areas shall clearly establish the boundaries of the affected area by including a map of the regulated area, with the boundaries clearly drawn, by setting out the boundaries in a written description, or by a combination of these techniques. Adequate notice as to a regulation affecting only a particular location shall be given in the following manner. When an ordinance providing regulations for a specific area is proposed, owners of the parcel of land involved as shown on the county tax listing, and the owners of land within 500 feet of the proposed area to be regulated, as shown on the county tax listing, shall be mailed a notice of the proposed classification by first-class mail at the last addresses listed for such owners on the county tax abstracts. This mailing requirement does not apply in regulations affecting the entire lake. Notice shall also be given by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to the waters of Lake Lure or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area, and it shall be printed in a newspaper of general circulation in Rutherford County.

(d) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:

- (1) The Secretary of State;
- (2) The clerk of superior court of Rutherford County;
- (3) The Executive Director of the Wildlife Resources Commission; and
- (4) The federal Energy Regulatory Commission licensee for Lake Lure, if other than the Town of Lake Lure.

(e) Any official designated in subsection (d) of this section may issue certified copies of regulations filed with the official under the seal of the official's office. Such certified copies may be received in evidence in any proceeding.

(f) Publication and filing of regulations promulgated under this section as required above are for informational purposes and are a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of the regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Commission under the provisions of other sections of this Article relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker, or the making of other communication is essential to the validity of a regulation duly promulgated, it is presumed in any proceeding that prior notice was given and maintained, and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation. (2003-332, s. 1.)

#### **§ 77-88. Enforcement.**

(a) Where a municipal ordinance so provides, all law enforcement officers, or those officers as may be designated in the municipal ordinance, with territorial jurisdiction as to any part of the waters of Lake Lure or its shoreline area within the limitations of their subject matter

jurisdiction, have the authority of peace officers in enforcing the laws over all of the waters of Lake Lure and its shoreline area. A certificate of training issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission will suffice for certification for the purposes of this Article.

(b) Where a law enforcement officer with jurisdiction over any part of the waters of Lake Lure or its shoreline area is performing duties relating to the enforcement of the laws on the waters of Lake Lure or in its shoreline area, the officer shall have such extraterritorial jurisdiction as may be necessary to perform the officer's duties. These duties include investigations of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of this area to another although across territory not within the boundaries of the waters of Lake Lure and its shoreline area; conducting prisoners in custody to a court or to detention facilities as may be authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that this process may not be executed by virtue of this provision beyond the boundaries of Rutherford County. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

(c) Reserved for future codification purposes.

(d) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this shall be considered an extension of the duties of the office held, and no officer shall take any additional oath or title of office. (2003-332, s. 1.)

§ 77-89: Reserved for future codification purposes.

## Article 7.

### Roanoke River Basin Bi-State Commission.

#### Part 1. Roanoke River Basin Bi-State Commission.

#### § 77-90. Definitions.

The following definitions apply in this Article:

- (1) "Commission" means the Roanoke River Basin Bi-State Commission.
- (2) "Roanoke River Basin" or "Basin" means that land area designated as the Roanoke River Basin by the North Carolina Department of Environmental Quality pursuant to G.S. 143-215.8B and the Virginia State Water Control Board pursuant to Code of Virginia § 62.1-44.38. (2002-177, s. 1; 2015-241, s. 14.30(u).)

#### § 77-91. Commission established; purposes.

There is established the Roanoke River Basin Bi-State Commission. The Commission shall be composed of members from the State of North Carolina and the Commonwealth of Virginia. The purposes of the Commission shall be to:

- (1) Provide guidance and make recommendations to local, state, and federal legislative and administrative bodies, and to others as it deems necessary and appropriate, for the use, stewardship, and enhancement of the water, and other natural resources, for all citizens within the Basin.
- (2) Provide a forum for discussion of issues affecting the Basin's water quantity and water quality and issues affecting other natural resources.
- (3) Promote communication, coordination, and education among stakeholders within the Basin.
- (4) Identify problems and recommend appropriate solutions.
- (5) Undertake studies and prepare, publish, and disseminate information through reports, and in other forms, related to water quantity, water quality, and other natural resources of the Basin. (2002-177, s. 1.)

**§ 77-92. Membership; terms of office; eligibility for appointment.**

(a) The Roanoke River Basin Bi-State Commission shall consist of 18 members with each state appointing nine members. The North Carolina delegation to the Commission shall consist of the six members of the General Assembly of North Carolina appointed to the North Carolina Roanoke River Basin Advisory Committee and three nonlegislative members who represent different geographical areas of the North Carolina portion of the Basin and who reside within the Basin's watershed, to be appointed by the Governor of North Carolina. The Virginia delegation to the Commission shall be appointed as determined by the Commonwealth of Virginia.

(b) Members of the North Carolina House of Representatives, the North Carolina Senate, the Virginia House of Delegates, the Virginia Senate, and federal legislators, who have not been appointed to the Commission and whose districts include any portion of the Basin, may serve as nonvoting ex officio members of the Commission.

(c) Except as provided in this subsection, members of the North Carolina delegation to the Commission shall serve at the pleasure of the Governor of North Carolina. The Governor of North Carolina may not remove a legislative member of the North Carolina delegation to the Commission during the legislator's term of office, except that the Governor may remove any member of the North Carolina delegation to the Commission for misfeasance, malfeasance, or nonfeasance as provided in G.S. 143B-13. A legislative member of the North Carolina delegation to the Commission who ceases to be a member of the General Assembly of North Carolina shall cease to be a member of the Commission. The terms of members of the Virginia delegation to the Commission shall be determined by the Commonwealth of Virginia.

(d) Each state's delegation to the Commission may meet separately to discuss Basin-related issues affecting their state and may report their findings independently of the Commission. (2002-177, s. 1; 2005-37, ss. 2, 3; 2012-200, s. 28(a).)

**§ 77-93. Powers and duties.**

(a) The Commission shall have no regulatory authority.

(b) To perform its duties and objectives, the Commission shall have the following powers:

- (1) To develop rules and procedures for the conduct of its business or as may be necessary to perform its duties and carry out its objectives, including, but not limited to, selecting a chairman and vice-chairman, rotating chairmanships, calling meetings, and establishing voting procedures. Rules and procedures developed pursuant to this subdivision shall be effective upon an affirmative vote by a majority of the Commission members.
- (2) To establish standing and ad hoc advisory committees pursuant to G.S. 77-94 and the Virginia Roanoke River Basin Advisory Committee established pursuant to Chapter 5.4 of Title 62.1 of the Code of Virginia, which shall be constituted in a manner to ensure a balance between recognized interests. The Commission shall determine the purpose of each advisory committee.
- (3) To seek, apply for, accept, and expend gifts, grants and donations, services, and other aid from public or private sources. With the exception of funds provided by the planning district commissions, councils of governments, and commissions and funds appropriated by the General Assemblies of Virginia and North Carolina, the Commission may accept funds only after an affirmative vote by a majority of the members of the Commission or by following any other procedures that are established by the Commission for the conduct of its business.
- (4) To establish a nonprofit corporation to assist in the details of administering its affairs and in raising funds.
- (5) To enter into contracts and execute all instruments necessary or appropriate.
- (6) To perform any lawful acts necessary or appropriate for the furtherance of its work. (2002-177, s. 1; 2012-200, s. 28(b).)

**§ 77-94. Standing and ad hoc committees.**

To facilitate communication among stakeholders in the Basin, and to maximize participation by all interested parties, the Commission shall establish both standing and ad hoc committees. The Commission shall appoint the members of the standing and ad hoc committees in accordance with guidelines adopted by the Commission. The standing committees shall include all of the following:

- (1) Permit holders. – The Commission shall identify those entities that hold permits issued by a federal, state, or local regulatory agency pertaining to the water of the Basin. The entities may recommend representatives to be appointed to the committees by the Commission.

- (2) Roanoke River Basin interest groups. – The Commission shall identify interest groups that may recommend representatives to be appointed to the committees by the Commission.
- (3) Public officials and governmental entities. – The committees shall be composed of representatives of each county, city, and town located completely or partially within the Basin. Also, other governmental entities that the Commission deems appropriate may recommend one member to be appointed to the committees by the Commission. The committees may also include the United States Senators from North Carolina and Virginia or their designees, and any member of the United States House of Representatives or the Representative's designee, whose district includes any portion of the Basin, if the members elect to serve on the committees.
- (4) Agriculture, forestry, and soil and water conservation districts. – The Commission shall identify persons who represent agricultural and forestry interests throughout the Basin and representatives from the soil and water conservation districts within the Basin and shall appoint representatives from these groups to the committees. (2002-177, s. 1.)

**§ 77-95. Staffing and support.**

(a) The North Carolina Department of Environmental Quality and the Virginia Department of Environmental Quality shall provide staff support to the Commission. Additional staff may be hired or contracted by the Commission through funds raised by or provided to it. The duties and compensation of any additional staff shall be determined and fixed by the Commission, within available resources.

(b) All agencies of the State of North Carolina and the Commonwealth of Virginia shall cooperate with the Commission and, upon request, shall assist the Commission in fulfilling its responsibilities. The North Carolina Secretary of Environmental Quality and the Virginia Secretary of Natural Resources or their designees shall each serve as the liaison between their respective state agencies and the Commission. (2002-177, s. 1; 2015-241, ss. 14.30(u), (v).)

**§ 77-96. Funding.**

(a) The Commission shall annually adopt a budget that shall include the Commission's estimated expenses. Funding for the Commission shall be shared and apportioned between the State of North Carolina and the Commonwealth of Virginia. The appropriation of public funds to the Commission shall be provided through each state's regular process for appropriating public funds. The North Carolina councils of governments and commissions named in G.S. 77-103(b)(5) shall bear a proportion of North Carolina's share of the expenses, which may be in the form of in-kind contributions.

(b) The Commission shall designate a fiscal agent.

(c) The accounts and records of the Commission showing the receipt and disbursement of funds from whatever source derived shall be in the form that the North Carolina Auditor and the Virginia Auditor of Public Accounts prescribe, provided that the accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by similar enterprises. The accounts and records of the Commission shall be subject to an annual audit by the North Carolina Auditor and the Virginia Auditor of Public Accounts or their legal representatives, and the costs of the audit services shall be borne by the Commission. The results of the audits shall be delivered by March 1 of each year to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division of the General Assembly of North Carolina and as provided by the Commonwealth of Virginia. (2002-177, s. 1; 2017-57, s. 14.1(b).)

**§ 77-97. Compensation and expenses of Commission members.**

(a) The appointed members of the North Carolina delegation to the Commission shall receive per diem, subsistence, and travel expenses as follows:

- (1) Commission members who are members of the General Assembly at the rate established in G.S. 120-3.1.
- (2) Commission members who are officials or employees of the State or of local government agencies at the rate established in G.S. 138-6.
- (3) All other Commission members at the rate established in G.S. 138-5.

(b) The members of the Virginia delegation to the Commission shall receive compensation as provided by the Commonwealth of Virginia.

(c) All expenses shall be paid from funds appropriated or otherwise available to the Commission. (2002-177, s. 1.)

**§ 77-98. Annual report.**

The Commission shall submit an annual report, including any recommendations, on or before 1 October of each year to the Governor of North Carolina, the Environmental Review Commission of the General Assembly of North Carolina, the Governor of Virginia, and the General Assembly of Virginia. (2002-177, s. 1; 2007-495, s. 22.)

**§ 77-99. Termination.**

The General Assembly of North Carolina may terminate the Commission by repealing this Part. The Commission shall terminate if the General Assembly of Virginia repeals the provisions of the Code of Virginia that are comparable to this Part. (2002-177, s. 1.)

**§§ 77-100 through 77-102:** Reserved for future codification purposes.

Part 2. Roanoke River Basin Advisory Committee.

**§ 77-103:** Repealed by Session Laws 2011-266, s. 1.25(a), effective July 1, 2011.

§ 77-104: Repealed by Session Laws 2011-266, s. 1.25(a), effective July 1, 2011.

§ 77-105: Repealed by Session Laws 2011-266, s. 1.25(a), effective July 1, 2011.

§ 77-106: Repealed by Session Laws 2011-266, s. 1.25(a), effective July 1, 2011.

§ 77-107: Reserved for future codification purposes.

§ 77-108: Reserved for future codification purposes.

§ 77-109: Reserved for future codification purposes.

#### Article 8.

#### River Basins Advisory Commissions.

#### § 77-110. Definitions.

The following definitions apply in this Article:

- (1) "Commission" or "commissions" means (i) the Catawba/Wateree River Basin Advisory Commission, (ii) the Yadkin/Pee Dee River Basin Advisory Commission, or (iii) both commissions, as required by the context.
- (2) "River basin" or "river basins" means (i) that land area designated as the Catawba River Basin pursuant to G.S. 143-215.22G and that land area designated as the Catawba/Wateree River Basin by the South Carolina Department of Health and Environmental Control, (ii) that land area designated as the Yadkin (Yadkin-Pee Dee) River Basin pursuant to G.S. 143-215.22G and that land area designated as the Yadkin/Pee Dee River Basin by the South Carolina Department of Health and Environmental Control, or (iii) both river basins, as required by the context. (2004-83, s. 1.)

#### § 77-111. Commissions established; purposes.

There is established the Catawba/Wateree River Basin Advisory Commission and the Yadkin/Pee Dee River Basin Advisory Commission. The commissions shall be constituted as described in this Article and there shall be a separate commission for each river basin. The commissions shall be permanent bodies composed of members from the State of North Carolina and the State of South Carolina. The purpose of each commission shall be to:

- (1) Provide guidance and make recommendations to local, state, and federal legislative and administrative bodies, and to others as it considers necessary and

- appropriate, for the use, stewardship, and enhancement of the water, and other natural resources, for all citizens within the river basins.
- (2) Provide a forum for discussion of issues affecting the river basin's water quantity and water quality, and issues affecting other natural resources.
  - (3) Promote communication, coordination, and education among stakeholders within the river basins.
  - (4) Identify problems and recommend appropriate solutions.
  - (5) Undertake studies related to water quantity, water quality, and other natural resources in the river basin based on existing data available from agencies located in either state.
  - (6) Determine the optimum approach to comprehensively and collaboratively provide recommendations for integrated river management including, but not limited to, the total assimilative capacity of the river basin. (2004-83, s. 1.)

**§ 77-112. Powers and duties.**

- (a) The authority granted to each commission shall be advisory in nature and in no way shall either commission be construed to have any regulatory authority.
- (b) Neither commission shall have any authority to obligate or otherwise bind the State of North Carolina, the State of South Carolina, or any agency or subdivision of either state.
- (c) To achieve its purposes, each commission shall have all of the following powers and duties:
  - (1) To develop rules and procedures for the conduct of its business or as may be necessary to perform its duties and carry out its objectives including, but not limited to, calling meetings and establishing voting procedures. Rules and procedures developed pursuant to this item shall be effective upon an affirmative vote by a majority of the commission members.
  - (2) To establish standing and ad hoc committees, which shall be constituted in a manner to ensure a balance between recognized interests and states. The commissions shall determine the purpose of each standing or ad hoc committee.
  - (3) To seek, apply for, accept, and expend gifts, grants, donations, services, and other aid from public or private sources. The commissions may accept or expend funds only after an affirmative vote by a majority of the members of the commissions.
  - (4) To exercise the powers of a body corporate, including the power to sue and be sued, and adopt and use a common seal and alter the same.
  - (5) To enter into contracts and execute all instruments necessary or appropriate to achieve the purposes of the commissions.
  - (6) To designate a fiscal agent.
  - (7) To perform any lawful acts necessary or appropriate to achieve the purposes of the commissions. (2004-83, s. 1.)

**§ 77-113. Membership; terms of office; eligibility for appointment; meetings.**

- (a) The Catawba/Wateree River Basin Advisory Commission shall be composed of 15 members as follows:



- (1) Two members of the North Carolina House of Representatives whose districts include a part of the North Carolina portion of the river basin, to be appointed by the Speaker of the North Carolina House of Representatives.
  - (2) Two members of the North Carolina Senate whose districts include a part of the North Carolina portion of the river basin, to be appointed by the President Pro Tempore of the North Carolina Senate.
  - (3) Two members of the South Carolina House of Representatives, to be appointed by the Speaker of the South Carolina House of Representatives.
  - (4) Two members of the South Carolina Senate, to be appointed by the President Pro Tempore of the South Carolina Senate.
  - (5) One person from South Carolina representing a water or sewer municipal utility to be appointed by the South Carolina legislative members of the Commission.
  - (6) One person from a nonprofit land conservation trust operating within the North Carolina portion of the river basin, appointed by the Governor of North Carolina.
  - (7) The President of Duke Power or the President's designee.
  - (8) The Chair of the Bi-State Catawba River Task Force or the Chair's designee.
  - (9) The Chief Executive Officer of Carolina's Partnership, Inc., or the Chief Executive Officer's designee.
  - (10) One person to represent the following commissions, appointed jointly by the three chief executive officers of the commissions: the Lake Wylie Marine Commission established pursuant to Article 4 of Chapter 77 of the General Statutes, the Mountain Island Lake Marine Commission established pursuant to Article 6 of Chapter 77 of the General Statutes, and the Lake Norman Marine Commission established pursuant to Chapter 1089 of the 1969 Session Laws.
  - (11) One member of a lake homeowner's association located on the Catawba/Wateree River whose members reside in South Carolina, to be appointed by the President Pro Tempore of the South Carolina Senate.
- (b) The Yadkin/Pee Dee River Basin Advisory Commission shall be composed of 15 members as follows:
- (1) Two members of the North Carolina House of Representatives whose districts include a part of the North Carolina portion of the river basin, to be appointed by the Speaker of the North Carolina House of Representatives.
  - (2) Two members of the North Carolina Senate whose districts include a part of the North Carolina portion of the river basin, to be appointed by the President Pro Tempore of the North Carolina Senate.
  - (3) Two members of the South Carolina House of Representatives, to be appointed by the Speaker of the South Carolina House of Representatives.
  - (4) Two members of the South Carolina Senate, to be appointed by the President Pro Tempore of the South Carolina Senate.
  - (5) One person from South Carolina representing a water or sewer municipal utility to be appointed by the South Carolina legislative members of the Commission.
  - (6) One person from South Carolina representing the agricultural community to be appointed by the South Carolina legislative members of the Commission.
  - (7) One person from a water or sewer municipal utility, appointed by the Governor of North Carolina.

- (8) The President of Progress Energy or the President's designee.
- (9) The President of Alcoa Power Generating, Inc., (APGI) or the President's designee.
- (10) The President of Weyerhaeuser or the President's designee.
- (11) A representative of the land development industry, whose organization does business within the Yadkin/Pee Dee River Basin and who shall be appointed by the Chair of the Commission.

(c) Each member appointed to the commissions pursuant to subdivisions (1) and (2) of subsections (a) and (b) of this section shall serve at the pleasure of the appointing authority so long as the member remains a Representative or Senator. Each member appointed to the commissions pursuant to subdivisions (3) and (4) of subsections (a) and (b) of this section shall serve as provided by the General Assembly of South Carolina. Each member appointed to the commissions pursuant to subdivisions (7) through (9) of subsection (a) and subdivisions (8) through (10) of subsection (b) of this section shall serve for so long as the member continues in the qualifying position or, if the member is a designee, at the pleasure of the designating authority. Each member appointed to the commissions pursuant to subdivisions (6) and (10) of subsection (a) and subdivisions (7) and (11) of subsection (b) of this section shall serve a term of two years and may be reappointed to serve no more than three consecutive full terms or 84 consecutive months, whichever is greater. The term of a person appointed to the commission pursuant to subdivision (10) of subsection (a) of this section shall expire on 1 January of even-numbered years. The term of a person appointed to the commission pursuant to subdivision (6) of subsection (a) of this section shall expire on 1 January of odd-numbered years. The term of a member who is appointed to the commissions pursuant to subdivisions (5) and (11) of subsection (a) and subdivisions (5) and (6) of subsection (b) of this section shall serve as provided by the General Assembly of South Carolina. An appointment to fill a vacancy on the commissions shall be for the unexpired portion of the term. A vacancy on the commissions shall be filled in the same manner as the original appointment. Members of the commissions who are appointed from or reside in North Carolina may be removed by the Governor of North Carolina for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143B-13.

(d) The legislative members of each commission may appoint additional members to the commission to serve as advisory members as the legislative members consider necessary.

(e) The members of each commission shall elect a Chair, Vice-Chair, and any other officers they consider necessary and shall determine the length of the term of office, not to exceed two years, of each officer. The Chair and the Vice-Chair shall not be from the same state and the Chair shall be rotated between the State of North Carolina and the State of South Carolina.

(f) Each commission shall meet upon the call of the Chair. A majority of each commission shall constitute a quorum for the transaction of business.

(g) The legislative members of the commissions from each state may meet separately to discuss river basin-related issues affecting their state and may report their findings independently of the commissions. (2004-83, s. 1; 2005-37, s. 1.)

**§ 77-114. Staffing; meeting facilities; assistance by agencies.**

(a) The North Carolina Department of Environmental Quality and the South Carolina Department of Health and Environmental Control shall provide staff support and facilities to each commission within the existing programs of the respective agencies.

Additional staff may be hired or contracted by each commission through funds raised by or provided to it. The duties and compensation of any additional staff shall be determined and fixed by each commission, within available resources.

(b) All agencies of the State of North Carolina and the State of South Carolina shall cooperate with the commissions and, upon request, shall assist each commission in fulfilling its responsibilities. The North Carolina Secretary of Environmental Quality and the Commissioner of the South Carolina Department of Health and Environmental Control or their designees shall each serve as the liaison between their respective state agencies and each commission.

(c) The commissions may obtain information and data upon request from all state officers, agents, agencies, and departments of the State of North Carolina and the State of South Carolina while in discharge of their duties. (2004-83, s. 1; 2015-241, ss. 14.30(u), (v).)

#### **§ 77-115. Funding.**

(a) Each commission shall annually adopt a budget that shall include the estimated income and expenses of each commission. Funding for the commissions shall be shared and apportioned between the State of North Carolina and the State of South Carolina as each state may provide through its regular appropriations process.

(b) The accounts and records of each commission showing the receipt and disbursement of funds from whatever source derived shall be in the form that the Auditor of North Carolina and the State Auditor of South Carolina prescribe. The accounts and records of each commission shall be subject to an annual audit by the Auditor of North Carolina and the State Auditor of South Carolina or their legal representatives. The cost of the annual audits shall be borne by each commission. The results of the audits shall be delivered by March 1 of each year to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division of the General Assembly of North Carolina and to the General Assembly of South Carolina as the General Assembly of South Carolina shall provide. (2004-83, s. 1; 2017-57, s. 14.1(c).)

#### **§ 77-116. Compensation and expenses of members of the commissions.**

(a) Members of the commissions who are appointed from or reside in North Carolina shall receive no salary for their service on the commissions but may be paid, within available resources, per diem, subsistence, and travel expenses as follows:

- (1) Members of the commissions who are members of the General Assembly at the rate established in G.S. 120-3.1.
- (2) Members of the commissions who are officials or employees of the State or of local government agencies at the rate established in G.S. 138-6.
- (3) All other members of the commissions at the rate established in G.S. 138-5.

(b) Members of the commissions who are appointed from or reside in South Carolina shall be compensated as provided by the General Assembly of South Carolina.

(c) All expenses shall be paid from funds appropriated or otherwise available to the commissions. (2004-83, s. 1.)

**§ 77-117. Annual report.**

The commissions shall submit annual reports, including any recommendations, on or before 1 October of each year to the Governor of North Carolina, the Environmental Review Commission of the General Assembly of North Carolina, the Governor of South Carolina, and the General Assembly of South Carolina, as the Governor, the General Assembly of South Carolina, or the Commissioner of the South Carolina Department of Health and Environmental Control shall provide. (2004-83, s. 1.)

**§ 77-118. Termination.**

The General Assembly of North Carolina may terminate the commissions by repealing this Article. The commissions shall terminate if the General Assembly of South Carolina repeals the provisions of the South Carolina Code of Laws that are comparable to this Article. (2004-83, s. 1.)

**§ 77-119. Reserved for future codification purposes.**

**§ 77-120. Reserved for future codification purposes.**

**§ 77-121. Reserved for future codification purposes.**

**§ 77-122. Reserved for future codification purposes.**

**§ 77-123. Reserved for future codification purposes.**

**§ 77-124. Reserved for future codification purposes.**

Article 9.

Clean Coastal Water and Vessel Act.

**§ 77-125. Definitions.**

The following definitions apply in this Article:

- (1) Department. – Department of Environmental Quality.
- (2) Large vessel marina. – A marina that has docking facilities and has more than 10 wet slips for vessels of 26 feet or more that have marine sanitation devices. The term includes privately and publicly owned marinas and anchorages.
- (3) Marine sanitation device. – As defined in 33 U.S.C. § 1322. The term does not include "portable toilets" as defined in this act.

- (4) Portable toilet. – A self-contained mobile toilet facility and holding tank for sewage.
- (5) Pumpout facility. – The term includes stations affixed permanently to a dock, mobile stations mounted to a golf cart or hand truck, direct slipside connections, pumpout vessels, and tanker trucks.
- (6) Sewage. – Treated or untreated human waste. As used in this act, the term includes effluent produced or held by any type of marine sanitation device.
- (7) Vessel. – As defined in G.S. 75A-2. (2009-345, s. 1; 2010-180, s. 21(b); 2015-241, s. 14.30(u).)

**§ 77-126. Marina pumpout facilities and services required in certain areas; marinas and local government may apply for grant funds.**

(a) The owner or operator, as appropriate, of any large vessel marina that is located on coastal waters designated as a no discharge zone by the Environmental Protection Agency or that is located in a county or municipality that has adopted a resolution to petition the Environmental Protection Agency for a no discharge zone designation shall either (i) install and maintain an operational pumpout facility at the marina that is available to customers patronizing the marina or (ii) contract with an outside service provider to provide pumpout services on a regular basis to the marina.

(b) The owner or operator, as appropriate, of a large vessel marina may apply for any private, State, or federal grant funds that are available for the purpose of assisting with the cost of installing and maintaining a pumpout facility. A county or municipality may also apply for any private, State, or federal grant funds that are available for the purpose of assisting with the cost of installing and maintaining a pumpout facility. (2009-345, s. 1; 2010-180, s. 21(b).)

**§ 77-127. Department of Environmental Quality establish pumpout facility criteria; inspection of pumpout facilities and vessels docked or moored at a marina.**

(a) The Department of Environmental Quality shall establish appropriate criteria for pumpout facilities and pumpout services provided at large vessel marinas that offer docking services to the general public. The criteria shall include requirements that the facility or services be available to the public, the pumpout facility be open during normal hours, and the pumpout facility be used for its intended purpose. The criteria also shall include a requirement that these marinas maintain records regarding the pumpout facility or services. The Department also shall develop guidelines for inspections of pumpout facilities at such marinas and of vessels that are docked or moored at these marinas.

(b) The Department also shall establish appropriate criteria for pumpout facilities and pumpout services provided at privately owned large vessel marinas that do not offer docking services to the general public. The criteria shall include requirements that the facility or services be made reasonably available to members of the private marina and the pumpout facility be used for its intended purpose. The criteria also shall include a

requirement that these marinas maintain records regarding the pumpout facility or services. The Department also shall develop guidelines for inspections of pumpout facilities at such marinas and of vessels that are docked or moored at these marinas. (2009-345, s. 1; 2010-180, s. 21(b); 2015-241, s. 14.30(u).)

**§ 77-128. Vessel owner and operator required to keep log of pumpout dates.**

(a) Any owner or operator of a vessel that has a marine sanitation device shall maintain a record of the date of each pumpout of the marine sanitation device and the location of the pumpout facility. Each record shall be maintained for a period of one year from the date of the pumpout.

(b) A violation of this section is punishable as a Class 3 misdemeanor. No civil penalty shall be assessed under G.S. 77-130 for a violation of this section. (2009-345, s. 1; 2010-180, s. 21(b).)

**§ 77-129. No discharge of treated or untreated sewage in coastal waters; duty of marina owner or operator to report unlawful discharge.**

(a) No person shall discharge treated or untreated sewage into coastal waters, including effluent produced or held by any type of marine sanitation device into coastal waters. The owner or operator of a vessel with a marine sanitation device shall keep the overboard waste discharge valves of the device secure by acceptable methods set forth under 33 C.F.R. § 159.7(b) so as to prevent the discharge of treated or untreated sewage, except when lawfully discharging sewage at a pumpout facility. A violation of this section is punishable as a Class 1 misdemeanor and also may be assessed a civil penalty pursuant to G.S. 77-130.

(b) If the owner or operator of a large vessel marina knows that the owner or operator of any vessel docked or moored at the marina knowingly and unlawfully discharged sewage, including effluent produced or held by a marine sanitation device, in coastal waters in violation of this section, then the marina owner or operator shall report the unlawful discharge to the appropriate law enforcement agency. A marina owner or operator who fails to report an unlawful discharge pursuant to this subsection may be assessed a civil penalty pursuant to G.S. 77-130. (2009-345, s. 1; 2010-180, s. 21(b).)

**§ 77-130. Enforcement.**

(a) The following officers have authority to enforce this Article and to inspect a large vessel marina or vessel subject to this Article:

- (1) Wildlife protectors.
- (2) Marine fisheries inspectors.
- (3) Any sworn local law enforcement officer with jurisdiction to enforce the laws in the county or municipality in which the marina or vessel is located.
- (4) United States Coast Guard personnel.

(b) Officers enforcing the provisions of this Article shall report violations to the Department.

(c) Unless provided otherwise by this Article, a civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Secretary of Environmental Quality against any person who violates this Article. If any action or failure for which a penalty may be assessed under this section is continuous, the Secretary of Environmental Quality may assess a penalty not to exceed ten thousand dollars (\$10,000) per day for so long as the violation continues. (2009-345, s. 1; 2010-180, s. 21(b); 2015-241, s. 14.30(v).)

**§ 77-131. Application of Article.**

The provisions of this Article apply only to the following:

- (1) A large vessel marina that is located on coastal waters designated by the Environmental Protection Agency as a no discharge zone or that is located in a county or municipality that has adopted a resolution to petition the Environmental Protection Agency for a no discharge zone designation.
- (2) A vessel in coastal waters that is designated as a no discharge zone by the Environmental Protection Agency. (2009-345, s. 1; 2010-180, s. 21(a), (b).)

**§ 77-132. Rule-making authority.**

The Department shall adopt rules to implement this Article. (2009-345, s. 1; 2010-180, s. 21(b).)

**§ 77-133:** Reserved for future codification purposes.

**§ 77-134:** Reserved for future codification purposes.

**§ 77-135:** Reserved for future codification purposes.

**§ 77-136:** Reserved for future codification purposes.

**§ 77-137:** Reserved for future codification purposes.

**§ 77-138:** Reserved for future codification purposes.

**§ 77-139:** Reserved for future codification purposes.

Article 10.

Falls Lake Watershed Association.

**§ 77-140. Definitions.**

The following definitions apply in this Article:

- (1) "Board of directors" has the same meaning as in G.S. 55A-1-40.
- (2) "Falls Lake watershed" means those natural areas of drainage including all tributaries contributing to the supply of Falls Lake, the specific limits of which are designated by the Environmental Management Commission pursuant to G.S. 143-213.
- (3) "Local government" means a county, city, town, or incorporated village that is located in whole or in part within the Falls Lake watershed. Local government also includes any water or sewer authority that is created pursuant to Article 1 of Chapter 162A of the General Statutes that provides service within the Falls Lake watershed.
- (4) "Nonprofit corporation" has the same meaning as in G.S. 55A-1-40. (2010-155, s. 1.)

**§ 77-141. Falls Lake Watershed Association criteria for creation; board of directors; purpose; meetings; and records.**

(a) Local governments may elect to incorporate the Falls Lake Watershed Association nonprofit corporation or establish the Association using an existing nonprofit corporation. The Association shall only be comprised of local governments that choose to participate in the Association.

(b) Each local government that elects to participate in the Association shall appoint a representative and an alternate representative to serve on the board of directors of the Association. The first board of directors that is appointed to the Association shall adopt bylaws that govern the operation of the Association.

(c) The purposes of the Association may include, but are not limited to:

- (1) Providing a forum for sharing information in order to assist local governments in complying with State and federal laws that pertain to the water quality in the Falls Lake watershed.
- (2) Providing a mechanism for participating local governments to coordinate and fund common technical resources.
- (3) Planning for and conducting water quality monitoring in the Falls Lake watershed in coordination with the Department of Environmental Quality.
- (4) Coordinating with the Department of Environmental Quality in the development of a transparent and accessible system for recording and maintaining nutrient offsets and credits that complies with any rules adopted to protect and restore water quality in the Falls Lake watershed.



- (5) Providing a public forum to review and discuss innovative approaches to restore, protect, and maintain water quality in the Falls Lake watershed.
- (6) Conducting and evaluating scientific research that describes or predicts conditions related to or affecting water quality in the Falls Lake watershed, including the reservoir.

(d) The Association shall be subject to the requirements for meetings of public bodies pursuant to Article 33C of Chapter 143 of the General Statutes.

(e) The Association shall be subject to the requirements for public records pursuant to Chapter 132 of the General Statutes. (2010-155, s. 1; 2015-241, s. 14.30(u).)

**§ 77-142. Memoranda of understanding.**

To the extent allowed by law, the Department of Environmental Quality may enter into memoranda of understanding with the Association to implement the purposes in G.S. 77-141(c). (2010-155, s. 1; 2015-241, s. 14.30(u).)

**§ 77-143. Authority.**

The authority granted pursuant to this Article is in addition to and not in derogation of any other authority granted to local governments under any other provision of law. (2010-155, s. 1.)