

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 802\*

Environment and Natural Resources Committee Substitute Adopted 5/2/91

House Committee Substitute Favorable 6/19/91

Short Title: Remedy Certain Water Withdrawals.

(Public)

Sponsors:

Referred to:

April 24, 1991

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATE POLICY REGARDING WATER WITHDRAWALS AND TO PROVIDE REMEDIES FOR WATER WITHDRAWALS WHICH ARE CONTRARY TO PUBLIC POLICY.

The General Assembly of North Carolina enacts:

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

**§ 143-215.22A. Water withdrawal policy; remedies.**

(a) It is against the public policy of North Carolina to withdraw water from any major river or reservoir if both of the following factors are present: (i) the withdrawal will cause the natural flow of water in the river or a portion of the reservoir to be reversed; and (ii) substantial portions of the water are not returned to the river system after use. For purposes of this section, a withdrawal will cause natural flow to be reversed if as a result of the withdrawal, the rate of flow in the river or discrete portion of the reservoir is 15 cubic feet per second or more, moving in a generally opposite direction than prior to the withdrawal, over a distance of more than one mile. To correct for periodic effects, including tidal influences and reservoir fluctuations, flow speed and direction shall be calculated by using annual average flow data to determine pre-withdrawal flows, and projected annual average flow assuming the maximum practical rate of withdrawal, to determine post-withdrawal flows. Flow speed and direction before and after withdrawal shall be determined based on average annual flow data.

1       (b) In an action brought by the State in the superior court of any county bordering  
2 such reservoir or river, any such withdrawal, and all steps taken to facilitate that  
3 withdrawal, shall be enjoined upon a showing that said public policy has been violated.  
4 If the withdrawal occurs, the withdrawing party shall be liable to the State for damages  
5 in an amount equal to the maximum value of the water withdrawn, as if that water were  
6 put to its most valuable theoretical use. In calculating such damages, the court shall  
7 take into account the continuing nature of the withdrawal, and the potential that the  
8 maximum value of water may increase in the future as a result of scarcity or other  
9 factors.

10       (c) It is the intent of this section to reach water in rivers and reservoirs which  
11 naturally flows from one point in this State to another, regardless of whether the point of  
12 withdrawal is located within or without the State. The courts of this State shall have  
13 jurisdiction over the parties withdrawing water or seeking a withdrawal contrary to this  
14 public policy, and over the subject matter of the action, notwithstanding the location of  
15 the point of withdrawal."

16               Sec. 2. This act is effective upon ratification.