

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 1167
SENATE BILL 432

AN ACT TO PROVIDE FOR THE CONTROL OF WATER AND AIR POLLUTION AND
THE MANAGEMENT AND CONSERVATION OF WATER RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. This entire act shall be known and may be cited as the Water and Air Resources Management and Pollution Control Act of 1971.

Sec. 2. Chapter 113 of the General Statutes is hereby amended by inserting a new Subchapter VII entitled WATER CONSERVATION which includes therein a new Article 29 to read as follows:

"SUBCHAPTER VII. WATER CONSERVATION.

"ARTICLE 29.

"Natural and Scenic Rivers System.

"§ 113-420. Short title. — This Article shall be known and may be cited as the 'Natural and Scenic Rivers Act of 1971.'

"§ 113-421. Declaration of policy. — The General Assembly finds that certain rivers of North Carolina possess outstanding natural, scenic, educational, geological, recreational, historic, fish and wildlife, scientific and cultural values of great present and future benefit to the people. The General Assembly further finds as policy the necessity for a rational balance between the conduct of man and the preservation of the natural beauty along the many rivers of the State. This policy includes retaining the natural and scenic conditions in some of the State's valuable rivers by maintaining them in a free-flowing state and to protect their water quality and adjacent lands by retaining these natural and scenic conditions. It is further declared that the preservation of certain rivers or segments of rivers in their natural and scenic condition constitutes a beneficial public purpose.

"§ 113-422. Declaration of purpose. — The purpose of this Article is to implement the policy as set out in G.S. 113-421 by instituting a North Carolina Natural and Scenic Rivers System, and by prescribing methods for inclusion of components to the System from time to time.

"§ 113-423. Definitions. — As used in this Article, unless the context requires otherwise: (1) 'Department' means the Department of Conservation and Development.

(2) 'Free-flowing,' as applied to any river or section of a river, means existing or flowing in natural condition without substantial impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the North Carolina Natural and Scenic Rivers System shall not automatically bar its consideration for such inclusion: Provided, that this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the System.

(3) 'River' means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

- (4) 'Road' means public or private highway, hard-surface road, dirt road, or railroad.
- (5) 'Scenic easement' means a perpetual easement in land which (i) is held for the benefit of the people of North Carolina, (ii) is specifically enforceable by its holder or beneficiary, and (iii) limits or obligates the holder of the servient estate, his heirs, and assigns with respect to their use and management of the land and activities conducted thereon. The object of such limitations and obligations is the maintenance or enhancement of the natural beauty of the land in question or of the areas affected by it.

"§ 113-424. Types of scenic rivers. — The following types of rivers are eligible for inclusion in the North Carolina Natural and Scenic Rivers System:

Class I. Natural river areas. Those free-flowing rivers or segments of rivers and adjacent lands existing in a natural condition. Those rivers or segments of rivers that are free of man-made impoundments and generally inaccessible except by trail, with the lands within the boundaries essentially primitive and the waters essentially unpolluted. These represent vestiges of primitive America.

Class II. Scenic river areas. Those rivers or segments of rivers that are largely free of impoundments, with the lands within the boundaries largely primitive and largely undeveloped, but accessible in places by roads.

"§ 113-425. Criteria for System. — For the inclusion of any river or segment of river in the Natural and Scenic Rivers System, the following criteria must be present:

- (1) River segment length — must be no less than one (1) mile.
- (2) Boundaries — of the System shall be the visual horizon or such distance from each shoreline as may be determined to be necessary by the Director, but shall not be less than twenty (20) feet. Provided, that this shall not be construed to authorize the Director to acquire, except by donation or gift, more than 320 acres of land per mile for inclusion within the boundaries.
- (3) Water quality — shall not be less than that required for Class "C" waters as established by the North Carolina Board of Water and Air Resources.
- (4) Water flow — shall be sufficient to assure a continuous flow and shall not be subjected to withdrawal or regulation to the extent of substantially altering the natural ecology of the stream.
- (5) Public access — shall be limited, but may be permitted to the extent deemed proper by the Director, and in keeping with the property interest acquired by the Department and the purpose of this Article.

"§ 113-426. Administrative agency; federal grants; additions to the System; regulations.

— (a) The Department of Conservation and Development is the agency of the State of North Carolina with the duties and responsibilities to administer and control the North Carolina Natural and Scenic Rivers System.

(b) The Department shall be the agency of the State with the authority to accept federal grants of assistance in planning, developing (which would include the acquisition of land or an interest in land), and administering the Natural and Scenic Rivers System.

(c) The Director of the Department shall study and from time to time submit to the Governor and to the General Assembly proposals for the additions to the System of rivers and segments of rivers which, in his judgment, fall within one or more of the categories set out in G.S. 113-424. Each proposal shall specify the category of the proposed addition and shall be accompanied by a detailed report of the facts which, in the Director's judgment, makes the area a worthy addition to the System.

(d) The Board of Conservation and Development may establish reasonable regulations for the purpose of carrying out the provisions of this Article.

"§ 113-427. **Raising the status of an area.** — Whenever in the judgment of the Director of the Department a scenic river segment has been sufficiently restored and enhanced in its natural scenic and recreational qualities, such segment may be reclassified with the approval of the Board, to a natural river area status and thereafter administered accordingly.

"§ 113-428. **Land acquisition.** — (a) The Department of Administration is authorized to acquire for the Department of Conservation and Development, within the boundaries of a river or segment of river as set out in G.S. 113-425 on behalf of the State of North Carolina, lands in fee title or a lesser interest in land, preferably 'scenic easements'. Acquisition of land or interest therein may be by donation, purchase with donated or appropriated funds, exchange or otherwise.

(b) The Department of Administration in acquiring real property or a property interest therein as set out in (1) above shall have and may exercise the power of eminent domain in accordance with the provisions of Article 2, Chapter 40, of the General Statutes, as amended.

"§ 113-429. **Claim and allowance of charitable deduction for contribution or gift of easement.** — The contribution or donation of a 'scenic easement', right-of-way or any other easement or interest in land to the State of North Carolina, as provided in this act, shall be deemed a contribution to the State of North Carolina within the provisions of G.S. 105-130.9 and G.S. 105-147(16). The value of the contribution or donation shall be the fair market value of the easement or other interest in land when the contribution or donation is made.

"§ 113-430. **Component as part of State park, wildlife refuge, etc.** — Any component of the State Natural and Scenic Rivers System that is or shall become a part of any State park, wildlife refuge, or State-owned area shall be subject to the provisions of this Article and the Articles under which the other areas may be administered, and in the case of conflict between the provisions of these Articles the more restrictive provisions shall apply.

"§ 113-431. **Component as part of National Wild and Scenic River System.** — Nothing in this Article shall preclude a river or segment of a river from becoming part of the National Wild and Scenic River System. The Director of the Department is directed to encourage and assist any federal studies for the inclusion of North Carolina rivers in the national system. The Director may enter into cooperative agreements for joint federal-state administration of a North Carolina river or segment of river: Provided, that such agreements relating to water and land use are not less restrictive than the requirements of this Article.

"§ 113-432. **Violations.** — (a) Civil action. Whoever violates, fails, neglects or refuses to obey any provision of this Article or regulation or order of the Director of the Department of Conservation and Development may be compelled to comply with or obey the same by injunction, mandamus, or other appropriate remedy.

(b) Penalties. Whoever violates, fails, neglects or refuses to obey any provision of this Article or regulation or order of the Director of the Department of Conservation and Development is guilty of a misdemeanor and may be punished by a fine of not more than fifty dollars (\$50.00) for each violation, and each day such person shall fail to comply, where feasible, after having been officially notified by the Department shall constitute a separate offense subject to the foregoing penalty.

"§ 113-433. **Authorization of advances.** — The Department of Administration is hereby authorized to advance from land-purchase appropriations necessary amounts for the purchase of land in those cases where reimbursement will be later effected by the Bureau of Outdoor Recreation of the United States Department of the Interior."

Sec. 3. Article 21 of Chapter 143 of the General Statutes of North Carolina is hereby amended by adding thereto at the end thereof a new part, to be numbered Part 6, and to read as follows:

"Part 6. Floodway Regulation

"§ 143-215.51. **Preamble.** — The purpose of this Part is to specify a means for regulation of artificial obstructions in floodways by responsible local governments with guidance,

coordination and assistance from State Government, consonant with the State policy of vesting primary responsibility for flood plain management with local levels of government. It is hereby declared that the channel and a portion of the flood plain of all of the State's streams will be designated as a floodway, in which artificial obstructions may not be placed except with the permission of the responsible local government. The purpose of designating these areas as a floodway is to help control and minimize the extent of floods by preventing obstructions which inhibit water flow and increase flood height and damage, and thereby to prevent or minimize loss of life, injuries, property damage and other losses (both public and private) in flood hazard areas, and to promote the public health, safety and welfare of citizens of North Carolina in flood hazard areas.

"§ 143-215.52. Definitions. — As used in this Part, unless the context otherwise requires:

- (1) 'Floodway' means that portion of the channel and flood plain of a stream designated to provide passage for the 100-year flood, without increasing the elevation of that flood at any point by more than one foot.
- (2) 'Natural obstruction' includes any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway by a nonhuman cause.
- (3) 'Artificial obstruction' means any obstruction which is not a natural obstruction, including any which, while not a significant obstruction in itself, is capable of accumulating debris and thereby reducing the flood-carrying capacity of the stream.
- (4) 'Stream' means a water course that collects surface runoff from an area of one square mile or greater. This does not include flooding due to tidal or storm surge on estuarine or ocean waters.
- (5) 'Local government' means any county or municipal corporation.

"§ 143-215.53. Artificial obstruction prohibited. — The placement of any artificial obstruction in the floodway of any stream after the floodway has been delineated pursuant to G.S. 143-215.56 is hereby prohibited, except as set forth in G.S. 143-215.54, unless a permit has been obtained for such artificial obstruction from the responsible local government. No damageable portion of a structure located outside the floodway may be below the elevation that would be attained by the 100-year flood if the stream were contained within the floodway.

"§ 143-215.54. Floodway uses. — (a) Local governments are empowered to grant permits for the use of the floodways consistent with the purposes of this Part.

(b) The following uses may be made of floodways as a matter of right without a permit issued under this Part:

- (1) General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses.
- (2) Loading areas, parking areas, rotary aircraft ports, and other similar industrial-commercial uses.
- (3) Lawns, gardens, parking, play areas, and other similar uses.
- (4) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, swimming pools, hiking or horseback riding trails, open space and other similar private and public recreational uses.
- (5) Streets, bridges, overhead utility lines, creek and storm drainage facilities, sewage or waste treatment plant outlets, water supply intake structures, and other similar public, community or utility uses.
- (6) Temporary facilities (for a specified number of days), such as displays, circuses, carnivals, or similar transient amusement enterprises.
- (7) Boat docks, ramps, piers, or similar structures.
- (8) Dams.

"§ 143-215.55. **Existing artificial obstructions.** — Artificial obstructions existing in a floodway on the effective date of this Part shall not be considered to be in violation of this Part. However, they may not be enlarged or replaced in part or in whole, without a permit, as provided by this Part in the case of a proposed artificial obstruction. Local governments are empowered to acquire, by purchase, exchange, or condemnation such existing artificial obstructions if deemed necessary by the responsible local government for the purpose of avoiding flood damages. The procedure in all condemnation proceedings pursuant to this section shall conform as nearly as possible to the procedure provided in G.S. Chapter 40, Article 2, and all acts amendatory thereof.

"§ 143-215.56. **Delineation of floodway; powers of Board of Water and Air Resources; powers of local governments.** — (a) For the purpose of delineating the floodway and evaluating the possibility of flood damages, responsible local governments are empowered to:

- (1) request technical assistance from the competent federal agencies, including the Army Corps of Engineers, the Soil Conservation Service, the Tennessee Valley Authority, and the U. S. Geological Survey, or successor agencies, and
- (2) utilize the reports and data supplied by federal and state agencies as the basis for the exercise by local ordinance or resolution of the powers and responsibilities conferred on responsible local governments by this Part.

(b) The Board of Water and Air Resources shall be empowered to render advice and assistance to any local government having responsibilities under this Part. In exercising this function it shall specifically be authorized to furnish manuals, suggested standards, plans, and other technical data; to conduct training programs; and to give advice and assistance with respect to handling of particular applications; but it shall not be limited to such activities. In the exercise of its powers to adopt rules and regulations interpreting and applying the provisions of this Part, the Board may adopt (but is not limited to adopting) regulations interpreting any of the terms used in this Part, including regulations supplementing the definitions provided in this Part. A copy of every regulation adopted by the Board interpreting or applying the provisions of this Part, shall be filed by the Board with the chairman of the governing body of each county and municipality within the State, as well as with the Secretary of State as required by G.S. 143-195.

(c) The local governing body may delineate any floodway subject to its regulation by showing it on a map or drawing, by a written description, or any combination thereof, to be designated appropriately and filed permanently with the clerk of superior court and with the register of deeds in the county where the land lies and with the Director of Water and Air Resources. Alterations in these lines shall be indicated by appropriate entries upon or additions to such map or description. Such entries or additions shall be made by or under the direction of the clerk of superior court. Photographic, typed or other copies of such map or description, certified by the clerk of superior court, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. The local governing body may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or maps which it is designated to replace upon the filing thereof at those places designated above.

"§ 143-215.57. **Procedures in issuing permits.** — (a) Responsible local governments are empowered to establish application forms and require such maps, plans, and other information as necessary for the issuance of permits in a manner consonant with the objectives of this Part. They shall consider the effects of a proposed artificial obstruction in a floodway in creating danger to life and property (1) by water which may be backed up or diverted by such obstruction; (2) by the danger that the obstruction will be swept downstream to the injury of others; and (3) by the injury or damage at the site of the obstruction itself. For this purpose they

may take into account anticipated development in the foreseeable future which may be adversely affected by the obstruction, as well as existing development.

(b) In prescribing standards and requirements for the issuance of permits under this Part, and in issuing such permits, responsible local governments shall proceed as in the case of an ordinance for the better government of the county or municipality, as the case may be. A municipality may exercise the powers granted in this Part not only within its corporate boundaries but also within the area of its extra-territorial zoning jurisdiction. A county may exercise the powers granted in this Part at any place within the county outside the zoning jurisdiction of any municipalities in the county. The county may regulate territory within the zoning jurisdiction of any municipality whose governing body, by resolution, agrees to such regulation; provided, however, that any such municipal governing body may, upon one year's written notice, withdraw its approval of the county regulations, and those regulations shall have no further effect within the municipality's jurisdiction.

(c) The local governing body is hereby empowered to adopt such regulations as it may deem necessary concerning the form, time, and manner of submission of applications for permits under this Part. Such regulations may provide for the issuance of permits under this Part by the local governing body or by such agency as may be designated by said body, as prescribed by the governing body. Every final decision granting or denying a permit under this Part shall be subject to review by the superior court of the county, with the right of jury trial at the election of the party seeking review. The time and manner of election of a jury trial shall be governed by G.S. 1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of any such appeal, no action shall be taken which would be unlawful in the absence of a permit issued under this Part.

"§ 143-215.58. Violations and penalties. — (a) Any violation of this Part or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part shall constitute a misdemeanor.

(b) Failure to remove any artificial obstruction or enlargement or replacement thereof, that violates this Part or any ordinance adopted (or the provision of any permit issued) under the authority of this Part, shall constitute a separate violation of this Part for each ten days that such failure continues after written notice from the county or municipal governing body.

(c) In addition to or in lieu of other remedies, the county or municipal governing body may institute any appropriate action or proceeding to restrain or prevent any violation of this Part or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part, or to require any person, firm or corporation which has committed any such violation to remove a violating obstruction or restore the conditions existing before the placement of the obstruction.

"§ 143-215.59. Other approvals required. — (a) The granting of a permit under the provisions of this Part shall in no way affect any other type of approval required by any other statute or ordinance of the State or any political subdivision of the State, or of the United States, but shall be construed as an added requirement.

(b) No permit for the construction of any structure to be located within a floodway shall be granted by a political subdivision unless the applicant has first obtained the permit required by this Part.

"§ 143-215.60. Liability for damages. — No action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this Part shall be brought against the State or any political subdivision of the State, or their employees or agents.

"§ 143-215.61. Flood plain management. — The provisions of this Part shall not preclude the imposition by responsible local governments of land use controls and other regulations in the interest of flood plain management for the flood plain or the floodway."

Sec. 4. Subsection (5) of G.S. 143-213 is hereby amended to read as follows:

"§ 143-213(5). The term 'air pollution' shall mean the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tends to be injurious to human health or welfare, to animal or plant life or to property or that interferes with the enjoyment of life or property."

Sec. 5. G.S. 143-215(a) is amended by adding thereto the following subdivision:

"(6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations."

Sec. 6. G.S. 143-215.1(a) is amended by adding thereto the following subdivision:

"(6) Willfully cause or permit any wastes, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications, unless allowed as a condition of any special order or other appropriate instrument issued or entered into by the Board under the provisions of this Article."

Sec. 7. G.S. 143-215.3(a)(11)d. is hereby amended by adding thereto paragraph 8 as follows:

"8. Notwithstanding any other provision of this section, if the Board determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Board, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emissions of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary."

Sec. 8. Subparagraph iv. of G.S. 143-215.3(a)(11)e.1. is hereby amended to read as follows:

"iv. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules, regulations and standards duly adopted by the Board of Water and Air Resources; and administration of such rules, regulations and standards in accordance with provisions of this subdivision."

Sec. 9. Article 21 of G.S. Chapter 143 is hereby amended by adding thereto at the end thereof a new part, to be designated Part 8, and to read as follows:

"Part 8.

"Water and Air Quality Reporting

"§ 143-215.63. **Short Title.** — This Part shall be known and may be cited as the Water and Air Quality Reporting Act of 1971.

"§ 143-215.64. **Purpose.** — The purpose of this Part is to require all persons who are subject to the provisions of G.S. 143-215.1 to file reports with the Board of Water and Air Resources covering the discharge of waste and air contaminants to the waters and outdoor atmosphere of the State and to establish and maintain approved systems for monitoring the quantity and quality of such discharges and their effects upon the water and air resources of the State.

"§ 143-215.65. **Reports required.** — All persons subject to the provisions of G.S. 143-215.1 who discharge wastes to the waters or emit air contaminants to the outdoor atmosphere of this State shall file monthly reports with the Board setting forth the volume and characteristics of wastes discharged or air contaminants emitted daily or such other period of time as may be specified by the Board in its official regulations. Such reports shall be filed on forms either

provided by or approved by the Board and shall include such pertinent data with reference to the total and average volume of wastes or air contaminants discharged, the strength and amount of each waste substance or air contaminant discharged, the type and degree of treatment such wastes or air contaminants received prior to discharge and such other information as may be specified by the Board in its official regulations. The information shall be used by the Board only for the purpose of air and water pollution control. The Board shall provide proper and adequate facilities and procedures to safeguard the confidentiality of proprietary manufacturing processes except that confidentiality shall not extend to wastes discharged or air contaminants emitted.

"§ 143-215.66. Monitoring required. — In order to provide for adequately monitoring the discharge of wastes to the waters and the emission of contaminants to the outdoor atmosphere and their effects upon the quality of the environment, all persons subject to the provisions of G.S. 143-215.1 who cause such discharges or emissions shall establish and maintain adequate water and air quality monitoring systems and report the data obtained therefrom to the Board. Each monitoring system shall include the collection of water or air quality data as appropriate from such locations, in such detail, and with such frequency as shall be reasonably required by the Board, in its official regulations, for evaluating the efficiency of treatment facilities or air cleaning devices and the effects of the discharges or emissions upon the waters and air resources of the State.

"§ 143-215.67. Acceptance of wastes to disposal systems and air cleaning devices. — No person subject to the provisions of G.S. 143-215.1 shall willfully cause or allow the discharge of any wastes or air contaminants to a waste disposal system or air cleaning device in excess of the capacity of the disposal system or cleaning device or any wastes or air contaminants which the disposal system or cleaning device cannot adequately treat.

"§ 143-215.68. Rules and regulations. — The Board is hereby specifically authorized to adopt appropriate report forms and such rules and regulations as deemed necessary for the implementation of this Part.

"§ 143-215.69. Penalties. — Any person who violates any provisions of this Part or any regulations adopted by the Board for its implementation shall be guilty of a misdemeanor and shall be liable to a penalty of not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000) for each violation and each day such person shall fail to comply after having been officially notified by the Board shall constitute a separate offense subject to the foregoing penalty."

Sec. 10. Part 9 of Article 3 of Chapter 20 of the General Statutes is amended by adding thereto the following section immediately following G.S. 20-128:

"§ 20-128.1. Control of visible emissions. — (a) It shall be a violation of this Article:

- (1) For any gasoline powered motor vehicle registered and operated in this State to emit visible air contaminants under any mode of operation for longer than five consecutive seconds.
- (2) For any diesel powered motor vehicle registered and operated in this State to emit for longer than five consecutive seconds under any mode of operation visible air contaminants which are equal to or darker than the shade or density designated as No. 1 on the Ringelmann chart or are equal to or darker than a shade or density of twenty percent (20%) opacity.

(b) Any person charged with a violation of this section shall be allowed 30 days within which to make the necessary repairs or modification to bring the motor vehicle into conformity with the standards of this section and to have the motor vehicle inspected and approved by the agency issuing the notice of violation. Any person who, within 30 days of receipt of a notice of violation, and prior to inspection and approval by the agency issuing the notice, receives additional notice or notices of violation, may exhibit a certificate of inspection and approval

from the agency issuing the first notice in lieu of inspection and approval by the agencies issuing the subsequent notices.

(c) The provisions of this section shall be enforceable by all persons designated in G.S. 20-49; by all law enforcement officers of this State within their respective jurisdictions; by the personnel of local air pollution control agencies within their respective jurisdictions; and by personnel of State air pollution control agencies throughout the State.

(d) Any person who fails to comply with the provisions of this section shall be subject to the penalties provided in G.S. 20-176."

Sec. 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 12. This act shall become effective July 1, 1971.

In the General Assembly read three times and ratified, this the 21st day of July, 1971.