

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 448

Short Title: Watershed Program Amendments.

(Public)

Sponsors: Senator Daniel.

Referred to: Environment and Natural Resources.

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WATER SUPPLY WATERSHED PROTECTION ACT BY DELAYING THE ENFORCEMENT DATE, CLARIFYING LOCAL AND STATE POWERS AND DUTIES, AND IMPROVING ENFORCEMENT OF THE PROTECTION PROGRAM.

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

1 supply watershed management requirements. The Commission may establish a class of
2 local permits for development or construction activities which require approval by the
3 Department prior to issuance. Minimum statewide water supply watershed management
4 requirements and critical water supply watershed management requirements shall not be
5 enforced by the Department until 180 days after the Commission publishes the
6 classification of watersheds in the North Carolina Register.

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

14 (d) Mandatory Local Programs. – The Department shall assist local governments
15 to develop water supply watershed protection programs which comply with this section.
16 Local government compliance programs shall include an implementing local ordinance
17 and shall provide for maintenance, inspection, and enforcement procedures. As part of
18 its assistance to local governments, the Commission shall approve and make available a
19 model local water supply watershed management and protection ordinance. The model
20 management and protection ordinance adopted by the Commission shall, at a minimum,
21 include as options (i) controlling development density, (ii) providing for performance-
22 based alternatives to development density controls which are based on sound
23 engineering principles, and (iii) a combination of both (i) and (ii). It shall be the
24 responsibility of local governments to administer and enforce the minimum
25 management requirements. Every local government which has within its jurisdiction all
26 or a portion of a water supply watershed shall submit a local water supply watershed
27 management and protection ordinance to the Commission for approval. Local
28 governments may adopt such ordinances pursuant to their general police power, power
29 to regulate the subdivision of land, zoning power, or any combination of such powers.

30 This section shall not be construed to affect the validity of any local ordinance prior to
31 completion of the review of the ordinance by the Commission or prior to the assumption
32 by the Commission of responsibility for a local water supply watershed protection
33 program. Local governments may create or designate agencies to administer and
34 enforce such programs. The Commission shall approve a local program only if it
35 determines that the requirements of the program equal or exceed the minimum statewide
36 water supply watershed management requirements adopted pursuant to this section.

37 (e) Assumption of Local Programs. – The Commission shall assume
38 responsibility for water supply watershed ~~protection~~ protection, within all or the affected
39 portion of a water supply watershed, whenever a local government fails to adopt a
40 program which meets the requirements of this section or fails to adequately administer
41 and enforce the provisions of its program. The Commission shall not assume
42 responsibility for an approved local water supply watershed protection program until it
43 or its designee notifies the local government in writing by certified mail, return receipt
44 requested, of local program deficiencies, recommendations for changes and

1 improvements in the local program, and the deadline for compliance. The Commission
2 shall allow a local government a minimum of 120 days to bring its program into
3 compliance. The Commission shall order assumption of a local program if it finds that
4 the local government has made no substantial progress toward compliance. The
5 Commission may make such finding at any time between 120 days and 365 days after
6 receipt of notice under this subsection by the local government, with no further notice.
7 Proceedings to review such orders by the Commission shall be conducted by the
8 superior court pursuant to Article 4 of Chapter 150B of the General Statutes.

9 (f) State Enforcement Authority. – The Commission may take appropriate
10 preventive or remedial enforcement action against any person who violates any
11 ~~minimum applicable local or statewide water supply watershed management requirement,~~
12 ~~whenever requirement.~~ Whenever a local government has unlawfully issued a permit or
13 has failed to take appropriate enforcement action, the Commission may take
14 appropriate preventative or remedial enforcement actions under this Part including
15 issuance of an order declaring the permit void, assessing civil penalties, and an action
16 for injunctive relief. Such unlawfully issued permits constitute neither a license within
17 the meaning of G.S. 150B-3 nor a reasonable basis for expenditure of monies on
18 development or construction purported to be authorized by the permit.

19 (g) Civil Penalties. – A local government which fails to adopt a local water
20 supply watershed protection program as required by this section or fails to adequately
21 administer and enforce the provisions of its program shall be subject to a civil penalty
22 pursuant to ~~G.S. 143-215.6(a)(5)~~-G.S. 143-215.6(A)(e). In any area of the State which is
23 not covered by an approved local water supply watershed protection program, any
24 person who violates or fails to act in accordance with any applicable local, critical
25 watershed, or statewide minimum management requirement established pursuant to this
26 section shall be subject to a civil penalty as specified in ~~G.S. 143-215.6(a)(1)g~~-G.S. 143-
27 215.6A(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
30 water supply watershed protection programs. The Secretary shall develop and
31 administer generally applicable criteria under which local governments may qualify for
32 such assistance. Such criteria shall give priority to local governments which are not
33 then administering zoning ordinances in affected water supply watershed areas."

34 Sec. 2. This act is effective upon ratification.