

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 947

Short Title: Amend Interbasin Transfers.

(Public)

Sponsors: Senators Cochrane; Clark, Conder, East, Foxx, Horton, Jordan, Kincaid, Rand, Soles, and Webster.

Referred to: Agriculture/Environment/Natural Resources.

April 17, 1997

A BILL TO BE ENTITLED

1 AN ACT TO MODIFY THE BURDEN OF PROOF THAT MUST BE SATISFIED TO
2 OBTAIN AN INTERBASIN TRANSFER PERMIT, TO AUTHORIZE THE
3 ENVIRONMENTAL MANAGEMENT COMMISSION TO ISSUE SPECIAL
4 ORDERS FOR INTERBASIN TRANSFER VIOLATIONS, AND TO LIMIT THE
5 TOTAL AMOUNT OF WATER THAT MAY BE TRANSFERRED OUT OF ANY
6 RIVER BASIN.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 143-215.22I reads as rewritten:

10 "**§ 143-215.22I. Regulation of surface water transfers.**

11 (a) No person, without first securing a certificate from the Commission, may:

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

14 (2) Increase the amount of an existing transfer of water from one river basin
15 to another by twenty-five percent (25%) or more above the average
16 daily amount transferred during the year ending July 1, 1993, if the total
17 transfer including the increase is 2,000,000 gallons or more per day.

- 1 (3) Increase an existing transfer of water from one river basin to another
2 above the amount approved by the Commission in a certificate issued
3 under G.S. 162A-7 prior to July 1, 1993.
- 4 (b) Notwithstanding the provisions of subsection (a) of this section, a certificate
5 shall not be required to transfer water from one river basin to another up to the full
6 capacity of a facility to transfer water from one basin to another if the facility was
7 existing or under construction on July 1, 1993.
- 8 (c) An applicant for a certificate shall petition the Commission for the certificate.
9 The petition shall be in writing and shall include the following:
- 10 (1) A description of the facilities to be used to transfer the water, including
11 the location and capacity of water intakes, pumps, pipelines, and other
12 facilities.
- 13 (2) A description of the proposed uses of the water to be transferred.
- 14 (3) The water conservation measures to be used by the applicant to assure
15 efficient use of the water and avoidance of waste.
- 16 (4) Any other information deemed necessary by the Commission for review
17 of the proposed water transfer.
- 18 (d) Upon receipt of the petition, the Commission shall hold a public hearing on the
19 proposed transfer after giving at least 30 days' written notice of the hearing as follows:
- 20 (1) By publishing notice in the North Carolina Register.
- 21 (2) By publishing notice in a newspaper of general circulation in the area of
22 the river basin downstream from the point of withdrawal.
- 23 (3) By giving notice by first-class mail to each of the following:
- 24 a. A person who has registered under this Part a water withdrawal
25 or transfer from the same river basin where the water for the
26 proposed transfer would be withdrawn.
- 27 b. A person who secured a certificate under this Part for a water
28 transfer from the same river basin where the water for the
29 proposed transfer would be withdrawn.
- 30 c. A person holding a National Pollutant Discharge Elimination
31 System (NPDES) wastewater discharge permit exceeding
32 100,000 gallons per day for a discharge located downstream from
33 the proposed withdrawal point of the proposed transfer.
- 34 d. The board of county commissioners of each county that is
35 located entirely or partially within the river basin that is the
36 source of the proposed transfer.
- 37 e. The governing body of any public water supply system that
38 withdraws water downstream from the withdrawal point of the
39 proposed transfer.
- 40 (e) The notice of the public hearing shall include a nontechnical description of the
41 applicant's request and a conspicuous statement in bold type as to the effects of the water
42 transfer on the source and receiving river basins. The notice shall further indicate the

1 procedure to be followed by anyone wishing to submit comments on the proposed water
2 transfer.

3 (f) In determining whether a certificate may be issued for the transfer, the
4 Commission shall specifically consider each of the following items and state in writing
5 its findings of fact with regard to each item:

6 (1) The necessity, reasonableness, and beneficial effects of the amount of
7 surface water proposed to be transferred and its proposed uses.

8 (2) The present and reasonably foreseeable future detrimental effects on the
9 source river basin, including present and future effects on public,
10 industrial, and agricultural water supply needs, wastewater assimilation,
11 water quality, fish and wildlife habitat, hydroelectric power generation,
12 navigation, and recreation.

13 (3) The detrimental effects on the receiving river basin, including effects on
14 water quality, wastewater assimilation, fish and wildlife habitat,
15 navigation, recreation, and flooding.

16 (4) Reasonable alternatives to the proposed transfer, including their
17 probable costs, and environmental impacts.

18 (5) If applicable to the proposed project, the applicant's present and
19 proposed use of impoundment storage capacity to store water during
20 high-flow periods for use during low-flow periods and the applicant's
21 right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

22 (6) If the water to be withdrawn or transferred is stored in a multipurpose
23 reservoir constructed by the United States Army Corps of Engineers, the
24 purposes and water storage allocations established for the reservoir at
25 the time the reservoir was authorized by the Congress of the United
26 States.

27 (7) Any other facts and circumstances that are reasonably necessary to carry
28 out the purposes of this Part.

29 (g) ~~A No~~ certificate shall be granted for a water transfer unless the Commission
30 concludes by a preponderance of the evidence based upon the findings of fact made under
31 subsection (f) of this section that ~~the potential detriments of the proposed transfer outweigh~~
32 ~~the benefits of the transfer.~~ proposed transfer outweigh the potential detriments of the
33 transfer and that those detriments have been mitigated to a reasonable degree.

34 (h) The Commission may grant the certificate in whole or in part, or deny the
35 certificate. The Commission may also grant a certificate with any conditions attached
36 that the Commission believes are necessary to achieve the purposes of this Part. The
37 conditions may include mitigation measures proposed to minimize any detrimental
38 effects of the proposed transfer and measures to protect the availability of water in the
39 source river basin during a drought or other emergency. The certificate shall indicate the
40 maximum amount of water that may be transferred. No person shall transfer an amount
41 of water that exceeds the amount in the certificate.

42 (i) In cases where an applicant requests approval to increase a transfer that existed
43 on July 1, 1993, the Commission shall have authority to approve or disapprove only the

1 amount of the increase. If the Commission approves the increase, however, the
2 certificate shall be issued for the amount of the existing transfer plus the requested
3 increase. Certificates for transfers approved by the Commission under G.S. 162A-7 shall
4 remain in effect as approved by the Commission and shall have the same effect as a
5 certificate issued under this Part.

6 (j) In the case of water supply problems caused by drought, a pollution incident,
7 temporary failure of a water plant, or any other temporary condition in which the public
8 health requires a transfer of water, the Secretary of the Department of Environment,
9 Health, and Natural Resources may grant approval for a temporary transfer. Prior to
10 approving a temporary transfer, the Secretary of the Department of Environment, Health,
11 and Natural Resources shall consult with those parties listed in G.S. 143-215.22I(d)(3)
12 that are likely to be affected by the proposed transfer. However, the Secretary of the
13 Department of Environment, Health, and Natural Resources shall not be required to
14 satisfy the public notice requirements of this section or make written findings of fact and
15 conclusions in approving a temporary transfer under this subsection. If the Secretary of
16 the Department of Environment, Health, and Natural Resources approves a temporary
17 transfer under this subsection, the Secretary shall specify conditions to protect other
18 water users. A temporary transfer shall not exceed six months in duration, but the
19 approval may be renewed for a period of six months by the Secretary of the Department
20 of Environment, Health, and Natural Resources based on demonstrated need as set forth
21 in this subsection.

22 (k) The amount of water transferred out of any river basin as a result of the
23 aggregate of interbasin transfers in that basin shall not exceed two percent (2%) of the
24 seven-day 10-year low flow of the river.

25 (l) The Commission may issue, modify, or revoke, a special order, or other
26 appropriate instrument, to any person whom it finds in violation of this section. The
27 order or instrument may direct the person to take, or refrain from taking an action, or to
28 achieve a result, within a period of time specified by the special order, as the Commission
29 deems necessary and feasible in order to alleviate or eliminate the violation. The
30 Commission may enter into consent special orders, assurances of voluntary compliance
31 or other similar documents by agreement with the person responsible for the violation,
32 subject to the provisions of G.S. 143-215.2(a1) and (b) regarding proposed orders, and
33 the consent order, when entered into by the Commission after public review, shall have
34 the same force and effect as a special order of the Commission issued pursuant to
35 hearing.

36 Any person who complies with the terms of, or as a result of the conditions specified
37 in, a permit issued pursuant to this section, or a special order, consent special order,
38 assurance of voluntary compliance or similar document issued pursuant to this section, or
39 a final decision of the Commission or a court rendered pursuant to this section, shall not
40 be required to take or refrain from any further action nor be required to achieve any
41 further results under the terms of this or any other State law relating to the regulation of
42 interbasin transfers, for a period to be fixed by the Commission or court as it shall deem
43 fair and reasonable in the light of all the circumstances after the date when the special

1 order, consent special order, assurance of voluntary compliance, other document, or
2 decision, or the conditions of such permit become finally effective, if:

3 (1) The action taken results in the elimination or alleviation of the detriment
4 caused by the violation to the extent required by the permit, special
5 order, consent special order, assurance of voluntary compliance or other
6 document, or decision and complies with any other terms thereof; and

7 (2) The person complies with the terms and conditions of the permit,
8 special order, consent special order, assurance of voluntary compliance,
9 other document, or decision within the time limit, if any, specified
10 therein or as the same may be extended, and thereafter remains in
11 compliance."

12 Section 2. This act is effective when it becomes law.