

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1858

Short Title: Local Water Quality Plans.

(Public)

Sponsors: Representative Culpepper.

Referred to: Environment and Natural Resources.

May 30, 2000

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE CERTAIN LOCAL GOVERNMENTS UPSTREAM OF THE
2 COASTAL AREA TO DEVELOP AND IMPLEMENT WATER QUALITY
3 MANAGEMENT PLANS, TO INCLUDE THE DEVELOPMENT OF WATER
4 QUALITY MANAGEMENT PLANS AS A PURPOSE FOR WHICH CLEAN
5 WATER MANAGEMENT TRUST FUND GRANTS MAY BE AWARDED, AND
6 TO APPROPRIATE FUNDS TO IMPLEMENT THIS ACT.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. Chapter 113A of the General Statutes is amended by adding the
10 following:

11 **"ARTICLE 17.**

12 **"LOCAL WATER QUALITY MANAGEMENT PLANS.**

13 **"§ 113A-240. Cooperative State-local water quality management program.**

14 This Article establishes a cooperative program of water quality management among
15 local governments in the coastal area, local governments in the eight coastal river basins,
16 and State government. Local governments shall initiate water quality management
17 planning efforts. State government shall act primarily in a supportive capacity, except
18 where local governments do not elect to exercise their initiative. Enforcement shall be a
19 concurrent State-local responsibility.

20 **"§ 113A-241. Legislative findings and goals.**

1 The General Assembly finds that the goals stated in G.S. 113A-102 regarding the
2 State's coastal area continue to be a top priority for North Carolina. Progress has been
3 made in achieving those goals in the counties covered by the Coastal Area Management
4 Act; however, many of the pressures on the State's coastal area are the result of increasing
5 industrial growth and population in the counties located upstream in the eight coastal
6 river basins. The growth in the upstream counties and municipalities places a strain on
7 the water resources that flow into the coastal area and threatens the water quality of the
8 coastal area. The General Assembly further finds that the majority of the burden of
9 cleaning up the pollution resulting from growth upstream and restoring the water to
10 acceptable water quality standards falls unfairly on the State's coastal area. The General
11 Assembly therefore finds that a cooperative effort between coastal and upstream areas is
12 needed to enable the coastal area to achieve the State mandated goals set out in G.S.
13 113A-102.

14 **"§ 113A-242. Water quality management plans.**

15 (a) Mandatory Local Plans. – Each local government located within the eight
16 coastal river basins that has within its jurisdiction all or a portion of a watershed that
17 drains into the coastal area shall develop and adopt a local water quality management
18 plan to be submitted to the Clean Water Commission for approval. The water quality
19 management plan shall comply with the standards and requirements established by the
20 Commission and shall also include all of the following:

- 21 (1) An inventory of the local government's surface water resources.
- 22 (2) An analysis of the local government's water quality.
- 23 (3) An inventory of the land uses for those properties adjacent to the water
24 sources and an analysis as to whether those land uses contribute to or
25 abate pollution.
- 26 (4) Submit a local ordinance to implement a local water quality
27 management plan to the Commission for approval.
- 28 (5) Enforcement procedures for the water quality management plan.

29 (b) Development and Implementation of Local Plans. – The Commission shall
30 adopt rules for the development and implementation of water quality management plans.
31 The Commission shall establish water quality management goals and minimum best
32 management practice expectations for each watershed located within the eight coastal
33 river basins taking into consideration the goals set out in G.S. 113A-102.

34 (c) Model Plan and Local Ordinances. – The Department shall identify the eight
35 river basins draining into the coastal area and each local government within those basins
36 that has within its jurisdiction all or a portion of a watershed. The Department shall assist
37 local governments to develop water quality management plans that comply with this
38 Article. To further assist local governments, the Commission shall approve and make
39 available a model local water quality management plan. Local governments shall
40 administer and enforce the minimum water quality management requirements. Local
41 governments may adopt such ordinances pursuant to their general police power, power to
42 regulate the subdivision of land, zoning power, or any combination of such powers. This
43 section shall not be construed to affect the validity of any local ordinance adopted for the

1 protection of water quality prior to completion of the review of the ordinance by the
2 Commission. Local governments may create or designate local agencies to administer
3 and enforce the plans. The Commission shall approve a local plan only if it determines
4 that the requirements of the plan equal or exceed the minimum water quality management
5 requirements adopted by the Commission pursuant to this Article.

6 (e) Assumption of Local Programs. – The Commission shall assume responsibility
7 for water quality management planning within all or the affected portion of a watershed,
8 when a local government fails to adopt a plan that meets the requirements of this section
9 or when a local government fails to adequately administer and enforce the provisions of
10 its plan. The Commission shall not assume responsibility for an approved local water
11 quality management plan until it or its designee notifies the local government in writing
12 by certified mail, return receipt requested, of local plan deficiencies, recommendations
13 for changes and improvements in the local plan, and the deadline for compliance. The
14 Commission shall allow a local government a minimum of 120 days to bring its plan into
15 compliance. The Commission shall order assumption of an approved local plan if it finds
16 that the local government has made no substantial progress toward compliance. With no
17 further notice, the Commission may make such finding at any time between 120 days and
18 365 days after receipt of notice under this subsection by the local government.
19 Proceedings to review the orders by the Commission shall be conducted by the superior
20 court pursuant to Article 4 of Chapter 150B of the General Statutes based on the agency
21 record submitted to the Commission by the Secretary.

22 (f) State Enforcement Authority. – The Commission may take any appropriate
23 preventive or remedial enforcement action authorized by this Article against any person
24 who violates any water quality management plan requirement.

25 (g) Civil Penalties. – A local government that fails to adopt a local water quality
26 management plan as required by this Article or willfully fails to administer or enforce the
27 provisions of its plan in substantial compliance with the minimum water quality
28 management requirements shall be subject to a civil penalty pursuant to G.S. 143-
29 215.6A(e). In any upstream area that is not covered by an approved local water quality
30 management plan, any person who violates or fails to act in accordance with any
31 minimum water quality management plan requirements adopted by the Commission for
32 the upstream area pursuant to this Article shall be subject to a civil penalty as specified in
33 G.S. 143-215.6A(a)(7).

34 (h) State Agencies Compliance – Every State agency shall act in a manner
35 consistent with the policies and purposes of this section and shall comply with the
36 minimum requirements regarding a water quality management plan.

37 **"§ 113A-243. Clean Water Commission.**

38 (a) Established. – The Clean Water Commission is created. For administrative
39 purposes only, the Commission is located under the Department of Environment and
40 Natural Resources.

41 (b) Composition. – The Clean Water Commission shall consist of 15 members
42 appointed as follows:

43 (1) Five appointed by the Governor.

1 (2) Five appointed by the General Assembly upon the recommendation of
2 the Speaker of the House of Representatives in accordance with G.S.
3 120-121.

4 (3) Five appointed by the General Assembly upon the recommendation of
5 the President Pro Tempore of the Senate in accordance with G.S. 120-
6 121.

7 (c) Appointment of Members. – Appointments to the Commission shall be made
8 with consideration given to having a membership that has knowledge and experience in a
9 diverse range of water quality management interests. The members of the Commission
10 shall serve and act on the Commission solely for the best interests of the public and
11 public trust, and shall bring their particular knowledge and experience to the Commission
12 for that end alone.

13 (d) Residential Qualifications. – All nominees must reside within the upstream
14 counties or coastal area. No more than one member appointed by the Governor and one
15 appointed by the General Assembly may reside in a particular county. No more than two
16 members of the entire Commission, at any time, may reside in a particular county. No
17 more than three members of the entire Commission, at any time, may reside outside the
18 upstream counties.

19 (e) Office May Be Held Concurrently With Others. – Membership on the Clean
20 Water Commission is an office that may be held concurrently with other elective or
21 appointive offices in addition to the maximum number of offices permitted to be held by
22 one person under G.S. 128-1.1.

23 (f) Initial Appointments and Terms. – Each appointing officer shall designate one
24 of the officer's initial appointments to serve two-year terms, two to serve four-year terms,
25 and two to serve six-year terms. Thereafter, all appointments shall be for four years,
26 subject to reappointment. All initial appointments shall be made on or before January 1,
27 2001.

28 (g) Quorum. – A majority of the Commission shall constitute a quorum for the
29 transaction of business.

30 (h) Vacancies. – If a vacancy occurs, other than by the expiration of term, of a
31 member subject to appointment by the General Assembly upon the recommendation of
32 the Speaker of the House of Representatives or the President Pro Tempore of the Senate,
33 the vacancy shall be filled in accordance with G.S. 120-122. All other vacancies shall be
34 filled by the appointing official in the original manner. In making appointments to and
35 filling vacancies upon the Commission, each appointing officer shall give due
36 consideration to securing appropriate representation of women and minorities.

37 (i) Officers. – The chair shall be designated by the Governor from among the
38 members of the Commission to serve as chairman at the pleasure of the Governor. The
39 vice-chair shall be elected by and from the members of the Commission and shall serve
40 for a term of two years or until the expiration of his or her regularly appointed term.

41 (j) Compensation. – The members of the Commission shall receive per diem and
42 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-
43 5.

1 (k) Attendance. – Regular attendance at Commission meetings is a duty of each
2 member. The Commission shall develop procedures for declaring any seat on the
3 Commission to be vacant upon failure by a member to perform this duty.

4 (l) Rules. – The Commission shall adopt rules to implement this Article. Chapter
5 150B of the General Statutes applies to the rules adopted by the Commission.

6 **"§ 113A-244. Definitions.**

7 The following definitions apply in this Article:

8 (1) 'Coastal area' is as defined in G.S. 113A-103.

9 (2) 'Commission' means the Clean Water Commission created by G.S.
10 113A-243.

11 (3) 'Department' means the Department of Environment and Natural
12 Resources.

13 (4) 'Local government' means the governing body of any county or city
14 which contains within its boundaries any lands or waters subject to this
15 Article.

16 (5) 'Upstream area' means any local government located within the eight
17 coastal river basins that has within its jurisdiction all or a portion of a
18 watershed that drains into the coastal area."

19 Section 2. G.S. 113-145.6(b) reads as rewritten:

20 "(b) Develop Grant Criteria. – The Trustees shall develop criteria for awarding
21 grants under this Article. The criteria developed shall include consideration of the
22 following:

23 (1) The significant enhancement and conservation of water quality in the
24 State.

25 (2) The objectives of the basinwide management plans for the State's river
26 basins and watersheds.

27 (3) The promotion of regional integrated ecological networks insofar as
28 they affect water quality.

29 (4) The specific areas targeted as being environmentally sensitive.

30 (5) The geographic distribution of funds as appropriate.

31 (6) The preservation of water resources with significant recreational or
32 economic value and uses.

33 (7) The development of a network of riparian buffer-greenways bordering
34 and connecting the State's waterways that will serve environmental,
35 educational, and recreational uses.

36 (8) The development of a water quality management plan pursuant to
37 Article 17 of Chapter 113A of the General Statutes."

38 Section 3. There is appropriated from the General Fund to the Department of
39 Environment and Natural Resources the sum of one hundred thousand dollars (\$100,000)
40 for the 2000-2001 fiscal year to implement this act.

41 Section 4. This act becomes effective July 1, 2000.