

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 875*

Short Title: Regulate Interbasin Transfers.

(Public)

Sponsors: Senators Tally; Ward, Codington, Marshall, Cochrane, Parnell, Smith, and Kaplan.

Referred to: Environment and Natural Resources.

April 15, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE INTERBASIN TRANSFERS.

3 The General Assembly of North Carolina enacts:

4 Section 1. Part 2A of Article 21 of Chapter 143 of the General Statutes reads
5 as rewritten:

6 **"PART 2A. REGISTRATION OF WATER WITHDRAWALS AND**
7 **TRANSFERS.**

8 **TRANSFERS; REGULATION OF SURFACE WATER TRANSFERS.**

9 **"§ 143-215.22G. Definitions.**

10 In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the
11 following definitions apply to this Part.

12 (1) 'River basin' means any of the following river basins designated on the
13 map entitled 'Major River Basins and Sub-basins in North Carolina'
14 and filed in the Office of the Secretary of State on 16 April 1991:

- 15 a. 1-1 Broad River.
16 b. 2-1 Haw River.
17 c. 2-2 Deep River.
18 d. 2-3 Cape Fear River.
19 e. 2-4 South River.
20 f. 2-5 Northeast Cape Fear River.
21 g. 2-6 New River.
22 h. 3-1 Catawba River.
23 i. 3-2 South Fork Catawba River.

1	j.	4-1	Chowan River.
2	k.	4-2	Meherrin River.
3	l.	5-1	Nolichucky River.
4	m.	5-2	French Broad River.
5	n.	5-3	Pigeon River.
6	o.	6-1	Hiwassee River.
7	p.	7-1	Little Tennessee River.
8	q.	7-2	Tuskasegee (Tuckasegee) River.
9	r.	8-1	Savannah River.
10	s.	9-1	Lumber River.
11	t.	9-2	Big Shoe Heel Creek.
12	u.	9-3	Waccamaw River.
13	v.	9-4	Shalotte River.
14	w.	10-1	Neuse River.
15	x.	10-2	Contentnea Creek.
16	y.	10-3	Trent River.
17	z.	11-1	New River.
18	aa.	12-1	Albemarle Sound.
19	bb.	13-1	Ocoee River.
20	cc.	14-1	Roanoke River.
21	dd.	15-1	Tar River.
22	ee.	15-2	Fishing Creek.
23	ff.	15-3	Pamlico River and Sound.
24	gg.	16-1	Watauga River.
25	hh.	17-1	White Oak River.
26	ii.	18-1	Yadkin (Yadkin-Pee Dee) River.
27	jj.	18-2	South Yadkin River.
28	kk.	18-3	Uwharrie River.
29	ll.	18-4	Rocky River.

30 (2) 'Surface water' means any of the waters of the State located on the land
31 surface that are not derived by pumping from groundwater.

32 (3) 'Transfer' means the withdrawal, diversion, or pumping of surface
33 water from one river basin and discharge of all or any part of the water
34 in a river basin different from the origin.

35 **"§ 143-215.22H. Registration of water withdrawals and transfers required.**

36 (a) Any person who withdraws 1,000,000 gallons per day or more of water from
37 the surface waters of the State or who transfers 1,000,000 gallons per day or more of
38 water from one river basin to another shall register the withdrawal or transfer with the
39 Commission. A person registering a water withdrawal or transfer shall provide the
40 Commission with the following information:

41 (1) The maximum daily amount of the water withdrawal or transfer
42 expressed in millions of gallons per day.

43 (2) The location of the points of withdrawal and discharge and the
44 capacity of each facility used to make the withdrawal or transfer.

1 (b) Any person initiating a new surface water withdrawal or transfer of 1,000,000
2 gallons per day or more shall register the withdrawal or transfer with the Commission
3 not later than six months after the initiation of the withdrawal or transfer. The
4 information required under subsection (a) of this section shall be submitted with respect
5 to the new withdrawal or transfer.

6 **"§ 143-215.22I. Regulation of surface water transfers.**

7 (a) No person may do any of the following without first securing a certificate
8 from the Commission:

9 (1) Initiate a transfer of water of 2,000,000 gallons per day or more from
10 one river basin to another.

11 (2) Construct a facility designed to increase an existing transfer of water
12 from one river basin to another if the increase equals or exceeds
13 twenty-five percent (25%) of the capacity of the existing facilities or if
14 the increase would cause the transfer to equal or exceed 2,000,000
15 gallons per day.

16 (b) An applicant for a certificate shall petition the Commission for the certificate.
17 The petition shall be in writing and shall include the following:

18 (1) A description of the facilities to be used to transfer the water, including
19 the location and capacity of water intakes, pumps, pipelines, and other
20 facilities.

21 (2) A description of the proposed uses of the water to be transferred.

22 (3) The water conservation measures to be used by the applicant to assure
23 efficient use of the water and avoidance of waste.

24 (4) Any other information deemed necessary by the Commission for
25 review of the proposed water transfer.

26 (c) Upon receipt of the petition, the Commission shall hold a public hearing on
27 the proposed transfer after giving at least 30 days' written notice of the hearing as
28 follows:

29 (1) By publishing notice in the North Carolina Register.

30 (2) By publishing notice in a newspaper of general circulation in the area
31 of the river basin downstream from the point of withdrawal.

32 (3) By giving notice by first-class mail to each of the following:

33 a. A person who has registered under this Part a water withdrawal
34 or transfer from the same river basin where the water for the
35 proposed transfer would be withdrawn.

36 b. A person who secured a certificate under this Part for a water
37 transfer from the same river basin where the water for proposed
38 transfer would be withdrawn.

39 c. A person holding a National Pollutant Discharge Elimination
40 System (NPDES) wastewater discharge permit exceeding
41 100,000 gallons per day for a discharge located downstream
42 from the proposed withdrawal point of the proposed transfer.

- 1 d. The board of county commissioners of each county that is
2 located entirely or partially within the river basin that is the
3 source of the proposed transfer.
- 4 e. The governing body of any municipality that: (i) withdraws
5 water from the main stem of the river basin that is the source of
6 the proposed transfer and (ii) is located downstream of the
7 withdrawal point of the proposed transfer.
- 8 (d) The notice of the public hearing shall include a nontechnical description of
9 the applicant's request and a conspicuous statement in bold type as to the effects of the
10 water transfer on the source and receiving river basins. The notice shall further indicate
11 the procedure to be followed by anyone wishing to submit comments on the proposed
12 water transfer.
- 13 (e) In determining whether a certificate may be issued for the transfer, the
14 Commission shall specifically consider each of the following items and state in writing
15 its findings of fact with regard to each item:
- 16 (1) The necessity, reasonableness, and beneficial effects of the amount of
17 surface water proposed to be transferred and its proposed uses.
- 18 (2) The present and reasonably foreseeable future detrimental effects on
19 the source river basin, including effects on public, industrial, and
20 agricultural water supply, wastewater assimilation, water quality, fish
21 and wildlife habitat, hydroelectric power generation, navigation,
22 recreation, and any other relevant factors.
- 23 (3) The detrimental effects on the receiving river basin, including effects
24 on water quality, wastewater assimilation, fish and wildlife habitat,
25 navigation, recreation, flooding, and any other relevant factors.
- 26 (4) The reasonable alternatives to the proposed transfer, including their
27 probable cost, environmental impacts, and any other significant
28 factors.
- 29 (5) Mitigation measures proposed to minimize the detrimental effects.
- 30 (6) The applicant's present efforts and plans to impound water.
- 31 (7) The protection of the availability of water in the source river basin to
32 respond to emergencies, including drought.
- 33 (8) Any other facts and circumstances that are reasonably necessary to
34 carry out the purposes of this Part.
- 35 (f) No certificate shall be granted for a water transfer unless the Commission
36 concludes by a preponderance of the evidence based upon the preceding findings of fact
37 that:
- 38 (1) The present and reasonably foreseeable future water needs of the
39 source river basin are protected for the duration of the certificate
40 including municipal, industrial, and agricultural water supply,
41 wastewater assimilation, water quality, fish and wildlife habitat,
42 hydroelectric power generation, navigation, recreation, emergency
43 water needs, and any other significant factors.
- 44 (2) The benefits of the proposed transfer outweigh its potential detriments.

- 1 (3) Significant detrimental effects have been mitigated to the extent
2 reasonably possible and all reasonable alternatives have been
3 considered.
- 4 (4) The amount of water to be transferred and its proposed uses are both
5 necessary and reasonable.
- 6 (5) The applicant, or any parent, subsidiary, or other affiliate of the
7 applicant or parent is financially qualified to implement its
8 responsibilities under the certificate. As used in this subdivision, the
9 words 'affiliate,' 'parent,' and 'subsidiary' have the same meaning as in
10 17 Code of Federal Regulations § 240.12b-2 (April 1, 1990 Edition).
- 11 (6) The applicant, or any parent, subsidiary, or other affiliate of the
12 applicant or parent has been in substantial compliance with other
13 federal and state laws, regulations, and rules for the protection of the
14 environment. As used in this subdivision, the words 'affiliate,' 'parent,'
15 and 'subsidiary' have the same meaning as in 17 Code of Federal
16 Regulations § 240.12b-2 (April 1, 1990 Edition).
- 17 (g) The Commission may grant the certificate in whole or in part, or deny the
18 certificate. No person shall transfer an amount of water that exceeds the amount in the
19 certificate."
- 20 Sec. 2. G.S. 143-215.6A(a) reads as rewritten:
- 21 "(a) A civil penalty of not more than ten thousand dollars (\$10,000) may be
22 assessed by the Secretary against any person who:
- 23 (1) Violates any classification, standard, limitation, or management
24 practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-
25 215.
- 26 (2) Is required but fails to apply for or to secure a permit required by G.S.
27 143-215.1, or who violates or fails to act in accordance with the terms,
28 conditions, or requirements of such permit or any other permit or
29 certification issued pursuant to authority conferred by this Part,
30 including pretreatment permits issued by local governments and
31 laboratory certifications.
- 32 (3) Violates or fails to act in accordance with the terms, conditions, or
33 requirements of any special order or other appropriate document issued
34 pursuant to G.S. 143-215.2.
- 35 (4) Fails to file, submit, or make available, as the case may be, any
36 documents, data, or reports required by this Article or G.S. 143-355(k)
37 relating to water use information.
- 38 (5) Refuses access to the Commission or its duly designated representative
39 to any premises for the purpose of conducting a lawful inspection
40 provided for in this Article.
- 41 (6) Violates a rule of the Commission implementing this ~~Part~~ Part, Part 2A
42 of this Article, or G.S. 143-355(k).
- 43 (7) Violates or fails to act in accordance with the statewide minimum
44 water supply watershed management requirements adopted pursuant to

1 G.S. 143-214.5, whether enforced by the Commission or a local
2 government.

3 (8) Violates the offenses set out in G.S. 143-215.6B.

4 (9) Is required but fails to apply for or to secure a certificate required by
5 G.S. 143-215.22I or who violates or fails to act in accordance with the
6 terms, conditions, or requirements of the certificate."

7 Sec. 3. G.S. 153A-285 reads as rewritten:

8 "**§ 153A-285. Prerequisites to acquisition of water, water rights, etc.**

9 The word 'authority' as used in G.S. 162A-7(b) through (f) includes counties and
10 cities acting jointly or through joint agencies to provide water services or sewer services
11 or both. No county or city acting jointly and no joint agency may ~~divert water from one~~
12 ~~stream or river to another nor~~ institute any proceeding in the nature of eminent domain to
13 acquire water, water rights, or lands having water rights attached thereto until the
14 ~~diversion or~~ acquisition is authorized by a certificate from the Environmental
15 Management Commission pursuant to G.S. 162A-7. Any proceeding to secure a
16 certificate from the Environmental Management Commission shall be governed by the
17 provisions of G.S. 162A-7(b) through 162A-7(f)."

18 Sec. 4. G.S. 143B-282(a)(2) reads as rewritten:

19 "(2) The Environmental Management Commission shall adopt rules:

20 a. For air quality standards, emission control standards and
21 classifications for air contaminant sources pursuant to G.S. 143-
22 215.107;

23 b. For water quality standards and classifications pursuant to G.S.
24 143-214.1 and G.S. 143-215;

25 c. To implement water and air quality reporting pursuant to G.S.
26 143-215.68;

27 d. To be applied in capacity use areas pursuant to G.S. 143-
28 215.14;

29 e. To implement the issuance of permits for water use within
30 capacity use areas pursuant to G.S. 143-215.20;

31 f. Repealed by Session Laws 1983, c. 222, s. 3, effective April 25,
32 1983;

33 g. For the protection of the land and the waters over which this
34 State has jurisdiction from pollution by oil, oil products and oil
35 by-products pursuant to Article 21A of Chapter 143.

36 h. Governing underground tanks used for the storage of hazardous
37 substances or oil pursuant to Article 21 or Article 21A of
38 Chapter 143 of the General Statutes.

39 i. To implement the provisions of Part 2A of Article 21 of
40 Chapter 143 of the General Statutes."

41 Sec. 5. G.S. 153A-287 is repealed.

42 Sec. 6. G.S. 162A-7 is repealed.

43 Sec. 7. This act becomes effective July 1, 1993.