

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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1

HOUSE BILL 742

Short Title: Mountain Planning Act.

(Public)

Sponsors: Representatives Hege; and Diamont.

Referred to: Environment.

April 15, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH THE MOUNTAIN AREA PLANNING SYSTEM ACT, TO  
3 ENCOURAGE DEVELOPMENT OF LAND-USE PLANS BY COUNTIES IN  
4 THE MOUNTAIN AREA OF NORTH CAROLINA.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 113A of the General Statutes is amended by adding a new  
7 Article to read:

8 **"ARTICLE 15.**

9 **"MOUNTAIN AREA PLANNING SYSTEM ACT.**

10 **"§ 113A-220. Short title.**

11 This Article shall be known as the Mountain Area Planning System Act.

12 **"§ 113A-221. Purpose.**

13 It is hereby determined that it is a goal of the State of North Carolina to assist the  
14 mountain counties in providing for a secure future. The economy of the mountain area  
15 benefits greatly from possessing a high quality environment. To protect this  
16 environment and thus the economy, it is the purpose of this act to establish a Mountain  
17 Area Planning System.

18 **"§ 113A-222. Goals.**

19 The goals of the Mountain Area Planning System created pursuant to this Article are  
20 as follows:

- 21 (1) To provide planning capability at the local level to adopt policies and  
22 prepare maps directing the region's growth;  
23 (2) To insure that the development or preservation of the land and water  
24 resources of the mountain area proceeds in a manner consistent with

1           both the capabilities of the land and water for development, based  
2           upon ecological considerations, and the adopted policies of the local  
3           elected officials;

4           (3) To assert that the scenic beauty and natural resources of the mountain  
5           area are a valuable resource to all of the people of North Carolina; and

6           (4) To establish policies and guidelines for:

7           a. Protection, preservation, and conservation of natural resources  
8           including but not limited to scenic vistas, water use,  
9           floodplains, freshwater wetlands, and fish and wildlife;

10          b. Management of rural, transitional, or intensely developed areas  
11          and those areas well suited to intense development as well as  
12          areas of significant natural value;

13          c. Management of development adjacent to highways, waterways,  
14          and ridgetops to protect the visual environment of the mountain  
15          area from the impacts of incompatible development;

16          d. The economic development of the mountain area, including, but  
17          not limited to construction, location, and design of industrial  
18          and commercial establishments and signs so as to protect the  
19          scenic beauty which is also a major component of the economy  
20          of the area;

21          e. The provision of public infrastructure such as water and sewer  
22          facilities to promote environmentally safe development;

23          f. Recreation and tourist facilities and parklands;

24          g. Transportation and circulation patterns for the area including  
25          highways, railroads, waterways, hiking and bicycle routes and  
26          other public utilities, facilities, and accessways;

27          h. Preservation and enhancement of the historic, cultural, and  
28          scientific aspects of the mountain region;

29          i. Protection of present common-law and statutory public trust  
30          rights in the lands and waters of the mountain region; and

31          j. Any other purposes deemed necessary or appropriate to  
32          effectuate the policy of the Article.

33          k. Encouragement of a high level of citizen input.

34 **"§ 113A-223. Definitions.**

35         As used in this Article:

36           (1) 'Mountain area' means the counties of Alleghany, Ashe, Avery,  
37           Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood,  
38           Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk,  
39           Rutherford, Surry, Swain, Transylvania, Watauga, Wilkes, and  
40           Yancey.

41           (2) 'Department' means the Department of Economic and Community  
42           Development.

43           (3) 'Planning Council' means the Mountain Area Planning System  
44           Advisory Council.

1           (4) 'Secretary' means the Secretary of the Department of Economic and  
2           Community Development.

3 **"§ 113A-224. Mountain Area Planning System Advisory Council.**

4           (a) Creation. – There is hereby created and established a planning council to be  
5 known as the Mountain Area Planning System Advisory Council.

6           (b) The membership of the Mountain Area Planning System Advisory Council  
7 shall consist of no more than 35 members appointed or designated as follows:

8           (1) Thirty members appointed by the Governor. Of the members  
9 appointed by the Governor:

10           a. Twenty-four shall be upon recommendation by the board of  
11 county commissioners in each of the 24 counties of the  
12 Mountain Area; and

13           b. Six to represent municipal government upon recommendation  
14 by each of the six affected Lead Regional Organizations;

15           (2) Two members appointed by the Secretary of the Department of  
16 Economic and Community Development;

17           (3) One member appointed by the Secretary of the Department of  
18 Environment, Health, and Natural Resources;

19           (4) One member appointed by the Secretary of the Department of  
20 Administration; and

21           (5) One member appointed by the Secretary of the Department of  
22 Transportation.

23           (c) Functions and Duties. – The Planning Council shall assist the Secretary of the  
24 Department in an advisory capacity:

25           (1) With the preparation and amendment of the State Guidelines for the  
26 Mountain Area;

27           (2) With reviewing the plans submitted by local government under this  
28 Article; and

29           (3) On such matters arising under the implementation of this Article as the  
30 Council or the Secretary considers appropriate.

31           (d) The Governor shall appoint from the members a Chair and Vice-Chair.

32           (e) Compensation. – The members of the Planning Council shall not be  
33 compensated for their service on the Council.

34 **"§ 113A-225. State guidelines for the mountain area.**

35           (1) State guidelines for the mountain area shall consist of statements of  
36 objectives, policies, and standards to be followed by the counties and  
37 municipalities of the mountain area in preparing local land-use plans.

38           (2) The Department upon advice of the Planning Council, shall be  
39 responsible for the preparation, adoption, and amendment of the State  
40 guidelines. The Department shall be furnished such assistance as  
41 necessary by the secretaries of the Departments of Administration,  
42 Environment, Health and Natural Resources, and any other such  
43 incidental assistance as may be requested from any other State agency.

- 1           (3) The Department shall mail proposed as well as adopted rules  
2 establishing guidelines for planning in the mountain area to all  
3 counties and municipalities within the area and to all State, federal,  
4 regional, local, and private agencies which the Department believes to  
5 have special expertise in the mountain area.
- 6           (4) The Secretary may make annual grants to local governments for the  
7 purpose of preparing, amending, or implementing the requirements of  
8 this Article. The Secretary, with the advice of the Planning Council,  
9 shall develop and administer generally applicable criteria under which  
10 local governments may qualify for such assistance.
- 11           (5) The Secretary and the Planning Council may from time to time amend  
12 the State guidelines as it deems necessary. In addition, it shall review  
13 the guidelines each five years after January 1, 1992, in accordance  
14 with the procedures set out in subdivisions (3) and (4) of this section.

15 **"§ 113A-226. Effect of State guidelines.**

16 All local land-use plans adopted pursuant to this Article within the mountain area  
17 should be consistent with the State guidelines. Any State land policies governing the  
18 acquisition, use, and disposition of land by State departments and agencies shall take  
19 account of and be consistent with the State guidelines adopted under this Article and the  
20 State approved land-use plans prepared under this Article.

21 **"§ 113A-227. Land-use plans.**

- 22           (1) A land-use plan shall, for the purposes of this Article, consist of  
23 statements of objectives, policies, and standards to be followed in  
24 public and private use of the land within the local government  
25 jurisdiction, and shall be supplemented by maps showing the  
26 appropriate location of particular types of land and water uses and the  
27 public facilities required to develop these uses in harmony with other  
28 existing and proposed land uses and the natural environment. Each  
29 plan shall examine existing and proposed land-use and shall identify  
30 local growth management tools to implement the objectives and  
31 policies contained in the plan.
- 32           (2) The county commissioners may either (i) delegate to a municipality  
33 within the county responsibility for preparing those portions of the  
34 land-use plan that affect land within the municipality's planning  
35 jurisdiction as adopted under G.S. 160A-360, or (ii) receive  
36 recommendations from the municipality concerning those portions of  
37 the land-use plan that affect land within the municipality's planning  
38 jurisdiction prior to adoption of the plan or any amendments thereto or  
39 (iii) delegate responsibility to some municipalities and receive  
40 recommendations from other municipalities in the county. If a  
41 municipality is currently enforcing its zoning ordinance, its  
42 subdivision regulations, and the State Building Code, the county  
43 commissioners shall not prohibit the municipality from choosing to  
44 prepare its own land-use plan under this Article.

- 1           (3) Prior to adoption or subsequent amendment of any land-use plan, the  
2 body charged with its preparation shall hold a public hearing at which  
3 public and private parties shall have the opportunity to present  
4 comments and recommendations. Notice of the hearing shall be given  
5 not less than 30 days before the date of the hearing and shall state the  
6 date, time, and location of the hearing, the subject of the hearing, the  
7 action that is proposed; and that copies of the proposed plan are  
8 available for inspection at a designated office in the county or  
9 municipality during designated hours. Any such notice shall be  
10 published at least once in a newspaper of general circulation within the  
11 county.
- 12           (4) No land-use plan shall become effective for the purposes of this  
13 Article until it has been reviewed by the Department and found to be in  
14 conformance with the State guidelines. The county or municipality  
15 shall submit it to the Department for review following adoption.  
16 Within 45 days of the receipt of the plan, the Department, after  
17 conferring with the Planning Council, shall either approve the plan or  
18 notify the county or municipality of the specific changes which must  
19 be made in order for it to be approved. Following the adoption of such  
20 changes, the plan may be resubmitted in the original manner.
- 21           (5) Copies of each plan adopted and approved by the Department under  
22 this Article shall be maintained in a form available for public  
23 inspection by the adopting local government, the county, and the  
24 Department.

25 **§ 113A-228. Effect of land-use plan.**

- 26           (1) No action of any State department or agency including: (i) funding of  
27 any type of land development activity, transportation facility, or public  
28 utility; (ii) issuance of a State permit for any type of land-disturbing  
29 activity; or (iii) land-disturbing activity initiated or undertaken by a  
30 State department or agency; shall be made which is inconsistent with  
31 an approved local land-use plan adopted pursuant to this Article. The  
32 Department of Administration shall act as a clearinghouse to review  
33 actions for consistency with the local land-use plans.
- 34           (2) No local ordinances may be adopted which are inconsistent with an  
35 approved local land-use plan adopted pursuant to this Article. All  
36 local land-use ordinances existing as of the time of adoption of the  
37 local land-use plan shall be reviewed by the Department for  
38 consistency with the approved plan, and, if the Department finds any  
39 inconsistencies, it shall transmit recommendations for modification to  
40 the adopting local government.

41 **§ 113A-229. Choosing coverage or removal from coverage from this Article.**

- 42           (a) This Article shall apply to all counties within the mountain area unless and  
43 until the county adopts an ordinance exempting itself from the coverage of this Article.

1       (b) Exemption from this Article shall only be effective after a binding  
2 referendum, in which all registered voters in the jurisdiction are eligible to vote, which  
3 shall be held on or before July 1, 1992. The binding referendum shall be held either (i)  
4 upon resolution passed by the governing body of the jurisdiction or (ii) upon an  
5 initiative petition signed by fifteen percent (15%) of the registered voters of the county  
6 and filed with the board of elections of the county not later than 60 days before the  
7 election is to be held. At that referendum, each qualified voter desiring to vote shall be  
8 provided a ballot on which shall be provided the following:

9           '[] FOR coverage under the Mountain Area Planning Systems Act of  
10           1991.

11           [] AGAINST coverage under the Mountain Area Planning Systems Act  
12           of 1991.'

13       (c) If a jurisdiction removes itself from the coverage of this Article, by means of  
14 a binding referendum, as provided for in subsections (a) and (b) of this section, then it  
15 shall have until March 31, 1994, to place itself again under the coverage of this Article  
16 by means of a similar referendum.

17       (d) If a jurisdiction fails to exempt itself by referendum it may not take any  
18 further action to remove itself from the coverage of this Article.

19       (e) When a county removes itself from the coverage of this Article any  
20 municipality within the county may elect, upon a majority vote of the governing body of  
21 the municipality, to prepare a land-use plan under this Article."

22           Sec. 2. This act becomes effective January 1, 1992.