

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 156

Committee Substitute Favorable 3/22/89

Environment & Natural Resources Senate Committee Substitute Adopted 6/14/89

Short Title: Watershed Protection Rules.

(Public)

Sponsors:

Referred to:

February 6, 1989

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ADOPT RULES ESTABLISHING WATER SUPPLY WATERSHED CLASSIFICATIONS AND MINIMUM MANAGEMENT REQUIREMENTS FOR THE PROTECTION OF THE SURFACE WATER SUPPLIES OF THE STATE.

The General Assembly of North Carolina enacts:

Section 1. Article 21 of Chapter 143 is amended by adding a new section to read:

**"§ 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 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. 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 for the protection of surface water supplies through minimum performance-based water supply watershed management requirements

1 applicable to each classification. The Commission may designate water supply  
2 watersheds or portions thereof as critical water supply watersheds and impose  
3 management requirements that are more stringent than the minimum statewide water  
4 supply watershed management requirements.

5 (c) Classification of Water Supply Watersheds. – The Commission shall assign  
6 to each water supply watershed in the State the appropriate classification with the  
7 applicable minimum protective management requirements. The Commission may  
8 reclassify water supply watersheds as necessary to protect future water supplies or  
9 improve protection at existing water supplies. A local government shall not be required  
10 to submit a revised water supply watershed protection program to the Commission  
11 earlier than 270 days after it receives notice of a reclassification from the Commission.

12 (d) Mandatory Local Programs. – The Department shall assist local governments  
13 to develop water supply watershed protection programs which comply with this section.  
14 Local government compliance programs shall include an implementing local ordinance  
15 and shall provide for maintenance, inspection, and enforcement procedures. As part of  
16 its assistance to local governments, the Commission shall approve and make available a  
17 model local water supply watershed management and protection ordinance. The model  
18 management and protection ordinance adopted by the Commission shall, at a minimum,  
19 include as options (i) controlling development density, (ii) providing for performance-  
20 based alternatives to development density controls which are based on sound  
21 engineering principles, and (iii) a combination of both (i) and (ii). It shall be the  
22 responsibility of local governments to administer and enforce the minimum  
23 management requirements. Every local government which has within its jurisdiction all  
24 or a portion of a water supply watershed shall submit a local water supply watershed  
25 management and protection ordinance to the Commission for approval. This section  
26 shall not be construed to affect the validity of any local ordinance prior to completion of  
27 the review of the ordinance by the Commission or prior to the assumption by the  
28 Commission of responsibility for a local water supply watershed protection program.  
29 Local governments may create or designate agencies to administer and enforce such  
30 programs. The Commission shall approve a local program only if it determines that the  
31 requirements of the program equal or exceed the minimum statewide water supply  
32 watershed management requirements adopted pursuant to this section.

33 (e) Assumption of Local Programs. – The Commission shall assume  
34 responsibility for water supply watershed protection whenever a local government fails  
35 to adopt a program which meets the requirements of this section or fails to adequately  
36 administer and enforce the provisions of its program. The Commission shall not assume  
37 responsibility for a water supply watershed protection until it or its designee notifies the  
38 local government in writing by certified mail, return receipt requested, of local program  
39 deficiencies, recommendations for changes and improvements in the local program, and  
40 the deadline for compliance. The Commission shall allow a local government a  
41 minimum of 120 days to bring its program into compliance. The Commission shall  
42 order assumption of a local program if it finds that the local government has made no  
43 substantial progress toward compliance. The Commission may make such finding at

1 any time between 120 days and 365 days after receipt of notice under this subsection by  
2 the local government, with no further notice.

3 (f) State Enforcement Authority. – The Commission may take appropriate  
4 preventive or remedial enforcement action against any person who violates any  
5 minimum water supply watershed management requirement whenever a local  
6 government has unlawfully issued a permit or has failed to take appropriate enforcement  
7 action.

8 (g) Civil Penalties. – A local government which fails to adopt a local water  
9 supply watershed protection program as required by this section shall be subject to a  
10 civil penalty pursuant to G.S. 143-215.6(a)(5). In any area of the State which is not  
11 covered by an approved local water supply watershed protection program, any person  
12 who violates or fails to act in accordance with any statewide minimum management  
13 requirement established pursuant to this section shall be subject to a civil penalty as  
14 specified in G.S. 143-215.6(a)(1)g.

15 (h) Planning Grants to Local Governments. – The Secretary may make annual  
16 grants to local governments for the purpose of assisting in the development of local  
17 water supply watershed protection programs. The Secretary shall develop and  
18 administer generally applicable criteria under which local governments may qualify for  
19 such assistance. Such criteria shall give priority to local governments which are not  
20 then administering zoning ordinances in affected water supply watershed areas."

21 Sec. 2. Article 21 of Chapter 143 is amended by adding a new section to  
22 read:

23 "**§ 143-214.6. Watershed Protection Advisory Council.**

24 (a) Creation. – There is created the Watershed Protection Advisory Council.

25 (b) Membership. – The Council shall consist of not more than 20 members  
26 appointed or designated as follows:

27 (1) The Secretary or his designee;

28 (2) The Secretary of Transportation or his designee;

29 (3) The Secretary of Human Resources or his designee;

30 (4) The Commissioner of Agriculture or his designee;

31 (5) One member each from two different lead regional organizations to be  
32 appointed by the Commission from nominations submitted by lead  
33 regional organizations;

34 (6) Three representatives of county government, one to be appointed by  
35 the General Assembly upon recommendation of the President Pro  
36 Tempore of the Senate, one to be appointed by the General Assembly  
37 upon recommendation of the Speaker of the House of Representatives,  
38 and one to be appointed by the Commission, from three lists of three  
39 nominees each submitted by the North Carolina Association of County  
40 Commissioners;

41 (7) Three representatives of municipal government, one to be appointed  
42 by the General Assembly upon recommendation of the President Pro  
43 Tempore of the Senate, one to be appointed by the General Assembly  
44 upon recommendation of the Speaker of the House of Representatives,

1                   and one to be appointed by the Commission, from three lists of three  
2                   nominees each submitted by the North Carolina League of  
3                   Municipalities;

4           (8)   One member appointed by the Commission who has technical or  
5           professional expertise in the area of land use planning;

6           (9)   One member who is a local health director appointed by the  
7           Commission upon recommendation of the Secretary of Human  
8           Resources;

9           (10) Two members appointed by the Commission who shall be actively  
10           involved with or have had extensive experience in the field of land  
11           development upon the recommendation of the North Carolina Home  
12           Builders Association;

13           (11) One member appointed by the Commission who has technical or  
14           professional expertise in the area of water resources;

15           (12) One soil and water conservation district supervisor appointed by the  
16           Secretary;

17           (13) Two members appointed by the Commission who represent the  
18           interests of the environmental and conservation community.

19       (c)   Functions and Duties. – The Advisory Council shall assist the Secretary and  
20       the Commission in an advisory capacity on:

21           (1)   Development of necessary water supply watershed protection rules;  
22           and

23           (2)   Such other water supply watershed protection matters as the Council  
24           or Secretary consider appropriate.

25       (d)   Multiple Offices. – Any person who is a member of the Council may hold  
26       such membership concurrently with and in addition to any other elective or appointive  
27       office or offices such person is permitted to hold under G.S. 128-1.1.

28       (e)   Chairman and Vice-Chairman. – The Council shall annually elect a Chairman  
29       and Vice-Chairman from among its members.

30       (f)   Compensation. – Members of the Council who are not State employees shall  
31       receive per diem and necessary travel and subsistence expenses in accordance with the  
32       provisions of G.S. 138-5."

33           Sec. 3. G.S. 143-215.2(a) reads as rewritten:

34       "(a) Issuance. – The Commission is hereby empowered, after the effective date of  
35       classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S.  
36       143-215, or a water supply watershed management requirement adopted pursuant to  
37       G.S. 143-214.5, to issue (and from time to time to modify or revoke) a special order, or  
38       other appropriate instrument, to any person whom it finds responsible for causing or  
39       contributing to any pollution of the waters of the State within the area for which  
40       standards have been established. Such an order or instrument may direct such person to  
41       take, or refrain from taking such action, or to achieve such results, within a period of  
42       time specified by such special order, as the Commission deems necessary and feasible  
43       in order to alleviate or eliminate such pollution. The Commission is authorized to enter  
44       into consent special orders, assurances of voluntary compliance or other similar

1 documents by agreement with the person responsible for pollution of the water and such  
2 document shall have the same force and effect as a special order of the Commission  
3 issued pursuant to hearing. Provided, however, that the provisions of this section shall  
4 not apply to any agricultural operation, such as the use or preparation of any land for the  
5 purposes of planting, growing, or harvesting plants, crops, trees or other agricultural  
6 products, or raising livestock or poultry."

7 Sec. 4. G.S. 143-215.6(a) reads as rewritten:

8 "(a) Civil Penalties. –

9 (1) A civil penalty of not more than ten thousand dollars (\$10,000) may be  
10 assessed by the Commission against any person who:

11 a. Violates any classification, standard, limitation or management  
12 practice established pursuant to G.S. 143-214.1, 143-214.2, or  
13 143-215.

14 b. Is required but fails to apply for or to secure a permit required  
15 by G.S. 143-215.1, or who violates or fails to act in accordance  
16 with the terms, conditions, or requirements of such permit.

17 c. Violates or fails to act in accordance with the terms, conditions,  
18 or requirements of any special order or other appropriate  
19 document issued pursuant to G.S. 143-215.2.

20 d. Fails to file, submit, or make available, as the case may be, any  
21 documents, data or reports required by this Article or G.S. 143-  
22 355(k) relating to water use information.

23 e. Refuses access to the Commission or its duly designated  
24 representative to any premises for the purpose of conducting a  
25 lawful inspection provided for in this Article.

26 f. Violates a rule of the Commission implementing this Part or  
27 G.S. 143-355(k).

28 g. Violates or fails to act in accordance with the statewide  
29 minimum water supply watershed management requirements  
30 adopted pursuant to G.S. 143-214.5, whether enforced by the  
31 Commission or a local government.

32 (2) If any action or failure to act for which a penalty may be assessed  
33 under this subsection is continuous, the Commission may assess a  
34 penalty not to exceed ten thousand dollars (\$10,000) per day for so  
35 long as the violation ~~continues~~ continues, unless otherwise stipulated.

36 (3) In determining the amount of the penalty the Commission shall  
37 consider the degree and extent of harm caused by the violation and the  
38 cost of rectifying the damage.

39 (4) The Commission may assess the penalties provided for in this  
40 subsection. Any person assessed shall be notified of the assessment by  
41 registered or certified mail, and the notice shall specify the reasons for  
42 the assessment. If the person assessed fails to pay the amount of the  
43 assessment to the Department within 30 days after receipt of notice, or  
44 such longer period, not to exceed 180 days, as the Commission may

1 specify, the Commission may institute a civil action in the superior  
2 court of the county in which the violation occurred or, in the discretion  
3 of the Commission, in the superior court of the county in which the  
4 person assessed resides or has his or its principal place of business, to  
5 recover the amount of the assessment.

6 (5) A civil penalty of not more than ten thousand dollars (\$10,000) per  
7 month may be assessed by the Commission against any local  
8 government which fails to adopt or enforce a water supply watershed  
9 protection program as required by G.S. 143-214.5. No such penalty  
10 shall be imposed against a local government until the Commission has  
11 assumed the responsibility for administering and enforcing the local  
12 water supply watershed protection program. Civil penalties shall be  
13 imposed pursuant to a uniform schedule adopted by the Commission.  
14 The schedule of civil penalties shall be based on acreage and other  
15 relevant cost factors and shall be designed to recoup the costs of  
16 administration and enforcement."

17 Sec. 5. (a) The Environmental Management Commission shall adopt water  
18 supply watershed classifications and applicable management requirements as required  
19 by G.S. 143-214.4(b) no later than 1 January 1991.

20 (b) The Environmental Management Commission shall publish the proposed  
21 classification of all existing water supply watersheds under the classifications adopted  
22 pursuant to G.S. 143-214.4(b) no later than 1 January 1991. The Environmental  
23 Management Commission shall complete the classification of all existing water supply  
24 watersheds no later than 1 January 1992.

25 (c) Every local government shall submit a local water supply management  
26 and protection ordinance to the Environmental Management Commission for approval  
27 by 1 July 1992.

28 Sec. 6. The Environmental Management Commission shall submit written  
29 reports on the implementation of this act to the Environmental Review Commission on  
30 a quarterly basis beginning 1 January 1990.

31 Sec. 7. This act shall not affect the validity of any local ordinance relating to  
32 watershed protection adopted prior to the effective date of this act.

33 Sec. 8. This act is effective upon ratification.