

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 875\*

Environment and Natural Resources Committee Substitute Adopted 4/26/93  
Third Edition Engrossed 5/4/93

Short Title: Regulate Interbasin Transfers.

(Public)

Sponsors:

Referred to:

April 15, 1993

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

3 The General Assembly of North Carolina enacts:

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

6 "PART 2A. REGISTRATION OF WATER WITHDRAWALS AND  
7 TRANSFERS.  
8 TRANSFERS; REGULATION OF SURFACE WATER TRANSFERS.

9 "§ 143-215.22G. Definitions.

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

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

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

(a) Any person who withdraws 1,000,000 gallons per day or more of water from the surface waters of the State or who transfers 1,000,000 gallons per day or more of

1 water from one river basin to another shall register the withdrawal or transfer with the  
2 Commission. A person registering a water withdrawal or transfer shall provide the  
3 Commission with the following information:

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

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

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

13 **§ 143-215.22I. Regulation of surface water transfers.**

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

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

18 (2) Construct a facility or expand an existing facility that would increase  
19 the capacity of an existing transfer of water from one river basin to  
20 another if the increase would cause the total transfer to equal or exceed  
21 one hundred twenty-five percent (125%) of the capacity of the existing  
22 facilities as of July 1, 1993, and if the increase causes the total transfer  
23 to equal or exceed two million gallons per day.

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

26 (1) A description of the facilities to be used to transfer the water, including  
27 the location and capacity of water intakes, pumps, pipelines, and other  
28 facilities.

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

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

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

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

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

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

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

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

- 1           b.    A person who secured a certificate under this Part for a water  
2           transfer from the same river basin where the water for the  
3           proposed transfer would be withdrawn.
- 4           c.    A person holding a National Pollutant Discharge Elimination  
5           System (NPDES) wastewater discharge permit exceeding  
6           100,000 gallons per day for a discharge located downstream  
7           from the proposed withdrawal point of the proposed transfer.
- 8           d.    The board of county commissioners of each county that is  
9           located entirely or partially within the river basin that is the  
10          source of the proposed transfer.
- 11          e.    The governing body of any public water supply system that: (i)  
12          withdraws water downstream from the source of the proposed  
13          transfer and (ii) is located downstream of the withdrawal point  
14          of the proposed transfer.
- 15          (d)   The notice of the public hearing shall include a nontechnical description of  
16          the applicant's request and a conspicuous statement in bold type as to the effects of the  
17          water transfer on the source and receiving river basins. The notice shall further indicate  
18          the procedure to be followed by anyone wishing to submit comments on the proposed  
19          water transfer.
- 20          (e)   In determining whether a certificate may be issued for the transfer, the  
21          Commission shall specifically consider each of the following items and state in writing  
22          its findings of fact with regard to each item:
- 23               (1)   The necessity, reasonableness, and beneficial effects of the amount of  
24               surface water proposed to be transferred and its proposed uses.
- 25               (2)   The present and reasonably foreseeable future detrimental effects on  
26               the source river basin, including present and future effects on public,  
27               industrial, and agricultural water supply needs, wastewater  
28               assimilation, water quality, fish and wildlife habitat, hydroelectric  
29               power generation, navigation, recreation, and any other relevant  
30               factors.
- 31               (3)   The detrimental effects on the receiving river basin, including effects  
32               on water quality, wastewater assimilation, fish and wildlife habitat,  
33               navigation, recreation, flooding, and any other relevant factors.
- 34               (4)   The reasonable alternatives to the proposed transfer, including their  
35               probable cost, environmental impacts, and any other significant  
36               factors.
- 37               (5)   Mitigation measures proposed to minimize the detrimental effects.
- 38               (6)   The protection of the availability of water in the source river basin to  
39               respond to emergencies, including drought.
- 40               (7)   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           (8) If the water to be withdrawn or transferred is stored in a multi-purpose  
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           (9) Any other facts and circumstances that are reasonably necessary to  
7 carry out the purposes of this Part.

8           (f) No 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 (e) of this section that the benefits of the proposed transfer outweigh  
11 the potential detriments of the transfer and that those detriments have been mitigated to  
12 a reasonable degree.

13           (g) The Commission may grant the certificate in whole or in part, or deny the  
14 certificate. No person shall transfer an amount of water that exceeds the amount in the  
15 certificate. In cases where an applicant requests approval to increase a transfer that  
16 existed on July 1, 1993, the Commission shall have authority to approve or disapprove  
17 only the amount of the increase. If the Commission approves the increase, however, the  
18 certificate shall be issued for the amount of the existing transfer plus the requested  
19 increase. Certificates for transfers approved by the Commission under G.S. 162A-7  
20 shall remain in effect as approved."

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

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

24           (1) Violates any classification, standard, limitation, or management  
25 practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-  
26 215.

27           (2) Is required but fails to apply for or to secure a permit required by G.S.  
28 143-215.1, or who violates or fails to act in accordance with the terms,  
29 conditions, or requirements of such permit or any other permit or  
30 certification issued pursuant to authority conferred by this Part,  
31 including pretreatment permits issued by local governments and  
32 laboratory certifications.

33           (3) Violates or fails to act in accordance with the terms, conditions, or  
34 requirements of any special order or other appropriate document issued  
35 pursuant to G.S. 143-215.2.

36           (4) Fails to file, submit, or make available, as the case may be, any  
37 documents, data, or reports required by this Article or G.S. 143-355(k)  
38 relating to water use information.

39           (5) Refuses access to the Commission or its duly designated representative  
40 to any premises for the purpose of conducting a lawful inspection  
41 provided for in this Article.

42           (6) Violates a rule of the Commission implementing this ~~Part~~ Part, Part 2A  
43 of this Article, or G.S. 143-355(k).

1 (7) Violates or fails to act in accordance with the statewide minimum  
2 water supply watershed management requirements adopted pursuant to  
3 G.S. 143-214.5, whether enforced by the Commission or a local  
4 government.

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

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

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

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

11 a. For air quality standards, emission control standards and  
12 classifications for air contaminant sources pursuant to G.S. 143-  
13 215.107;

14 b. For water quality standards and classifications pursuant to G.S.  
15 143-214.1 and G.S. 143-215;

16 c. To implement water and air quality reporting pursuant to G.S.  
17 143-215.68;

18 d. To be applied in capacity use areas pursuant to G.S. 143-  
19 215.14;

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

22 f. Repealed by Session Laws 1983, c. 222, s. 3, effective April 25,  
23 1983;

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

27 h. Governing underground tanks used for the storage of hazardous  
28 substances or oil pursuant to Article 21 or Article 21A of  
29 Chapter 143 of the General Statutes.

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

32 Sec. 4. G.S. 153A-285 is repealed.

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

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

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