

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 455*
Second Edition Engrossed 4/29/91

Short Title: Aquatic Weed Control.

(Public)

Sponsors: Senator Tally.

Referred to: Environment and Natural Resources.

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE CONTROL OF AQUATIC WEEDS.

3 The General Assembly of North Carolina enacts:

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

6 **“ARTICLE 15.**
7 **"AQUATIC WEED CONTROL.**

8 **"§ 113A-220. Short title.**

9 This Article shall be known as the Aquatic Weed Control Act of 1991.

10 **"§ 113A-221. Definitions.**

11 Unless a different meaning is required by the context, the following definitions shall
12 apply throughout this Article:

13 (1) ‘Department’ means the Department of Environment, Health, and
14 Natural Resources.

15 (2) ‘Secretary’ means the Secretary of Environment, Health, and Natural
16 Resources or his designee.

17 (3) ‘Noxious aquatic weed’ means any plant organism so designated under
18 this Article.

19 (4) ‘Waters of the State’ means any surface body or accumulation of
20 water, whether publicly or privately owned and whether naturally
21 occurring or artificially created, which is contained within, flows
22 through, or borders upon any part of this State.

23 **"§ 113A-222. Designation of noxious aquatic weeds.**

1 (a) The Secretary, after consultation with the Director of the North Carolina
2 Agricultural Extension Service, the Wildlife Resources Commission, and the Marine
3 Fisheries Commission, and with the concurrence of the Commissioner of Agriculture,
4 may designate as a noxious aquatic weed any plant organism which:

5 (1) Grows in or is closely associated with the aquatic environment,
6 whether floating, emersed, submersed, or ditch-bank species, and
7 including terrestrial phases of any such plant organism;

8 (2) Exhibits characteristics of obstructive nature and either massive
9 productivity or choking density; and

10 (3) Is or may become a threat to public health or safety or to existing or
11 new beneficial uses of the waters of the State.

12 (b) A plant organism may be designated as being a noxious aquatic weed either
13 throughout the State or within specified areas within the State.

14 (c) The Secretary shall designate a plant organism as a noxious aquatic weed by
15 rules adopted pursuant to Chapter 150B of the General Statutes.

16 (d) The Secretary may modify or withdraw any designation of a plant organism
17 as a noxious aquatic weed made previously under this section. Any modification or
18 withdrawal of such designation shall be made following the procedures for designation
19 set out in this section.

20 **"§ 113A-223. Powers and duties of the Secretary.**

21 (a) The Secretary shall direct the control, eradication, and regulation of noxious
22 aquatic weeds so as to protect and preserve human health, safety, and the beneficial uses
23 of the waters of the State and to prevent injury to property and beneficial plant and
24 animal life. The Secretary shall have the power to:

25 (1) Conduct research and planning related to the control of noxious
26 aquatic weeds;

27 (2) Coordinate activities of all public bodies, authorities, agencies, and
28 units of local government in the control and eradication of noxious
29 aquatic weeds;

30 (3) To delegate to any public body, authority, agency, or unit of local
31 government any power or duty under this Article, except that the
32 Secretary may not delegate the designation of noxious aquatic weeds;

33 (4) Accept donations, grants, and services from both public and private
34 sources;

35 (5) Enter into contracts or agreements, including cost-sharing agreements,
36 with public or private agencies for research and development of
37 methods of control of noxious aquatic weeds or for the performance of
38 noxious aquatic weed control activities;

39 (6) Construct, acquire, operate, and maintain facilities and equipment
40 necessary for the control of noxious aquatic weeds; and

41 (7) Enter upon private property for purposes of conducting investigations
42 and engaging in aquatic weed control activities.

43 (b) The Secretary may control, remove, or destroy any noxious aquatic weed
44 located in the waters of the State or in areas adjacent to such waters wherever such

1 weeds threaten to invade such waters. The Secretary may employ any appropriate
2 control technology which is consistent with federal and State law, regulations, and rules.
3 Control technologies may include, but are not limited to drawdown of waters,
4 application of chemicals to shoreline and surface waters, mechanical controls, physical
5 removal from transport mechanisms, quarantine of transport mechanisms, and
6 biological controls. Any biological control technology may be implemented only with
7 the approval of the Wildlife Resources Commission, the Marine Fisheries Commission
8 and the Commissioner of Agriculture.

9 (c) In determining the appropriate strategies and technologies, the Secretary shall
10 consider their relative short-term and long-term cost-efficiency and effectiveness,
11 consistent with a margin of safety adequate to protect public health and the resources of
12 the State.

13 (d) All activities carried out by the Secretary, his designees, and others
14 authorized to perform any function under this Article shall be consistent with all
15 applicable federal and State law, regulations, and rules. The provisions of the North
16 Carolina Environmental Policy Act of 1971, Article 1 of Chapter 113A of the General
17 Statutes, shall apply to all activities conducted pursuant to this Article.

18 **"§ 113A-224. Powers of the Commissioner of Agriculture.**

19 (a) The Commissioner of Agriculture may regulate the importation, sale, use,
20 culture, collection, transportation, and distribution of a noxious aquatic weed as a plant
21 pest under Article 36 of Chapter 106 of the General Statutes.

22 (b) This article shall not be construed to limit any power of the Commissioner of
23 Agriculture, the Department of Agriculture, or the Board of Agriculture under any other
24 provision of law.

25 **"§ 113A-225. Responsibilities of other State agencies.**

26 All State agencies shall cooperate with the Secretary to assist in the implementation
27 of this Article.

28 **"§ 113A-226. Enforcement.**

29 (a) Any person who violates this Article or any rule adopted pursuant to this
30 Article shall be guilty of a misdemeanor and, upon conviction, shall be fined not less
31 than fifty dollars (\$50.00) or more than one thousand dollars (\$1,000), or imprisoned for
32 not less than 10 days nor more than 180 days, or both, for each offense.

33 (b) Whenever there exists reasonable cause to believe that any person has
34 violated this Article or rules adopted pursuant to this Article, the Secretary may request
35 the Attorney General to institute a civil action for injunctive relief to restrain the
36 violation. The Attorney General may institute such action in the name of the State upon
37 relation of the Department in the superior court of the county in which the violation
38 occurred. Upon a determination by the court that the alleged violation of the provisions
39 of this Article or of rules adopted pursuant to this Article has occurred or is threatened,
40 the court shall grant the relief necessary to prevent or abate the violation or threatened
41 violation. Neither the institution of the action, nor any of the proceedings thereon shall
42 relieve any party to such proceedings from any penalty otherwise prescribed for
43 violations of this Article.

44 **"§ 113A-227. Adoption of rules.**

- 1 The Secretary may adopt rules necessary to implement the provisions of this Article
- 2 pursuant to Chapter 150B of the General Statutes."
- 3 Sec. 2. This act becomes effective 1 October 1991.