

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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HOUSE BILL 960*

Short Title: Amend Interbasin Transfer Law. (Public)

Sponsors: Representatives Gillespie, Church, Hilton, R. Warren (Primary Sponsors);
Brisson, Brown, Current, Dockham, England, Frye, Kiser, Setzer, Starnes,
and West.

Referred to: Environment and Natural Resources, if favorable, Judiciary I.

March 22, 2007

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE LAW GOVERNING THE REGULATION OF
2 INTERBASIN TRANSFERS AND TO DIRECT THE DEPARTMENT OF
3 JUSTICE AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL
4 RESOURCES TO STUDY WHETHER THERE IS A NEED FOR AN
5 INTERSTATE COMPACT TO MEDIATE ANY FUTURE INTERSTATE
6 WATER SUPPLY ISSUES.
7

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** Part 2A of Article 21 of Chapter 143 of the General Statutes is
10 amended by adding a new section to read:

11 "**§ 143-215.22F. Legislative intent.**

12 The General Assembly declares that water resources of the State and common law
13 riparian rights are subject to regulation by the State. The waters of the State are a natural
14 resource owned by the State in trust for the public and subject to the State's sovereign
15 power to plan, regulate, and control the withdrawal and use of these waters, under
16 applicable State law, in order to protect the public health, safety, and welfare. Further,
17 the general welfare and public interest require that water resources of the State be put to
18 reasonable beneficial use to the fullest extent to which they are capable, subject to
19 reasonable regulation, in order to conserve and protect these resources, prevent waste of
20 the resource, provide for protection of the ecosystem, ensure navigability where
21 appropriate, promote sustainable economic development, and to provide and maintain
22 conditions which are conducive to the development and reasonable use of the State's
23 water resources. In order to provide legal security for water rights within the constraints
24 provided in this Part, the Part establishes a certificate program that makes an interbasin
25 transfer a matter of legal record entitled to legal protection.

26 The surface waters of the State require integrated planning and management. North
27 Carolina's rivers and streams flow long distances and support natural aquatic

1 ecosystems, while providing many communities economic, social, and environmental
 2 benefits. The State is responsible for maintaining these water resources for the
 3 maximum physical and economic benefit of the people while sustaining a safe yield and
 4 a respect for natural systems, including all waters of the State. The State shall preserve
 5 minimum flows and levels in water sources as necessary to protect the designated uses
 6 of those water sources and support aquatic ecosystems by reserving such waters from
 7 allocation."

8 **SECTION 2.** G.S. 143-215.22G reads as rewritten:

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) "Quasi-judicial hearing" means a hearing held in accordance with the
 13 standards and procedures for contested case hearings under Article 3A
 14 of Chapter 150B of the General Statutes.

15 (~~4~~)(1a) "River basin" means any of the following river basins designated on
 16 the map entitled "Major River Basins and Sub-basins in North
 17 Carolina" and filed in the Office of the Secretary of State on 16 April
 18 1991. The term "river basin" includes any portion of the river basin
 19 that extends into another state. Any area outside North Carolina that is
 20 not included in one of the river basins listed in this subdivision
 21 comprises a separate river basin.

- 22 a. 1-1 Broad River.
- 23 b. 2-1 Haw River.
- 24 c. 2-2 Deep River.
- 25 d. 2-3 Cape Fear River.
- 26 e. 2-4 South River.
- 27 f. 2-5 Northeast Cape Fear River.
- 28 g. 2-6 New River.
- 29 h. 3-1 Catawba River.
- 30 i. 3-2 South Fork Catawba River.
- 31 j. 4-1 Chowan River.
- 32 k. 4-2 Meherrin River.
- 33 l. 5-1 Nolichucky River.
- 34 m. 5-2 French Broad River.
- 35 n. 5-3 Pigeon River.
- 36 o. 6-1 Hiwassee River.
- 37 p. 7-1 Little Tennessee River.
- 38 q. 7-2 Tuskasegee (Tuckasegee) River.
- 39 r. 8-1 Savannah River.
- 40 s. 9-1 Lumber River.
- 41 t. 9-2 Big Shoe Heel Creek.
- 42 u. 9-3 Waccamaw River.
- 43 v. 9-4 Shallotte River.
- 44 w. 10-1 Neuse River.

- 1 x. 10-2 Contentnea Creek.
- 2 y. 10-3 Trent River.
- 3 z. 11-1 New River.
- 4 aa. 12-1 Albemarle Sound.
- 5 bb. 13-1 Ocoee River.
- 6 cc. 14-1 Roanoke River.
- 7 dd. 15-1 Tar River.
- 8 ee. 15-2 Fishing Creek.
- 9 ff. 15-3 Pamlico River and Sound.
- 10 gg. 16-1 Watauga River.
- 11 hh. 17-1 White Oak River.
- 12 ii. 18-1 Yadkin (Yadkin-Pee Dee) River.
- 13 jj. 18-2 South Yadkin River.
- 14 kk. 18-3 Uwharrie River.
- 15 ll. 18-4 Rocky River.

16 (1b) "Safe yield" means the amount of water that can be continuously
 17 withdrawn from a source water body without adverse effects to water
 18 quality and aquatic habitat during 7Q10 conditions, as defined in
 19 G.S. 130A-295.01.

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

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

- 27 a. The discharge of water upstream from the point where it is
 28 withdrawn.
- 29 b. The discharge of water downstream from the point where it is
 30 withdrawn."

31 **SECTION 3.** G.S. 143-215.22I reads as rewritten:

32 **"§ 143-215.22I. Regulation of surface water transfers.**

33 (a) Certificate: Required for Interbasin Transfer. – No person, without first
 34 securing a certificate from the Commission, may:

- 35 (1) Initiate a transfer of 2,000,000 gallons of water or more per day from
 36 one river basin to another.
- 37 (2) Increase the amount of an existing transfer of water from one river
 38 basin to another by twenty-five percent (25%) or more above the
 39 average daily amount transferred during the year ending July 1, 1993,
 40 if the total transfer including the increase is 2,000,000 gallons or more
 41 per day.
- 42 (3) Increase an existing transfer of water from one river basin to another
 43 above the amount approved by the Commission in a certificate issued
 44 under G.S. 162A-7 prior to July 1, 1993.

1 (b) Certificate: Exception for Certain Facilities. – Notwithstanding the
2 provisions of subsection (a) of this section, a certificate shall not be required to transfer
3 water from one river basin to another up to the full capacity of a facility to transfer
4 water from one basin to another if the facility was existing or under construction on July
5 1, 1993.

6 (c) Petition. – An applicant for a certificate shall petition the Commission for the
7 certificate. The petition shall be in writing and shall include the following:

8 (1) A description of the facilities to be used to transfer the water, including
9 the location and capacity of water intakes, pumps, pipelines, and other
10 facilities.

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

12 (3) ~~The~~ An assurance of the efficient use of the water and the avoidance of
13 waste, the water conservation measures to be used by the applicant at
14 the time of application and any additional water conservation measures
15 that will be implemented by the applicant if the certificate is granted.
16 ~~to assure efficient use of the water and avoidance of waste.~~

17 (4) The applicant's water supply plan and 25-year population projections,
18 as appropriate. In calculating the population projections, the
19 Commission shall identify overlaps in the projected population growth
20 of water plans and ensure that the population figures for any
21 overlapping service areas are counted only once.

22 (5) An itemized report detailing the source, volume, and maximum
23 permitted capacity of all existing, permitted, reasonably foreseeable
24 and other proposed water withdrawals and interbasin transfers from the
25 source river basin as well as detailing every existing, planned, and
26 potential source of water within the receiving river basin, including,
27 without limitation, existing and potential new surface water
28 impoundments, groundwater wells, reinjection storage, and potential
29 expansions of any of the foregoing, as well as any other technically
30 feasible technology.

31 (6) A determination of whether the proposed interbasin transfer and
32 existing, permitted, reasonably foreseeable, and other proposed
33 withdrawals are within the safe yield of the source water body.

34 (7) A letter of support from each upstream and downstream public water
35 supplier, including each water supplier in downstream states that make
36 withdrawals from the source water body stating that the proposed
37 interbasin transfer will not negatively affect existing water users and is
38 consistent with local water supply plans.

39 (8) The most recent information available from the Division of Water
40 Quality of the Department concerning the water quality of the source
41 river basin and the receiving river basin including, without limitation,
42 any information on any segments of either basin that are deemed
43 impaired under section 303(d) of the Clean Water Act, that are the
44 subject to a total maximum daily load (TMDL) limitation, or would

1 have their assimilative capacity impaired by the proposed interbasin
2 transfer and other transfers listed in subsection (6) of this section or
3 their ability to support habitat listed in subsection (9) of this section,
4 and also including information from any other federal, state, regional,
5 local, or interstate body having jurisdiction over the water quality of
6 either basin.

7 (9) The most recent information available from the Wildlife Resources
8 Commission concerning aquatic habitat for rare, threatened, and
9 endangered species in the source river basin and the receiving river
10 basin.

11 (4)(10) Any other information deemed necessary by the Commission for
12 review of the proposed water transfer.

13 (c1) Notice of Petition for Certificate. – When the Commission receives notice
14 from a person that the person intends to submit a petition for a water transfer, the
15 Commission shall provide that notice to the parties listed in subsection (d) of this
16 section within 30 days of its receipt by the Commission. The notice shall be forwarded
17 to the parties by the Commission in the same manner as provided by subsection (d) of
18 this section. The purpose of the notice is to inform interested parties at the earliest
19 reasonable time of a potential transfer and to allow for full discussion, and, if necessary,
20 mediation regarding a proposed transfer before significant economic resources have
21 been committed to the proposed transfer.

22 (d) Public Hearing Requirement; Notice. – ~~Upon~~ Except as provided in
23 subsection (e1) of this section, upon receipt of the petition, the Commission shall hold a
24 public hearing on the proposed transfer after giving at least 30 days' written notice of
25 the hearing as follows:

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

27 (2) By publishing notice in a newspaper of general circulation in the ~~area~~
28 ~~of the river basin downstream from the point of withdrawal.~~following
29 areas:

30 a. Areas of the river basin that withdraw water from the source
31 water body both upstream and downstream from the point of
32 withdrawal.

33 b. Areas that are not currently withdrawing water from the source
34 water body but that identify the source water body as a water
35 source for future needs in a local water supply plan submitted to
36 the Department pursuant to G.S. 143-355(1).

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

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

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

- 1 c. A person holding a National Pollutant Discharge Elimination
2 System (NPDES) wastewater discharge permit exceeding
3 100,000 gallons per day for a discharge located upstream and
4 downstream from the proposed withdrawal point of the
5 proposed transfer.
- 6 d. The board of county commissioners of each county that is
7 located entirely or partially within the river basin that is the
8 source of the proposed transfer.
- 9 e. The governing body of any public water supply system that
10 withdraws water upstream and downstream from the
11 withdrawal point of the proposed transfer.

12 (4) By providing notice to persons and state agencies in adjacent states
13 that withdraw water upstream and downstream from the withdrawal
14 point of the proposed transfer to the same extent and in the same
15 manner that the adjacent state provides notice to North Carolina
16 citizens and State agencies with regard to a proposed water transfer in
17 the adjacent state.

18 (e) Content of Notice. – The notice of the public hearing shall include a
19 nontechnical description of the applicant's request and a conspicuous statement in bold
20 type as to the effects of the water transfer on the source and receiving river basins. The
21 notice shall further indicate the procedure to be followed by anyone wishing to submit
22 comments on the proposed water transfer.

23 (e1) Quasi-Judicial Hearing. – An applicant or any person or entity described in
24 subdivision (d)(3) of this section may request that a quasi-judicial hearing be held
25 regarding the petition in lieu of the public hearing. The request for the quasi-judicial
26 hearing shall be submitted to the Commission no later than 20 days before the date the
27 public hearing is scheduled.

28 (e2) Petition: No Consideration if Exceeds Safe Yields. – The Commission shall
29 not consider a petition for a transfer from a river basin if the sum of the authorized
30 withdrawals and transfers from the source river basin exceeds the combined safe yields
31 of the source water bodies in the source river basin.

32 (f) Certificate: Criteria. – In determining whether a certificate may be issued for
33 the transfer, the Commission shall specifically consider each of the following items and
34 state in writing its findings of fact with regard to each item:

- 35 (1) The necessity, reasonableness, and beneficial effects of the amount of
36 surface water proposed to be transferred and its proposed uses.
- 37 (2) The present and reasonably foreseeable future detrimental effects on
38 the source river basin, including present and future effects on public,
39 industrial, and agricultural water supply needs, wastewater
40 assimilation, water quality, fish and wildlife habitat, hydroelectric
41 power generation, navigation, and recreation. Local water supply plans
42 that affect the source major river basin shall be used to evaluate the
43 projected future municipal water needs in the source major river
44 ~~basin.~~ basin and to determine whether the proposed interbasin transfer

- 1 will have a detrimental impact on the future water supplies of local
2 governments that make withdrawals from the source water body.
- 3 (2a) The cumulative effect on the source major river basin of any water
4 transfer or consumptive water use that, at the time the Commission
5 considers the application for a certificate is occurring, is authorized
6 under this section, or is projected in any local water supply plan that
7 has been submitted to the Department in accordance with
8 G.S. 143-355(1).
- 9 (3) The detrimental effects on the receiving river basin, including effects
10 on water quality, wastewater assimilation, fish and wildlife habitat,
11 including wetlands, navigation, recreation, and flooding.
- 12 (4) Reasonable alternatives to the proposed transfer, including their
13 probable costs, and environmental impacts.
- 14 (4a) Mitigation measures are examined and committed to be implemented
15 in the certificate to ensure that the detrimental effects to the source
16 river basin under subsection (2) and to the receiving river basin under
17 (3) are avoided to the maximum extent feasible.
- 18 (5) If applicable to the proposed project, the applicant's present and
19 proposed use of impoundment storage capacity to store water during
20 high-flow periods for use during low-flow periods and the applicant's
21 right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.
- 22 (6) If the water to be withdrawn or transferred is stored in a multipurpose
23 reservoir constructed by the United States Army Corps of Engineers,
24 the purposes and water storage allocations established for the reservoir
25 at the time the reservoir was authorized by the Congress of the United
26 States.
- 27 (7) Any other facts and circumstances that are reasonably necessary to
28 carry out the purposes of this Part.
- 29 (f1) Certificate: Required Assessments. – The following assessments shall be
30 prepared as required by this subsection for any petition for a certificate under this
31 section:
- 32 (1) An environmental assessment as defined by G.S. 113A-9(1) shall be
33 prepared for any petition for a certificate under this section. The
34 determination of whether an environmental impact statement shall also
35 be required shall be made in accordance with the provisions of Article
36 1 of Chapter 113A of the General Statutes. The applicant who petitions
37 the Commission for a certificate under this section shall pay the cost of
38 special studies necessary to comply with Article 1 of Chapter 113A of
39 the General Statutes. The environmental assessment or environmental
40 impact statement shall include an evaluation of the applicant's ability
41 to meet the applicant's water supply needs from sources that do not
42 require an interbasin transfer and through the use of water
43 conservation measures. The environmental assessment or
44 environmental impact statement shall include an evaluation of

1 measures to mitigate any damage that may arise from the proposed
2 interbasin transfer. The environmental assessment or environmental
3 impact statement shall be completed and made available to the public
4 at least 30 days before the public hearing required by subsection (d) of
5 this section.

6 (2) An economic impact assessment shall be prepared for any petition for
7 a certificate under this section. The economic impact assessment shall
8 include a review of the benefits and negative impacts on the local and
9 regional economy of both the source river basin and the receiving river
10 basin.

11 (3) A social impact assessment shall be prepared for any petition for a
12 certificate under this section. The social impact assessment shall
13 include a review of the recreational and agricultural uses of both the
14 source river basin and the receiving river basin.

15 (4) A groundwater aquifer assessment shall be prepared for any petition
16 for a certificate under this section. The assessment shall determine
17 what impact that the transfer may have on groundwater resources and
18 how the transfer may modify the timing and rate of aquifer recharge in
19 the river basin.

20 (5) An impoundment assessment shall be prepared for any petition for a
21 certificate under this section. The assessment shall include an
22 evaluation of the impact the transfer may have on water supplies
23 provided by surface water resources that are collected or held in
24 reservoirs or other impoundments, whether the transfer may modify
25 the water table of those impoundments, and if so, the timing and rate
26 required to replenish the water supply in the impoundments and return
27 them to a safe water table level.

28 (g) Certificate: Weight of Evidence; Burden of Proof; Expiration. – The
29 applicant has the burden of proof to rebut the presumption in subsection (m) of this
30 section and to satisfy the provisions of this subsection. A certificate shall be granted for
31 a water transfer if the applicant establishes and the Commission concludes by a
32 preponderance of the evidence based upon the findings of fact made under subsection
33 (f) of this section that: (i) the benefits of the proposed transfer outweigh the detriments
34 of the proposed transfer, and (ii) the detriments have been or will be mitigated to a
35 reasonable degree. The conditions necessary to ensure that the detriments are and
36 continue to be mitigated to a reasonable degree shall be attached to the certificate in
37 accordance with ~~subsection (h)~~ subsections (h) and (h1) of this section.

38 A certificate granted under this section shall expire 10 years from the date of its
39 issuance and may be modified during that time as provided by this section. A certificate
40 may be renewed under this section, but the sum of the period of time for which the
41 original certificate was issued and the period of time for each renewal of the certificate
42 shall not exceed 40 years. The procedure for renewal shall be the same as for the
43 petition for the original certificate.

1 A certificate issued under this section is valid only for the applicant to whom the
2 certificate was granted and is not transferable.

3 (g1) Certificate: Mandatory Grounds for Denial. – Notwithstanding subsection (g)
4 of this section, the Commission shall not grant a certificate of transfer if:

5 (1) The proposed interbasin transfer will supply more than five percent
6 (5%) of the water used by the applicant;

7 (2) The sum of the proposed transfer and the authorized withdrawals and
8 transfers from the source river basin exceeds the combined safe yields
9 of the source water bodies in the source river basin;

10 (3) The sum of the proposed transfer and the authorized withdrawals and
11 transfers of the petitioner exceeds the projected water use included in
12 the petitioner's most recent water supply plan submitted to the
13 Department pursuant to G.S. 143-355(1); or

14 (4) The Commission determines that a better option is available for
15 addressing the water supply needs than the proposed water transfer or
16 that there are additional mitigation measures that could be undertaken
17 to ensure that the detrimental effects to the source river basin or the
18 receiving river basin are minimized.

19 (h) Certificate: Authority to Grant, Revise, Deny. – The Commission may
20 respond to a petition under this section with any of the options outlined by this section,
21 provided that any option adopted by the Commission protects the source river basin.
22 The Commission may grant the certificate in whole or in part, revise the certificate as
23 provided by this section and grant the revised version of the certificate, or deny the
24 certificate. The Commission, on its own motion or at the request of another party who
25 shall be affected by the transfer, may consider options not included in the petition and
26 accompanying documentation for the certificate and in lieu of the certificate as
27 originally proposed in the petition, may grant a revised version of the certificate that
28 incorporates any of those options. The Commission may also grant a certificate with any
29 conditions attached that the Commission believes are necessary to achieve the purposes
30 of this Part. The conditions may include mitigation measures proposed to minimize any
31 detrimental effects of the proposed transfer and measures to protect the availability of
32 water in the source river basin during a drought or other emergency. ~~The certificate~~
33 ~~shall include a drought management plan that specifies how the transfer shall be~~
34 ~~managed to protect the source river basin during drought conditions. The certificate~~
35 ~~shall indicate the maximum amount of water that may be transferred. No person shall~~
36 ~~transfer an amount of water that exceeds the amount in the certificate.~~

37 (h1) Certificate: Mandatory Conditions. – Any certificate issued under this
38 section shall include all of the following conditions and provisions:

39 (1) The certificate shall indicate the maximum amount of water that may
40 be transferred. The certificate shall also indicate the daily maximum
41 amount that may be transferred. No person shall transfer an amount of
42 water that exceeds either of those amounts in the certificate.

43 (2) While the certificate shall indicate the maximum transfer amounts as
44 provided by subdivision (1) of this subsection, the certificate shall be

1 issued to provide the amount of water anticipated to be needed for the
2 next two years and shall include a sliding scale that sets out the
3 increments that the water transfer may be increased, and further
4 provide that the increase shall be allowed only as needed.

5 (3) The certificate shall include a condition that the amount of an
6 interbasin transfer is subject to reduction during periods of drought and
7 that the time frame for implementing the reduction shall occur before
8 citizens along the basin are required to adopt mandatory conservation
9 restrictions. The certificate shall also include a drought management
10 plan for both the source river basin and the receiving river basin that
11 specifies how the transfer shall be managed to protect the source river
12 basin during drought conditions.

13 (4) If the withdrawal point for a water transfer is located on an
14 impoundment, the certificate shall not authorize a transfer of water that
15 would cause:

16 a. A reservoir level to drop below minimum water level; or

17 b. A reservoir to be unable to release the minimum in stream flow
18 required by the Federal Energy Regulatory Commission or
19 another agency's applicable jurisdictional requirements. The
20 Commission may consider relevant modeling data or other
21 applicable data from a reservoir owner in analyzing the
22 prohibitions set out in this subdivision.

23 (5) The granting of a certificate does not convey a property right to a
24 permittee regarding a water transfer amount. The Commission shall
25 expressly reserve the right to decrease a transfer amount based upon
26 prevailing conditions. Further, any right to a water transfer allowed by
27 a certificate granted under this section is subordinate to the water
28 supply needs of the communities in the source river basin.

29 (i) Increase in Interbasin Transfer Existing on July 1, 1993. – In cases where an
30 applicant requests approval to increase a transfer that existed on July 1, 1993, the
31 Commission shall have authority to approve or disapprove only the amount of the
32 increase. If the Commission approves the increase, however, the certificate shall be
33 issued for the amount of the existing transfer plus the requested increase. Certificates for
34 transfers approved by the Commission under G.S. 162A-7 shall remain in effect as
35 approved by the Commission and shall have the same effect as a certificate issued under
36 this Part.

37 (j) Temporary Transfer. – In the case of water supply problems caused by
38 drought, a pollution incident, temporary failure of a water plant, or any other temporary
39 condition in which the public health requires a transfer of water, the Secretary of
40 Environment and Natural Resources may grant approval for a temporary transfer. Prior
41 to approving a temporary transfer, the Secretary shall consult with those parties listed in
42 G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However,
43 the Secretary shall not be required to satisfy the public notice requirements of this
44 section or make written findings of fact and conclusions in approving a temporary

1 transfer under this subsection. In considering whether to approve a temporary transfer,
2 the Secretary shall consider only the actual need for water and shall not consider water
3 uses resulting from water sales entered into as a profitable enterprise by an entity. If the
4 Secretary approves a temporary transfer under this subsection, the Secretary shall
5 specify binding conditions to protect other water users. A temporary transfer shall not
6 exceed six months in duration, but the approval may be renewed for a period of six
7 months by the Secretary based on demonstrated need as set forth in this subsection. A
8 temporary transfer may be renewed no more than two times after the initial approval.

9 (k) Compliance With Federal Law. – The substantive restrictions and conditions
10 upon surface water transfers authorized in this section may be imposed pursuant to any
11 federal law that permits the State to certify, restrict, or condition any new or continuing
12 transfers or related activities licensed, relicensed, or otherwise authorized by the federal
13 government.

14 (k1) Monitor Quantity of Water Withdrawals. – Any person who receives a
15 certificate under this section shall file with the Commission on the first of each month, a
16 report stating the quantity and use of the water withdrawn and transferred during the
17 previous month. The report shall be made on a form approved by the Commission. The
18 quantity of water that is withdrawn and transferred may be determined in any of the
19 following manners:

20 (1) Flow meters accurate to within ten percent (10%) of calibration.

21 (2) The rated capacity of the pump in conjunction with the use of an hour
22 meter, electric meter, or log.

23 (3) The rated capacity of the cooling systems.

24 (4) A standard or method employed by the United States Geological
25 Survey in determining a quantity of surface water withdrawn; or

26 (5) Another method found to provide reliable water withdrawal data
27 approved by the Commission.

28 (l) Future Water Needs Plan: Requirement and Implementation. – When any
29 transfer for which a certificate was issued under this section equals eighty percent
30 (80%) of the maximum amount authorized in the certificate, the applicant shall submit
31 to the Department a detailed plan that specifies how the applicant intends to address
32 future foreseeable water needs. If the applicant is required to have a local water supply
33 plan, then this plan shall be an amendment to the local water supply plan required by
34 G.S.143-355(l). When the transfer equals ninety percent (90%) of the maximum amount
35 authorized in the certificate, the applicant shall begin implementation of the plan
36 submitted to the Department.

37 (m) Public Policy Statement. – It is the public policy of the State to maintain,
38 protect, and enhance water quality within North Carolina. To that end, there is a
39 presumption that a certificate for an interbasin transfer shall not be granted unless the
40 applicant can show that there are no water sources available within the applicant's
41 watershed, that the interbasin transfer is necessary to protect and promote public health,
42 and that there is no other reasonable alternative to the requested transfer. Further, it is
43 the public policy of the State that the cumulative impact of transfers from a source river
44 basin shall not result in a violation of the antidegradation policy set out in 40 Code of

1 Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation
2 policy adopted pursuant thereto. It is also the public policy of this State that any
3 interbasin transfer granted under this section shall be based on the actual use and water
4 supply need of an area and shall not include consideration of water sales that are used to
5 generate revenue.

6 (n) Certificate: Authority to Modify After Granted. – The Commission may
7 modify any certificate granted for an interbasin transfer if the Commission determines
8 that:

- 9 (1) The cumulative impact of existing, permitted, and proposed
10 withdrawals has exceeded or will exceed the safe yield of the source
11 water body;
12 (2) The cumulative impact of existing, permitted, and proposed
13 withdrawals has caused or contributed to or will cause or contribute to
14 the deterioration of water quality in either the source river basin or the
15 receiving river basin; or
16 (3) The projections of population growth, water supply, or water demand
17 upon which the certificate for the interbasin transfer was granted were
18 inaccurate."

19 **SECTION 4.** The Department of Justice and the Department of Environment
20 and Natural Resources shall jointly study the need to negotiate an interstate compact
21 with adjoining states that have a river basin that drains into or from North Carolina to
22 mediate and cooperatively resolve water supply disputes that may arise from interbasin
23 transfers and consumptive water uses in river basins that are shared by North Carolina
24 and those states. The Attorney General and the Secretary of Environment and Natural
25 Resources shall report the findings and recommendations of the study and any proposed
26 legislation required to implement the recommendations to the 2007 General Assembly,
27 2008 Regular Session.

28 **SECTION 5.** This act is effective when it becomes law and applies to any
29 petition for a certificate or for the modification of a certificate for an interbasin transfer
30 that is acted on by the Environmental Management Commission on or after that date,
31 provided that the procedural requirements contained in G.S. 143-215.22I(c), (d), (e),
32 and (e1), as enacted or modified in this act, apply to any petition for a certificate or for
33 the modification of a certificate for an interbasin transfer (including one that must be
34 resubmitted on remand after hearing) that is submitted to the Environmental
35 Management Commission on or after that date.