

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 426
HOUSE BILL 156

AN ACT TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ADOPT RULES ESTABLISHING WATER SUPPLY WATERSHED CLASSIFICATIONS AND MINIMUM MANAGEMENT REQUIREMENTS FOR THE PROTECTION OF THE SURFACE WATER SUPPLIES OF THE STATE.

The General Assembly of North Carolina enacts:

Section 1. Article 21 of Chapter 143 is amended by adding a new section to read:

"§ 143-214.5. Water supply watershed protection.

(a) Policy Statement. – This section provides for a cooperative program of water supply watershed management and protection to be administered by local governments consistent with minimum statewide management requirements established by the Commission. If a local government fails to adopt a water supply watershed protection program or does not adequately carry out its responsibility to enforce the minimum water supply watershed management requirements of its approved program, the Commission shall administer and enforce the minimum statewide requirements. The reduction of agricultural nonpoint source discharges shall be accomplished primarily through the Agriculture Cost Share Program for Nonpoint Source Pollution Control.

(b) Development and Adoption of Water Supply Watershed Classifications and Management Requirements. – The Commission shall adopt rules for the classification of water supply watersheds and for the protection of surface water supplies through minimum performance-based water supply watershed management requirements applicable to each classification. The Commission may designate water supply watersheds or portions thereof as critical water supply watersheds and impose management requirements that are more stringent than the minimum statewide water supply watershed management requirements.

(c) Classification of Water Supply Watersheds. – The Commission shall assign to each water supply watershed in the State the appropriate classification with the applicable minimum protective management requirements. The Commission may reclassify water supply watersheds as necessary to protect future water supplies or improve protection at existing water supplies. A local government shall not be required to submit a revised water supply watershed protection program to the Commission earlier than 270 days after it receives notice of a reclassification from the Commission.

(d) Mandatory Local Programs. – The Department shall assist local governments to develop water supply watershed protection programs which comply with this section. Local government compliance programs shall include an implementing local ordinance

and shall provide for maintenance, inspection, and enforcement procedures. As part of its assistance to local governments, the Commission shall approve and make available a model local water supply watershed management and protection ordinance. The model management and protection ordinance adopted by the Commission shall, at a minimum, include as options (i) controlling development density, (ii) providing for performance-based alternatives to development density controls which are based on sound engineering principles, and (iii) a combination of both (i) and (ii). It shall be the responsibility of local governments to administer and enforce the minimum management requirements. Every local government which has within its jurisdiction all or a portion of a water supply watershed shall submit a local water supply watershed management and protection ordinance to the Commission for approval. This section shall not be construed to affect the validity of any local ordinance prior to completion of the review of the ordinance by the Commission or prior to the assumption by the Commission of responsibility for a local water supply watershed protection program. Local governments may create or designate agencies to administer and enforce such programs. The Commission shall approve a local program only if it determines that the requirements of the program equal or exceed the minimum statewide water supply watershed management requirements adopted pursuant to this section.

(e) Assumption of Local Programs. – The Commission shall assume responsibility for water supply watershed protection whenever a local government fails to adopt a program which meets the requirements of this section or fails to adequately administer and enforce the provisions of its program. The Commission shall not assume responsibility for a water supply watershed protection until it or its designee notifies the local government in writing by certified mail, return receipt requested, of local program deficiencies, recommendations for changes and improvements in the local program, and the deadline for compliance. The Commission shall allow a local government a minimum of 120 days to bring its program into compliance. The Commission shall order assumption of a local program if it finds that the local government has made no substantial progress toward compliance. The Commission may make such finding at any time between 120 days and 365 days after receipt of notice under this subsection by the local government, with no further notice.

(f) State Enforcement Authority. – The Commission may take appropriate preventive or remedial enforcement action against any person who violates any minimum water supply watershed management requirement whenever a local government has unlawfully issued a permit or has failed to take appropriate enforcement action.

(g) Civil Penalties. – A local government which fails to adopt a local water supply watershed protection program as required by this section shall be subject to a civil penalty pursuant to G.S. 143-215.6(a)(5). In any area of the State which is not covered by an approved local water supply watershed protection program, any person who violates or fails to act in accordance with any statewide minimum management requirement established pursuant to this section shall be subject to a civil penalty as specified in G.S. 143-215.6(a)(1)g.

(h) Planning Grants to Local Governments. – The Secretary may make annual grants to local governments for the purpose of assisting in the development of local water supply watershed protection programs. The Secretary shall develop and administer generally applicable criteria under which local governments may qualify for such assistance. Such criteria shall give priority to local governments which are not then administering zoning ordinances in affected water supply watershed areas."

Sec. 2. Article 21 of Chapter 143 is amended by adding a new section to read:

"§ 143-214.6. Watershed Protection Advisory Council.

(a) Creation. – There is created the Watershed Protection Advisory Council.

(b) Membership. – The Council shall consist of not more than 20 members appointed or designated as follows:

- (1) The Secretary or his designee;
- (2) The Secretary of Transportation or his designee;
- (3) The Secretary of Human Resources or his designee;
- (4) The Commissioner of Agriculture or his designee;
- (5) One member each from two different lead regional organizations to be appointed by the Commission from nominations submitted by lead regional organizations;
- (6) Three representatives of county government, one to be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, one to be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, and one to be appointed by the Commission, from three lists of three nominees each submitted by the North Carolina Association of County Commissioners;
- (7) Three representatives of municipal government, one to be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, one to be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, and one to be appointed by the Commission, from three lists of three nominees each submitted by the North Carolina League of Municipalities;
- (8) One member appointed by the Commission who has technical or professional expertise in the area of land use planning;
- (9) One member who is a local health director appointed by the Commission upon recommendation of the Secretary of Human Resources;
- (10) Two members appointed by the Commission who shall be actively involved with or have had extensive experience in the field of land development upon the recommendation of the North Carolina Home Builders Association;
- (11) One member appointed by the Commission who has technical or professional expertise in the area of water resources;

(12) One soil and water conservation district supervisor appointed by the Secretary;

(13) Two members appointed by the Commission who represent the interests of the environmental and conservation community.

(c) Functions and Duties. – The Advisory Council shall assist the Secretary and the Commission in an advisory capacity on:

(1) Development of necessary water supply watershed protection rules; and

(2) Such other water supply watershed protection matters as the Council or Secretary consider appropriate.

(d) Multiple Offices. – Any person who is a member of the Council may hold such membership concurrently with and in addition to any other elective or appointive office or offices such person is permitted to hold under G.S. 128-1.1.

(e) Chairman and Vice-Chairman. – The Council shall annually elect a Chairman and Vice-Chairman from among its members.

(f) Compensation. – Members of the Council who are not State employees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5."

Sec. 3. G.S. 143-215.2(a) reads as rewritten:

"(a) Issuance. – The Commission is hereby empowered, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, or a water supply watershed management requirement adopted pursuant to G.S. 143-214.5, to issue (and from time to time to modify or revoke) a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. Such an order or instrument may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water and such document shall have the same force and effect as a special order of the Commission issued pursuant to hearing. Provided, however, that the provisions of this section shall not apply to any agricultural operation, such as the use or preparation of any land for the purposes of planting, growing, or harvesting plants, crops, trees or other agricultural products, or raising livestock or poultry."

Sec. 4. G.S. 143-215.6(a) reads as rewritten:

"(a) Civil Penalties. –

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

a. Violates any classification, standard, limitation or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.

- b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
 - c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.
 - d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or G.S. 143-355(k) relating to water use information.
 - e. Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.
 - f. Violates a rule of the Commission implementing this Part or G.S. 143-355(k).
 - g. Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.
- (2) If any action or failure to act for which a penalty may be assessed under this subsection is continuous, the Commission may assess a penalty not to exceed ten thousand dollars (\$10,000) per day for so long as the violation ~~continues.~~ continues, unless otherwise stipulated.
 - (3) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.
 - (4) The Commission may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Commission may specify, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Commission, in the superior court of the county in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment.
 - (5) A civil penalty of not more than ten thousand dollars (\$10,000) per month may be assessed by the Commission against any local government which fails to adopt or enforce a water supply watershed protection program as required by G.S. 143-214.5. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission.

The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement."

Sec. 5. (a) The Environmental Management Commission shall adopt water supply watershed classifications and applicable management requirements as required by G.S. 143-214.4(b) no later than 1 January 1991.

(b) The Environmental Management Commission shall publish the proposed classification of all existing water supply watersheds under the classifications adopted pursuant to G.S. 143-214.4(b) no later than 1 January 1991. The Environmental Management Commission shall complete the classification of all existing water supply watersheds no later than 1 January 1992.

(c) Every local government shall submit a local water supply management and protection ordinance to the Environmental Management Commission for approval by 1 July 1992.

Sec. 6. The Environmental Management Commission shall submit written reports on the implementation of this act to the Environmental Review Commission on a quarterly basis beginning 1 January 1990.

Sec. 7. This act shall not affect the validity of any local ordinance relating to watershed protection adopted prior to the effective date of this act.

Sec. 7.1. Nothing herein contained shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of June, 1989.