

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 579
HOUSE BILL 124

AN ACT TO AMEND THE WATER SUPPLY WATERSHED PROTECTION
STATUTES TO CLARIFY LOCAL AND STATE POWERS AND DUTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-214.5 reads as rewritten:

"§ 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 that establish minimum statewide water supply watershed protection requirements applicable to each classification for the protection of to protect surface water supplies through by (i) controlling development density, (ii) minimum providing for performance-based water supply watershed management requirements applicable to each classification. alternatives to development density controls that are based on sound engineering principles, or (iii) a combination of both (i) and (ii). 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. The Commission may adopt rules that require that any permit issued by a local government for a development or construction activity conducted by that local government within a designated water supply watershed be approved by the Department prior to issuance. Any variance from the minimum statewide water supply watershed management requirements must be approved by the Commission prior to the issuance of a permit by a local government. Except as provided by G.S. 153A-347 and G.S. 160A-392, the power to implement this section with respect to development or construction activities that are conducted by State agencies is vested exclusively in the Commission.

(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~~ that 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~~ that are based on sound engineering principles, and (iii) a combination of both (i) and (ii). ~~It shall be the responsibility of local governments to~~ Local governments shall administer and enforce the minimum management requirements. Every local government ~~which~~ that 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. Local governments may adopt such ordinances pursuant to their general police power, power to regulate the subdivision of land, zoning power, or any combination of such powers. In adopting a local ordinance that imposes water supply watershed management requirements that are more stringent than those adopted by the Commission, a county must comply with the notice provisions of G.S.153A-343 and a municipality must comply with the notice provisions of G.S. 160A-384. This section shall not be construed to affect the validity of any local ordinance adopted for the protection of water supply watersheds 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.

(d1) A local ordinance adopted to implement the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities shall be no more restrictive than those adopted by the Commission. In adopting minimum statewide water supply watershed management requirements applicable to agriculture activities, the Commission shall consider the policy regarding agricultural nonpoint source discharges set out in subsection (a) of this section. The Commission may by rule designate another State agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities. If the Commission designates another State agency to administer the minimum statewide water supply watershed management requirements applicable to

agriculture and silviculture activities, management requirements adopted by local governments shall not apply to such activities.

(e) Assumption of Local Programs. – The Commission shall assume responsibility for water supply watershed ~~protection whenever protection, within all or the affected portion of a water supply watershed,~~ if a local government fails to adopt a program ~~which~~that meets the requirements of this section or whenever a local government fails to adequately administer and enforce the provisions of its program. The Commission shall not assume responsibility for an approved local water supply watershed protection program 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 an approved 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. Proceedings to review such orders by the Commission shall be conducted by the superior court pursuant to Article 4 of Chapter 150B of the General Statutes based on the agency record submitted to the Commission by the Secretary.

(f) State Enforcement Authority. – The Commission may take any appropriate preventive or remedial enforcement action authorized by this Part against any person who violates any minimum statewide water supply watershed management ~~requirement, 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~~that fails to adopt a local water supply watershed protection program as required by this section or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements shall be subject to a civil penalty pursuant to G.S. 143-215.6A(e). In any area of the State ~~which~~that 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~~statewide water supply watershed management requirement or more stringent management requirement adopted by the Commission for a critical water supply watershed established pursuant to this section shall be subject to a civil penalty as specified in G.S. 143-215.6A(a)(7).

(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~~that are not then administering zoning ordinances in affected water supply watershed areas."

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

"(e) Consistent with G.S. 143B-282.1, 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 that~~ fails to adopt a local water supply watershed protection program as required by G.S. 143-214.5, or willfully fails to administer or enforce a water supply watershed protection the provisions of its program as required by G.S. 143-214.5. ~~in substantial compliance with the minimum statewide water supply watershed management requirements.~~ 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. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives