

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 518

Short Title: Water Supply Watershed Act Improvements.

(Public)

Sponsors: Senators Kincaid and Davis.

Referred to: Agriculture/Environment/Natural Resources

March 29, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS OF NORTH CAROLINA TO IMPROVE THE
ADMINISTRATION OF THE WATER SUPPLY WATERSHED PROTECTION
ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-214.5 reads as rewritten:

"§ 143-214.5. Water supply watershed protection.

(a) Policy Statement. – This section provides for a cooperative program of water supply watershed management and protection to be administered by local governments consistent with minimum statewide management ~~requirements~~ guidelines established by the Commission. If a local government fails to adopt a water supply watershed protection program or does not adequately carry out its responsibility to enforce the minimum water supply watershed management requirements of its approved program, the Commission shall administer and enforce the minimum statewide ~~requirements~~ guidelines. The reduction of agricultural nonpoint source discharges shall be accomplished primarily through the Agriculture Cost Share Program for Nonpoint Source Pollution Control.

(b) Development and Adoption of Water Supply Watershed Classifications and Management Requirements. – The Commission shall adopt rules for the classification of water supply watersheds and that establish minimum statewide water supply watershed protection ~~requirements~~ guidelines applicable to each classification for use by local

1 governments to protect surface water supplies by (i) controlling development density, (ii)
2 providing for performance-based alternatives to development density controls that are
3 based on sound engineering principles, ~~or~~ (iii) a combination of both (i) and ~~(ii)~~, or
4 (iv) such other means as the local government deems necessary. Nothing in the State's
5 guidelines shall preclude local governments from (i) averaging development densities
6 over the entire jurisdiction or watershed, whichever is less, (ii) allowing stormwater
7 control systems alternative to wet detention basins, (iii) allowing accessory structures in
8 buffer areas, (iv) specifying buffer widths less stringent than the State's guidelines, or (v)
9 including publicly owned lands or other undevelopable lands within the watershed in
10 calculating the allowable development density for developable land within the watershed.
11 Property more than two miles from the water supply waters to which the property drains
12 is not subject to the provisions of this section. Nothing in this section shall be construed
13 to allow the State to limit the percent built-upon area within water supply watersheds or
14 the development density of individual projects. The Commission may designate water
15 supply watersheds or portions thereof as critical water supply watersheds and ~~impose~~
16 recommend management requirements that are more stringent than the minimum
17 statewide water supply watershed management requirements guidelines. The Commission
18 may adopt rules that require that any permit issued by a local government for a
19 development or construction activity conducted by that local government within a
20 designated water supply watershed be approved by the Department prior to issuance in
21 compliance with the watershed requirements adopted by that local government. Local
22 governments may grant ~~Any variance~~ variances from the local watershed protection
23 requirements adopted pursuant to the minimum statewide water supply watershed
24 management guidelines on a case-by-case basis in order to effect desirable social or
25 economic goals or if necessary to avoid adverse social or economic impacts. ~~requirements~~
26 must be approved by the Commission prior to the issuance of a permit by a local government.
27 Except as provided by G.S. 153A-347 and G.S. 160A-392, the power to implement this
28 section with respect to development or construction activities that are conducted by State
29 agencies must meet the State's minimum statewide watershed protection guidelines or
30 any applicable local government requirements, whichever are more stringent, and must
31 be approved by ~~is vested exclusively in~~ the Commission.

32 (c) Classification of Water Supply Watersheds. – The Commission shall assign to
33 each water supply watershed in the State the appropriate classification consistent with the
34 recommendation of local governments having jurisdiction in the watershed. ~~with the~~
35 applicable minimum management requirements. ~~Where multiple local governments having~~
36 jurisdiction in the watershed cannot agree on the appropriate water supply classification,
37 the Commission shall assign to the watershed the classification with the least stringent
38 watershed management guidelines. The Commission ~~may~~ may, in keeping with the
39 recommendation of local governments having jurisdiction in the water supply watershed,
40 reclassify water supply watersheds as necessary to protect future water supplies or
41 improve protection at existing water supplies. A local government shall not be required to
42 submit a revised water supply watershed protection program to the Commission earlier
43 than 270 days after it receives notice of a reclassification from the Commission.

1 (d) Mandatory Local Programs. – The Department shall assist local governments
2 to develop water supply watershed protection programs that comply with this section.
3 Local government compliance programs shall include an implementing local ordinance
4 and shall provide for maintenance, inspection, and enforcement procedures. As part of its
5 assistance to local governments, the Commission shall approve and make available a
6 model local water supply watershed management and protection ordinance. The model
7 management and protection ordinance adopted by the Commission shall, at a minimum,
8 include as options (i) controlling development density, (ii) providing for performance-
9 based alternatives to development density controls that are based on sound engineering
10 principles, and (iii) a combination of both (i) and (ii). Local governments shall
11 administer and enforce the minimum management ~~requirements~~ requirements adopted by
12 that local government. Every local government that has within its jurisdiction all or a
13 portion of a water supply watershed shall submit a local water supply watershed
14 management and protection ~~ordinance~~ program to the Commission for approval. Local
15 governments may adopt such ~~ordinances~~ programs pursuant to their general police power,
16 power to regulate the subdivision of land, zoning power, or any combination of such
17 powers. In adopting a local ordinance that imposes water supply watershed management
18 requirements that are more stringent than ~~those~~ the guidelines adopted by the
19 Commission, a county must comply with the notice provisions of G.S.153A-343 and a
20 municipality must comply with the notice provisions of G.S. 160A-384. ~~This section shall~~
21 ~~not be construed to affect the validity of any local ordinance adopted for the protection of water~~
22 ~~supply watersheds prior to completion of the review of the ordinance by the Commission or prior~~
23 ~~to the assumption by the Commission of responsibility for a local water supply watershed~~
24 ~~protection program.~~ Local governments may create or designate agencies to administer and
25 enforce such programs. ~~The Commission shall approve a local program only if it determines~~
26 ~~that the requirements of the program equal or exceed the minimum statewide water supply~~
27 ~~watershed management requirements adopted pursuant to this section.~~

28 (d1) A local ordinance adopted to implement the minimum statewide water supply
29 watershed management ~~requirements~~ guidelines applicable to agriculture and silviculture
30 activities shall be no more restrictive than those adopted by the Commission. In adopting
31 minimum statewide water supply watershed management ~~requirements~~ guidelines
32 applicable to agriculture activities, the Commission shall consider the policy regarding
33 agricultural nonpoint source discharges set out in subsection (a) of this section. The
34 Commission may by rule designate another State agency to administer the minimum
35 statewide water supply watershed management ~~requirements~~ guidelines applicable to
36 agriculture and silviculture activities. If the Commission designates another State agency
37 to administer the minimum statewide water supply watershed management ~~requirements~~
38 guidelines applicable to agriculture and silviculture activities, management requirements
39 adopted by local governments shall not apply to such activities.

40 (e) Assumption of Local Programs. – The Commission shall assume responsibility
41 for water supply watershed protection, within all or the affected portion of a water supply
42 watershed, if a local government fails to adopt a program ~~that meets the requirements of~~
43 under this section or whenever a local government fails to adequately administer and

1 enforce the provisions of its program. The Commission shall not assume responsibility
2 for an approved local water supply watershed protection program until it or its designee
3 notifies the local government in writing by certified mail, return receipt requested, of
4 local program deficiencies, recommendations for changes and improvements in the local
5 program, and the deadline for compliance. The Commission shall allow a local
6 government a minimum of 120 days to bring its program into compliance. The
7 Commission shall order assumption of an approved local program if it finds that the local
8 government has made no substantial progress toward compliance. The Commission may
9 make such finding at any time between 120 days and 365 days after receipt of notice
10 under this subsection by the local government, with no further notice. Proceedings to
11 review such orders by the Commission shall be conducted by the superior court pursuant
12 to Article 4 of Chapter 150B of the General Statutes based on the agency record
13 submitted to the Commission by the Secretary.

14 (f) State Enforcement Authority. – The Commission may take any appropriate
15 preventive or remedial enforcement action authorized by this Part against any person who
16 violates any ~~minimum statewide~~ applicable water supply watershed management
17 requirement.

18 (g) Civil Penalties. —~~A local government that fails to adopt a local water supply~~
19 ~~watershed protection program as required by this section or willfully fails to administer~~
20 ~~or enforce the provisions of its program in substantial compliance with the minimum~~
21 ~~statewide water supply watershed management requirements shall be subject to a civil~~
22 ~~penalty pursuant to G.S. 143-215.6A(e).~~ In any area of the State that is not covered by an
23 approved local water supply watershed protection program, any person who violates or
24 fails to act in accordance with any minimum statewide water supply watershed
25 management requirement or more stringent management requirement adopted by the
26 Commission for a critical water supply watershed established pursuant to this section
27 shall be subject to a civil penalty as specified in G.S. 143-215.6A(a)(7).

28 (h) Planning Grants to Local Governments. – The Secretary may make annual
29 grants to local governments for the purpose of assisting in the development of local water
30 supply watershed protection programs. The Secretary shall develop and administer
31 generally applicable criteria under which local governments may qualify for such
32 assistance. Such criteria shall give priority to local governments that are not then
33 administering zoning ordinances in affected water supply watershed areas.

34 (i) Every State agency shall act in a manner consistent with the policies and
35 purposes of this section, and shall comply with the minimum statewide water supply
36 watershed management ~~requirements~~ guidelines adopted by the Commission and with all
37 water supply watershed management and protection ordinances adopted by local
38 governments."

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

40 "**§ 143-215.6A. Enforcement procedures: civil penalties.**

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

- 1 (1) Violates any classification, standard, limitation, or management practice
2 established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.
- 3 (2) Is required but fails to apply for or to secure a permit required by G.S.
4 143-215.1, or who violates or fails to act in accordance with the terms,
5 conditions, or requirements of such permit or any other permit or
6 certification issued pursuant to authority conferred by this Part,
7 including pretreatment permits issued by local governments and
8 laboratory certifications.
- 9 (3) Violates or fails to act in accordance with the terms, conditions, or
10 requirements of any special order or other appropriate document issued
11 pursuant to G.S. 143-215.2.
- 12 (4) Fails to file, submit, or make available, as the case may be, any
13 documents, data, or reports required by this Article or G.S. 143-355(k)
14 relating to water use information.
- 15 (5) Refuses access to the Commission or its duly designated representative
16 to any premises for the purpose of conducting a lawful inspection
17 provided for in this Article.
- 18 (6) Violates a rule of the Commission implementing this Part, Part 2A of
19 this Article, or G.S. 143-355(k).
- 20 (7) Violates or fails to act in accordance with the statewide minimum water
21 supply watershed management ~~requirements-guidelines~~ adopted pursuant
22 to G.S. 143-214.5, ~~whether-when~~ enforced by the ~~Commission or a local~~
23 ~~government-Commission~~.
- 24 (7a) Violates or fails to act in accordance with the water supply watershed
25 management requirements adopted and enforced by a local government.
- 26 (8) Violates the offenses set out in G.S. 143-215.6B.
- 27 (9) Is required, but fails, to apply for or to secure a certificate required by
28 G.S. 143-215.22I, or who violates or fails to act in accordance with the
29 terms, conditions, or requirements of the certificate."
- 30 Sec. 3. G.S. 143-214.6 and G.S. 143-215.6A(e) are repealed.
- 31 Sec. 4. This act is effective upon ratification.