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SENATE BILL 875*

Environment and Natural Resources Committee Substitute Adopted 4/26/93

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Short Title: Regulate Interbasin Transfers.

(Public)

Sponsors:

Referred to:

April 15, 1993

A BILL TO BE ENTITLED

AN ACT TO REGULATE INTERBASIN TRANSFERS.

The General Assembly of North Carolina enacts:

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

"PART 2A. REGISTRATION OF WATER WITHDRAWALS AND TRANSFERS.

TRANSFERS; REGULATION OF SURFACE WATER TRANSFERS.

"§ 143-215.22G. Definitions.

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

- (1) 'River basin' means any of the following river basins designated on the map entitled 'Major River Basins and Sub-basins in North Carolina' and filed in the Office of the Secretary of State on 16 April 1991:
 - a. 1-1 Broad River.
 - b. 2-1 Haw River.
 - c. 2-2 Deep River.
 - d. 2-3 Cape Fear River.
 - e. 2-4 South River.
 - f. 2-5 Northeast Cape Fear River.
 - g. 2-6 New River.

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

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

(3) 'Transfer' means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin. However, notwithstanding the basin definitions in G.S. 143-215.22G(1), the following are not transfers under this Part:

a. The discharge of water upstream from the point where it is withdrawn.

b. The discharge of water downstream from the point where it is withdrawn.

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

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

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

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

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

15 **§ 143-215.22I. Regulation of surface water transfers.**

16 (a) No person, without first securing a certificate from the Commission, may:

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

19 (2) Increase the amount of an existing transfer of water from one river
20 basin to another by twenty-five percent (25%) or more above the
21 average daily amount transferred during the year ending July 1, 1993,
22 if the total transfer including the increase is 2,000,000 gallons or more
23 per day.

24 (3) Increase an existing transfer of water from one river basin to another
25 above the amount approved by the Commission in a certificate issued
26 under G.S. 162A-7 prior to July 1, 1993.

27 (b) Notwithstanding the provisions of subsection (a) of this section, a certificate
28 shall not be required to transfer water from one river basin to another up to the full
29 capacity of a facility to transfer water from one basin to another if the facility was
30 existing or under construction on July 1, 1993.

31 (c) An applicant for a certificate shall petition the Commission for the certificate.
32 The petition shall be in writing and shall include the following:

33 (1) A description of the facilities to be used to transfer the water, including
34 the location and capacity of water intakes, pumps, pipelines, and other
35 facilities.

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

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

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

41 (d) Upon receipt of the petition, the Commission shall hold a public hearing on
42 the proposed transfer after giving at least 30 days' written notice of the hearing as
43 follows:

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

- 1 (2) By publishing notice in a newspaper of general circulation in the area
2 of the river basin downstream from the point of withdrawal.
- 3 (3) By giving notice by first-class mail to each of the following:
- 4 a. A person who has registered under this Part a water withdrawal
5 or transfer from the same river basin where the water for the
6 proposed transfer would be withdrawn.
- 7 b. A person who secured a certificate under this Part for a water
8 transfer from the same river basin where the water for the
9 proposed transfer would be withdrawn.
- 10 c. A person holding a National Pollutant Discharge Elimination
11 System (NPDES) wastewater discharge permit exceeding
12 100,000 gallons per day for a discharge located downstream
13 from the proposed withdrawal point of the proposed transfer.
- 14 d. The board of county commissioners of each county that is
15 located entirely or partially within the river basin that is the
16 source of the proposed transfer.
- 17 e. The governing body of any public water supply system that
18 withdraws water downstream from the withdrawal point of the
19 proposed transfer.
- 20 (e) The notice of the public hearing shall include a nontechnical description of
21 the applicant's request and a conspicuous statement in bold type as to the effects of the
22 water transfer on the source and receiving river basins. The notice shall further indicate
23 the procedure to be followed by anyone wishing to submit comments on the proposed
24 water transfer.
- 25 (f) In determining whether a certificate may be issued for the transfer, the
26 Commission shall specifically consider each of the following items and state in writing
27 its findings of fact with regard to each item:
- 28 (1) The necessity, reasonableness, and beneficial effects of the amount of
29 surface water proposed to be transferred and its proposed uses.
- 30 (2) The present and reasonably foreseeable future detrimental effects on
31 the source river basin, including present and future effects on public,
32 industrial, and agricultural water supply needs, wastewater
33 assimilation, water quality, fish and wildlife habitat, hydroelectric
34 power generation, navigation, and recreation.
- 35 (3) The detrimental effects on the receiving river basin, including effects
36 on water quality, wastewater assimilation, fish and wildlife habitat,
37 navigation, recreation, and flooding.
- 38 (4) Reasonable alternatives to the proposed transfer, including their
39 probable costs, and environmental impacts.
- 40 (5) If applicable to the proposed project, the applicant's present and
41 proposed use of impoundment storage capacity to store water during
42 high-flow periods for use during low-flow periods and the applicant's
43 right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

1 (6) If the water to be withdrawn or transferred is stored in a multipurpose
2 reservoir constructed by the United States Army Corps of Engineers,
3 the purposes and water storage allocations established for the reservoir
4 at the time the reservoir was authorized by the Congress of the United
5 States.

6 (7) Any other facts and circumstances that are reasonably necessary to
7 carry out the purposes of this Part.

8 (g) A certificate shall be granted for a water transfer unless the Commission
9 concludes by a preponderance of the evidence based upon the findings of fact made
10 under subsection (f) of this section that the potential detriments of the proposed transfer
11 outweigh the benefits of the transfer.

12 (h) The Commission may grant the certificate in whole or in part, or deny the
13 certificate. The Commission may also grant a certificate with any conditions attached
14 that the Commission believes are necessary to achieve the purposes of this Part. The
15 conditions may include mitigation measures proposed to minimize any detrimental
16 effects of the proposed transfer and measures to protect the availability of water in the
17 source river basin during a drought or other emergency. The certificate shall indicate
18 the maximum amount of water that may be transferred. No person shall transfer an
19 amount of water that exceeds the amount in the certificate.

20 (i) In cases where an applicant requests approval to increase a transfer that
21 existed on July 1, 1993, the Commission shall have authority to approve or disapprove
22 only the amount of the increase. If the Commission approves the increase, however, the
23 certificate shall be issued for the amount of the existing transfer plus the requested
24 increase. Certificates for transfers approved by the Commission under G.S. 162A-7
25 shall remain in effect as approved by the Commission and shall have the same effect as
26 a certificate issued under this Part.

27 (j) In the case of water supply problems caused by drought, a pollution incident,
28 temporary failure of a water plant, or any other temporary condition in which the public
29 health requires a transfer of water, the Secretary of the Department of Environment,
30 Health, and Natural Resources may grant approval for a temporary transfer. Prior to
31 approving a temporary transfer, the Secretary of the Department of Environment,
32 Health, and Natural Resources shall consult with those parties listed in G.S. 143-
33 215.22I(d)(3) that are likely to be affected by the proposed transfer. However, the
34 Secretary of the Department of Environment, Health, and Natural Resources shall not be
35 required to satisfy the public notice requirements of this section or make written
36 findings of fact and conclusions in approving a temporary transfer under this subsection.
37 If the Secretary of the Department of Environment, Health, and Natural Resources
38 approves a temporary transfer under this subsection, the Secretary shall specify
39 conditions to protect other water users. A temporary transfer shall not exceed six
40 months in duration, but the approval may be renewed for a period of six months by the
41 Secretary of the Department of Environment, Health, and Natural Resources based on
42 demonstrated need as set forth in this subsection."

43 Sec. 2. G.S. 143-215.6A(a) reads as rewritten:

1 "(a) A civil penalty of not more than ten thousand dollars (\$10,000) may be
2 assessed by the Secretary against any person who:

- 3 (1) Violates any classification, standard, limitation, or management
4 practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-
5 215.
- 6 (2) Is required but fails to apply for or to secure a permit required by G.S.
7 143-215.1, or who violates or fails to act in accordance with the terms,
8 conditions, or requirements of such permit or any other permit or
9 certification issued pursuant to authority conferred by this Part,
10 including pretreatment permits issued by local governments and
11 laboratory certifications.
- 12 (3) Violates or fails to act in accordance with the terms, conditions, or
13 requirements of any special order or other appropriate document issued
14 pursuant to G.S. 143-215.2.
- 15 (4) Fails to file, submit, or make available, as the case may be, any
16 documents, data, or reports required by this Article or G.S. 143-355(k)
17 relating to water use information.
- 18 (5) Refuses access to the Commission or its duly designated representative
19 to any premises for the purpose of conducting a lawful inspection
20 provided for in this Article.
- 21 (6) Violates a rule of the Commission implementing this ~~Part~~ Part, Part 2A
22 of this Article, or G.S. 143-355(k).
- 23 (7) Violates or fails to act in accordance with the statewide minimum
24 water supply watershed management requirements adopted pursuant to
25 G.S. 143-214.5, whether enforced by the Commission or a local
26 government.
- 27 (8) Violates the offenses set out in G.S. 143-215.6B.
- 28 (9) Is required, but fails, to apply for or to secure a certificate required by
29 G.S. 143-215.22I, or who violates or fails to act in accordance with the
30 terms, conditions, or requirements of the certificate."

31 Sec. 3. G.S. 143B-282(a)(2) reads as rewritten:

- 32 "(2) The Environmental Management Commission shall adopt rules:
- 33 a. For air quality standards, emission control standards and
34 classifications for air contaminant sources pursuant to G.S. 143-
35 215.107;
 - 36 b. For water quality standards and classifications pursuant to G.S.
37 143-214.1 and G.S. 143-215;
 - 38 c. To implement water and air quality reporting pursuant to G.S.
39 143-215.68;
 - 40 d. To be applied in capacity use areas pursuant to G.S. 143-
41 215.14;
 - 42 e. To implement the issuance of permits for water use within
43 capacity use areas pursuant to G.S. 143-215.20;

- 1 f. Repealed by Session Laws 1983, c. 222, s. 3, effective April 25,
2 1983;
- 3 g. For the protection of the land and the waters over which this
4 State has jurisdiction from pollution by oil, oil products and oil
5 by-products pursuant to Article 21A of Chapter 143.
- 6 h. Governing underground tanks used for the storage of hazardous
7 substances or oil pursuant to Article 21 or Article 21A of
8 Chapter 143 of the General Statutes.
- 9 i. To implement the provisions of Part 2A of Article 21 of
10 Chapter 143 of the General Statutes."
- 11 Sec. 4. G.S. 153A-285 is repealed.
- 12 Sec. 5. G.S. 153A-287 is repealed.
- 13 Sec. 6. G.S. 162A-7 is repealed.
- 14 Sec. 7. This act becomes effective January 1, 1994. However, a certificate
15 shall not be required under the provisions of this act for any project that the Department
16 of Administration has determined to have completed the review process under the North
17 Carolina Environmental Policy Act of 1971, Article 1 of Chapter 113A of the General
18 Statutes, prior to January 1, 1994.