

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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HOUSE BILL 2785*
Corrected Copy 6/11/08
Senate Rules and Operations of The Senate Committee Substitute Adopted
7/10/08
Corrected Copy 7/15/08

Short Title: State Take Cape Fear Locks/Dams 1, 2, and 3.

(Public)

Sponsors:

Referred to:

May 29, 2008

A BILL TO BE ENTITLED

1
2 AN ACT TO ALLOW THE STATE TO ACQUIRE LOCKS AND DAMS ONE, TWO,
3 AND THREE ON THE CAPE FEAR RIVER FROM THE UNITED STATES.

4 Whereas, locks and dams #1, #2, and #3 on the Cape Fear River were
5 constructed by the United States in the period from 1915 to 1935; and

6 Whereas, it is understood that the Congress some time ago authorized a
7 mission for the Army Corps of Engineers related to the locks and dams in Bladen
8 County that hinged on maintaining commerce through the locks on the Cape Fear River;
9 and there has been no commercial traffic on the Cape Fear River in about twelve years,
10 and there may be no federal role in the maintenance of the locks and dams #2 and #3;
11 and

12 Whereas, the Army Corps of Engineers is engaged in planning and
13 implementing extensive work in the Wilmington Harbor area. The work has and will
14 involve dredging, blasting, facility relocation, and related activities. In order to be
15 allowed to do the work, the Army Corps of Engineers is working through a commitment
16 to the U.S. Fish and Wildlife Service that involves mitigation activities to compensate
17 for the projected negative environmental impacts on wildlife habitat and other
18 environmental features in the harbor area as a result of the Corps' work to improve the
19 harbor for commerce; and

20 Whereas, as part of the mitigation negotiated, the U.S. Army Corps of
21 Engineers has committed to construction of a fish passage option (not yet completely
22 defined) for Lock and Dam #1 (just upriver from the Wilmington Harbor area in Bladen
23 County) and the "study" of fish passage options and other issues related to Lock and
24 Dam #2 and the Huske Lock and Dam #3 (both also in Bladen County); and

1 Whereas, leaving Lock and Dam #1 in place with a rock arch rapids structure
2 would also protect the water supply intakes for the City of Wilmington and the Lower
3 Cape Fear Water and Sewer Authority; and

4 Whereas, there is concern upriver in Bladen, Cumberland, and Harnett
5 Counties (and to a lesser degree, Sampson, Lee, Chatham, and Moore Counties) that the
6 Army Corps of Engineers is only committed to "study" the second and the third lock
7 and dam complexes. An implication of the Army Corps of Engineers' "study"
8 commitment is that there is currently no funding for any specific recommended activity
9 for locks and dams #2 and #3 that might become identified by the negotiated study. A
10 more basic concern is that there could possibly be no definitive plan or action
11 recommended to leave the locks and dams #2 and #3 in place in the mentioned study;
12 and

13 Whereas, the nature of the concerns in Bladen, Cumberland, Harnett, and
14 other counties touches on at least three points: (i) a rock arch rapids "fish ladder" on
15 only Lock and Dam #1 does not allow migrating fish to get past locks and dams #2 or
16 #3; (ii) absence of locks and dams #2 and #3 jeopardizes existing and/or potential water
17 supply intakes above those two locks and dams; and (iii) absence of locks and dams #2
18 and #3 would lower the river surface by upwards of 20 feet and potentially compromise
19 water quality in the middle and lower subbasins of the Cape Fear River; and

20 Whereas, preliminary legislative steps are being initiated to create an
21 opportunity for a smooth transition of ownership of the locks, dams, and adjoining
22 property from the Army Corps of Engineers to the State of North Carolina, subject to
23 the resolution of these and some other questions regarding the condition of the lock and
24 dam complexes. Such a step would allow for the maximum utilization of the
25 transportation benefit represented by the locks and the recreational benefit created by a
26 river managed by the dams; and

27 Whereas, there is a proposed water supply intake behind Lock and Dam #2
28 that would serve Smithfield Packing. There are existing water supply intakes behind
29 Lock and Dam #3 serving DuPont Works and the City of Fayetteville, and it is critical
30 that these and other future water supply intakes be protected for the significant human
31 populations in the region; Now, therefore,
32 The General Assembly of North Carolina enacts:

33 **SECTION 1.** The State of North Carolina may accept from the United States
34 locks and dams #1, #2, and #3 on the Cape Fear River, along with all adjacent lands
35 currently owned by the United States, after the three locks and dams have been properly
36 refurbished and the rock arch rapids fish ladders have been successfully constructed.

37 **SECTION 2.** The Secretary of Transportation, in consultation with the
38 Board of Commissioners of Bladen County, shall negotiate the transfer from the United
39 States. When the Secretary of Transportation reaches an acceptable agreement with the
40 United States, he shall recommend its approval to the Council of State. The agreement
41 is then subject to approval by the Council of State. Upon approval, as part of a
42 successful transfer arrangement with the United States, the Council of State shall
43 allocate the property to the Department of Transportation, the Department of

1 Environment and Natural Resources, or such other State department as it deems
2 appropriate.
3 **SECTION 3.** This act is effective when it becomes law.