

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 567
SENATE BILL 802

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.

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the withdrawing party shall be liable to the State for damages in an amount equal to the maximum value of the water withdrawn, as if that water were put to its most valuable theoretical use.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

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

Sec. 2. This act is effective upon ratification.

1991. In the General Assembly read three times and ratified this the 4th day of July,

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives