

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE BILL 820\***  
**Senate Finance Committee Substitute Adopted 7/26/07**

Short Title: Amend Interbasin Transfer Laws.

(Public)

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Sponsors:

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Referred to:

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March 15, 2007

A BILL TO BE ENTITLED

1  
2 AN ACT TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO  
3 STUDY ISSUES RELATED TO THE TRANSFER OF WATER FROM ONE  
4 RIVER BASIN TO ANOTHER RIVER BASIN AND THE ALLOCATION OF  
5 SURFACE WATER RESOURCES AND TO AMEND THE LAWS GOVERNING  
6 THE TRANSFER OF WATER FROM ONE RIVER BASIN TO ANOTHER  
7 RIVER BASIN.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.(a)** The General Assembly finds that:

- 10 (1) The findings set out in the Preamble to the Regional Water Supply  
11 Planning Act of 1971, G.S. 162A-21, remain largely true today and the  
12 purposes of that Act remain largely unfulfilled today.
- 13 (2) North Carolina still lacks a comprehensive regime for regulating  
14 surface water withdrawals for consumptive and nonconsumptive uses,  
15 and that absence hinders the State's ability to make progress towards  
16 fulfilling the goals of the Act of 1971.
- 17 (3) The provisions of G.S. 143-215.73A, which require the Department of  
18 Environment and Natural Resources to prepare a statewide plan for  
19 water resources development projects, are too limited in terms of scope  
20 and time, and the resources available to the Department are insufficient  
21 to produce a comprehensive approach to water resource management.
- 22 (4) The particular requirements of other statutes regarding water  
23 resources, such as those regulating water transfers and withdrawals  
24 and those regulating capacity use areas, are difficult to apply and lead  
25 to unintended and even harmful consequences when applied in the  
26 absence of a sufficient comprehensive system of regulation of surface  
27 water resources within North Carolina.
- 28 (5) A number of North Carolina's major river basins extend into adjoining  
29 states, creating the potential for conflicts between North Carolina and

1 adjoining states over the management of shared water basins, whereas  
2 a comprehensive system of surface water withdrawal and management  
3 would provide the State with a better means for avoiding or mitigating  
4 those potential interstate conflicts.

5 **SECTION 1.(b)** The Environmental Review Commission, with the  
6 assistance of the Department of Environment and Natural Resources, shall study the  
7 allocation of surface water resources and their availability and maintenance in the State,  
8 including issues related to the transfer of water from one river basin to another and the  
9 withdrawal of water for consumptive use. The study shall include an evaluation of the  
10 benefits of establishing formal or informal procedures for negotiating transfers of water  
11 from one river basin to another. In the conduct of this study, the Environmental Review  
12 Commission may employ independent consultants as provided in G.S. 120-32.02 and  
13 G.S. 120-70.44. The Environmental Review Commission may submit an interim report  
14 to the 2008 Regular Session of the General Assembly and shall submit a final report of  
15 its findings and recommendations, including any legislative proposals, to the 2009  
16 General Assembly.

17 **SECTION 1.(c)** The Division of Water Resources of the Department of  
18 Environment and Natural Resources, in consultation with the Environmental Review  
19 Commission, shall prepare a revised map entitled "Major River Basins and Sub-basins  
20 in North Carolina". The revised map shall be prepared as a recommended replacement  
21 for the map referenced in G.S. 143-215.22G. The revised map shall define the extent to  
22 which any river basin that encompasses any river that flows from another state into  
23 North Carolina or that flows from North Carolina into another state extends into an  
24 adjacent state. The Environmental Review Commission shall recommend a revised map  
25 and a conforming legislative proposal to amend the definition of "river basin" set out in  
26 G.S. 143-215.22G to the 2008 Regular Session of the General Assembly.

27 **SECTION 2.** G.S. 143-215.22I is repealed.

28 **SECTION 3.** Part 2A of Article 21 of Chapter 143 of the General Statutes is  
29 amended by adding a new section to read:

30 **"§ 143-215.22L. Regulation of surface water transfers.**

31 **(a) Certificate Required.** – No person, without first obtaining a certificate from  
32 the Commission, may:

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

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

40 **(3) Increase an existing transfer of water from one river basin to another**  
41 **above the amount approved by the Commission in a certificate issued**  
42 **under G.S. 162A-7 prior to 1 July 1993.**

43 **(b) Exception.** – Notwithstanding the provisions of subsection (a) of this section,  
44 **a certificate shall not be required to transfer water from one river basin to another up to**

1 the full capacity of a facility to transfer water from one basin to another if the facility  
2 was in existence or under construction on 1 July 1993.

3 (c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of  
4 intent to file a petition that includes a nontechnical description of the applicant's request  
5 and an identification of the proposed water source. Within 90 days after the applicant  
6 files a notice of intent to file a petition, the applicant shall hold at least one public  
7 meeting in the source river basin upstream from the proposed point of withdrawal, at  
8 least one public meeting in the source river basin downstream from the proposed point  
9 of withdrawal, and at least one public meeting in the receiving river basin to provide  
10 information to interested parties and the public regarding the nature and extent of the  
11 proposed transfer and to receive comment on the scope of the environmental  
12 documents. Written notice of the public meetings shall be provided at least 30 days  
13 before the public meetings. At the time the applicant gives notice of the public  
14 meetings, the applicant shall request comment on the alternatives and issues that should  
15 be addressed in the environmental documents required by this section. The applicant  
16 shall accept written comment on the scope of the environmental documents for a  
17 minimum of 30 days following the public meetings. Notice of the public meetings and  
18 opportunity to comment on the scope of the environmental documents shall be provided  
19 as follows:

20 (1) By publishing notice in the North Carolina Register.

21 (2) By publishing notice in a newspaper of general circulation in:

22 a. Each county in this State located in whole or in part of the area  
23 of the source river basin upstream from the proposed point of  
24 withdrawal.

25 a1. Each county in an adjacent state located in whole or in part of  
26 the area of the source river basin upstream from the proposed  
27 point of withdrawal, up to the point of the last impoundment  
28 upstream from the point of withdrawal. This sub-subdivision  
29 shall not apply if there are no impoundments located in the  
30 source river basin upstream from the proposed point of  
31 withdrawal.

32 b. Each county in this State or in an adjacent state located in  
33 whole or in part of the area of the source river basin  
34 downstream from the proposed point of withdrawal.

35 c. Any area in the State in a river basin for which the source river  
36 basin has been identified as a future source of water in a local  
37 water supply plan prepared pursuant to G.S. 143-355(l).

38 d. Each county in the State located in whole or in part of the  
39 receiving river basin.

40 (3) By giving notice by first-class mail or electronic mail to each of the  
41 following:

42 a. The board of commissioners of each county in this State or any  
43 adjacent state that is located entirely or partially within the  
44 source river basin of the proposed transfer.

- 1           b. The board of commissioners of each county in this State or any  
2           adjacent state that is located entirely or partially within the  
3           receiving river basin of the proposed transfer.  
4           c. The governing body of any public water supply system that  
5           withdraws water upstream or downstream from the withdrawal  
6           point of the proposed transfer.  
7           d. If any portion of the source or receiving river basins is located  
8           in an adjacent state, all state water management or use agencies,  
9           environmental protection agencies, and the office of the  
10           governor in each adjacent state upstream or downstream from  
11           the withdrawal point of the proposed transfer.  
12           e. All persons who have registered a water withdrawal or transfer  
13           from the proposed source river basin under this Part or under  
14           similar law in an adjacent state.  
15           f. All persons who hold a certificate for a transfer of water from  
16           the proposed source river basin under this Part or under similar  
17           law in an adjacent state.  
18           g. All persons who hold a National Pollutant Discharge  
19           Elimination System (NPDES) wastewater discharge permit for  
20           a discharge of 100,000 gallons per day or more upstream or  
21           downstream from the proposed point of withdrawal.  
22           h. To any other person who submits to the applicant a written  
23           request to receive all notices relating to the petition.

24           (d) Environmental Documents. – The definitions set out in G.S. 113A-9 apply to  
25           this section. The Department shall conduct a study of the environmental impacts of any  
26           proposed transfer of water for which a certificate is required under this section. The  
27           study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted  
28           pursuant to G.S. 113A-4. An environmental assessment shall be prepared for any  
29           petition for a certificate under this section. The determination of whether an  
30           environmental impact statement shall also be required shall be made in accordance with  
31           the provisions of Article 1 of Chapter 113A of the General Statutes; except that an  
32           environmental impact statement shall be prepared for every proposed transfer of water  
33           from one major river basin to another for which a certificate is required under this  
34           section. The applicant who petitions the Commission for a certificate under this section  
35           shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A  
36           of the General Statutes. An environmental impact statement prepared pursuant to this  
37           subsection shall include all of the following:

- 38           (1) A comprehensive analysis of the impacts that would occur in the  
39           source river basin and the receiving river basin if the petition for a  
40           certificate is granted.  
41           (2) An evaluation of alternatives to the proposed interbasin transfer,  
42           including water supply sources that do not require an interbasin  
43           transfer and use of water conservation measures.

1           (3) A description of measures to mitigate any adverse impacts that may  
2           arise from the proposed interbasin transfer.

3           (e) Public Hearing on the Draft Environmental Document. – The Commission  
4 shall hold a public hearing on the draft environmental document for a proposed  
5 interbasin transfer after giving at least 30 days' written notice of the hearing in the  
6 Environmental Bulletin and as provided in subdivisions (2) and (3) of subsection (c) of  
7 this section. The notice shall indicate where a copy of the environmental document can  
8 be reviewed and the procedure to be followed by anyone wishing to submit written  
9 comments and questions on the environmental document. The Commission shall  
10 prepare a record of all comments and written responses to questions posed in writing.  
11 The record shall include complete copies of scientific or technical comments related to  
12 the potential impact of the interbasin transfer.

13           (f) Determination of Adequacy of Environmental Document. – The Commission  
14 shall not act on any petition for an interbasin transfer until the Commission has  
15 determined that the environmental document is complete and adequate. A decision on  
16 the adequacy of the environmental document is subject to review in a contested case on  
17 the decision of the Commission to issue or deny a certificate under this section.

18           (g) Petition. – An applicant for a certificate shall petition the Commission for the  
19 certificate. The petition shall be in writing and shall include all of the following:

20           (1) A description of the facilities to be used to transfer the water, including  
21 the location and capacity of water intakes, pumps, pipelines, and other  
22 facilities.

23           (2) A description of all the proposed consumptive and nonconsumptive  
24 uses of the water to be transferred.

25           (3) A description of the water quality of the source river and receiving  
26 river, including information on aquatic habitat for rare, threatened, and  
27 endangered species; in-stream flow data for segments of the source  
28 and receiving rivers that may be affected by the transfer; and any  
29 waters that are impaired pursuant to section 303(d) of the federal Clean  
30 Water Act (33 U.S.C. § 1313(d)).

31           (4) A description of the water conservation measures used by the applicant  
32 at the time of the petition and any additional water conservation  
33 measures that the applicant will implement if the certificate is granted.

34           (5) A description of every source of water within the receiving river basin,  
35 including surface water impoundments, groundwater wells, reinjection  
36 storage, and purchase of water from another source within the river  
37 basin, that is a practicable alternative to the proposed transfer that  
38 would meet the applicant's water supply needs. The description of  
39 water sources shall include sources available at the time of the petition  
40 for a certificate and any planned or potential water sources.

41           (6) A description of water transfers and withdrawals registered under  
42 G.S. 143-215.22H or included in a local water supply plan prepared  
43 pursuant to G.S. 143-355(l) from the source river basin, including

1 transfers and withdrawals at the time of the petition for a certificate  
2 and any planned or reasonably foreseeable transfers or withdrawals.

3 (7) A demonstration that the proposed transfer, if added to all other  
4 transfers and withdrawals required to be registered under  
5 G.S. 143-215.22H or included in any local water supply plan prepared  
6 pursuant to G.S. 143-355(l) from the source river basin at the time of  
7 the petition for a certificate, would not reduce the amount of water  
8 available for use in the source river basin to a degree that would impair  
9 existing uses, pursuant to the antidegradation policy set out in 40 Code  
10 of Federal Regulation § 131.12 (Antidegradation Policy) (1 July 2006  
11 Edition) and the statewide antidegradation policy adopted pursuant  
12 thereto, or existing and planned consumptive and nonconsumptive uses  
13 of the water in the source river basin. If the proposed transfer would  
14 impact a reservoir within the source river basin, the demonstration  
15 must include a finding that the transfer would not result in a water  
16 level in the reservoir that is inadequate to support existing uses of the  
17 reservoir, including recreational uses.

18 (8) The applicant's future water supply needs and the present and  
19 reasonably foreseeable future water supply needs in the source river  
20 basin. The analysis of future water supply needs shall include  
21 agricultural, recreational, industrial, and hydropower uses. Local water  
22 supply plans prepared pursuant to G.S. 143-355(l) for water systems in  
23 the source river basin shall be used to evaluate the projected future  
24 water needs in the source river basin that will be met by public water  
25 systems.

26 (9) The applicant's water supply plan prepared pursuant to  
27 G.S. 143-355(l). If the applicant's water supply plan is more than two  
28 years old at the time of the petition, then the applicant shall include  
29 with the petition an updated water supply plan.

30 (10) Any other information deemed necessary by the Commission for  
31 review of the proposed water transfer.

32 (g1) Settlement Discussions. – Within 30 days after an applicant files a petition  
33 under this section, the Commission shall appoint a mediation officer. The mediation  
34 officer may be a member of the Commission, an employee of the Department, or a  
35 neutral third party but shall not be a hearing officer under subsections (e) or (i) of this  
36 section. The mediation officer shall make a reasonable effort to initiate settlement  
37 discussions between the applicant and all other interested parties. Evidence of  
38 statements made and conduct that occurs in a settlement discussion conducted under this  
39 subsection, whether attributable to a party, a mediation officer, or other person shall not  
40 be subject to discovery and shall be inadmissible in any subsequent proceeding on the  
41 petition for a certificate. The Commission may adopt rules to govern the conduct of the  
42 mediation process.

43 (h) Draft Determination. – Within 90 days after the Commission determines that  
44 the environmental document prepared in accordance with subsection (d) of this section

1 is adequate or the applicant submits its petition for a certificate, whichever occurs later,  
2 the Commission shall issue a draft determination on whether to grant the certificate. The  
3 draft determination shall be based on the criteria set out in this section and shall include  
4 the conditions and limitations, findings of fact, and conclusions of law that would be  
5 required in a final determination. Notice of the draft determination shall be given as  
6 provided in subsection (c) of this section.

7 (i) Public Hearing on the Draft Determination. – Within 60 days of the issuance  
8 of the draft determination as provided in subsection (h) of this section, the Commission  
9 shall hold public hearings on the draft determination. At least one hearing shall be held  
10 in the affected area of the source river basin, and at least one hearing shall be held in the  
11 affected area of the receiving river basin. In determining whether more than one public  
12 hearing should be held within either the source or receiving river basins, the  
13 Commission shall consider the differing or conflicting interests that may exist within the  
14 river basins, including the interests of both upstream and downstream parties potentially  
15 affected by the proposed transfer. The public hearings shall be conducted by one or  
16 more hearing officers appointed by the Chair of the Commission. The hearing officers  
17 may be members of the Commission or employees of the Department. The Commission  
18 shall give at least 30 days' written notice of the public hearing as provided in subsection  
19 (c) of this section. The Commission shall prepare a record of all comments and written  
20 responses to questions posed in writing. The record shall include complete copies of  
21 scientific or technical comments related to the potential impact of the interbasin  
22 transfer.

23 (j) Final Determination: Factors to be Considered. – In determining whether a  
24 certificate may be issued for the transfer, the Commission shall specifically consider  
25 each of the following items and state in writing its findings of fact and conclusions of  
26 law with regard to each item:

27 (1) The necessity and reasonableness of the amount of surface water  
28 proposed to be transferred and its proposed uses.

29 (2) The present and reasonably foreseeable future detrimental effects on  
30 the source river basin, including present and future effects on public,  
31 industrial, economic, recreational, and agricultural water supply needs,  
32 wastewater assimilation, water quality, fish and wildlife habitat,  
33 hydroelectric power generation, navigation, and recreation. Local  
34 water supply plans prepared pursuant to G.S. 143-355(1) that affect the  
35 source river basin shall be used to evaluate the projected future water  
36 needs in the source river basin that will be met by public water  
37 systems. Information on projected future water needs that is more  
38 recent than the local water supply plans may be used if the  
39 Commission finds the information to be reliable. The determination  
40 shall include a specific finding as to measures that are necessary or  
41 advisable to mitigate or avoid detrimental impacts on the source river  
42 basin.

43 (3) The cumulative effect on the source major river basin of any water  
44 transfer or consumptive water use that, at the time the Commission

1 considers the petition for a certificate is occurring, is authorized under  
2 this section, or is projected in any local water supply plan that has been  
3 submitted to the Department in accordance with G.S. 143-355(l).

4 (4) The present and reasonably foreseeable future beneficial and  
5 detrimental effects on the receiving river basin, including present and  
6 future effects on public, industrial, economic, recreational, and  
7 agricultural water supply needs, wastewater assimilation, water  
8 quality, fish and wildlife habitat, hydroelectric power generation,  
9 navigation, and recreation. Local water supply plans prepared pursuant  
10 to G.S. 143-355(l) that affect the receiving river basin shall be used to  
11 evaluate the projected future water needs in the receiving river basin  
12 that will be met by public water systems. Information on projected  
13 future water needs that is more recent than the local water supply plans  
14 may be used if the Commission finds the information to be reliable.  
15 The determination shall include a specific finding as to measures that  
16 are necessary or advisable to mitigate or avoid detrimental impacts on  
17 the receiving river basin.

18 (5) The availability of alternatives to the proposed transfer, including the  
19 potential capacity of alternative sources of water, the potential of each  
20 alternative to reduce the amount of or avoid the proposed transfer,  
21 probable costs, and environmental impacts. The determination shall  
22 include a specific finding as to why the applicant's need for water  
23 cannot be satisfied by alternatives within the receiving basin, including  
24 unused capacity under a transfer for which a certificate is in effect or  
25 that is otherwise authorized by law at the time the applicant submits  
26 the petition. The determination shall include a specific finding as to  
27 whether a current water source of the applicant is no longer available  
28 due to depletion or contamination. The determination shall consider  
29 the extent to which access to potential sources of surface water or  
30 groundwater within the receiving river basin are unavailable as a result  
31 of the operation of other provisions of law that restrict the use of those  
32 potential sources. The determination shall consider the feasibility of  
33 the applicant's purchase of water from other water suppliers within the  
34 receiving basin and of the transfer of water from another sub-basin  
35 within the receiving major river basin. Except in circumstances of  
36 technical or economic infeasibility or adverse environmental impact,  
37 the Commission's determination as to reasonable alternatives shall give  
38 preference to alternatives that would involve a transfer from one  
39 sub-basin to another within the major receiving river basin over  
40 alternatives that would involve a transfer from one major river basin to  
41 another major river basin.

42 (6) If applicable to the proposed project, the applicant's present and  
43 proposed use of impoundment storage capacity to store water during



1 high-flow periods for use during low-flow periods and the applicant's  
2 right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

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

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

10 (k) Final Determination: Information to be Considered. – In determining whether  
11 a certificate may be issued for the transfer, the Commission shall consider all of the  
12 following sources of information:

13 (1) The petition.

14 (2) The environmental document prepared pursuant to subsection (d) of  
15 this section.

16 (3) All oral and written comment and all accompanying materials or  
17 evidence submitted pursuant to subsections (e) and (i) of this section.

18 (4) Information developed by or available to the Department on the water  
19 quality of the source river basin and the receiving river basin,  
20 including waters that are identified as impaired pursuant to section  
21 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)), that are  
22 subject to a total maximum daily load (TMDL) limit under subsections  
23 (d) and (e) of section 303 of the federal Clean Water Act, or that would  
24 have their assimilative capacity impaired if the certificate is issued.

25 (5) Any other information that the Commission determines to be relevant  
26 and useful.

27 (l) Final Determination: Burden and Standard of Proof; Specific Findings. – The  
28 Commission shall grant a certificate for a water transfer if the Commission finds that the  
29 applicant has established by a preponderance of the evidence all of the following:

30 (1) The benefits of the proposed transfer outweigh the detriments of the  
31 proposed transfer. In making this determination, the Commission shall  
32 be guided by the approved environmental document and the policy set  
33 out in subsection (s) of this section.

34 (2) The detriments have been or will be mitigated to the maximum degree  
35 practicable.

36 (3) The amount of the transfer does not exceed the amount of the  
37 projected shortfall under the applicant's water supply plan after first  
38 taking into account all other sources of water that are available to the  
39 applicant.

40 (4) There are no reasonable alternatives to the proposed transfer.

41 (m) Final Determination: Certificate Conditions and Limitations. – The  
42 Commission may grant the certificate in whole or in part, or deny the certificate. The  
43 Commission may impose any conditions or limitations on a certificate that the  
44 Commission finds necessary to achieve the purposes of this Part. The conditions and

1 limitations shall include any mitigation measures proposed by the applicant to minimize  
2 any detrimental effects within the source and receiving river basins. In addition, the  
3 certificate shall require all of the following conditions and limitations:

4 (1) A water conservation plan that specifies the water conservation  
5 measures that will be implemented by the applicant in the receiving  
6 river basin to ensure the efficient use of the transferred water. The  
7 water conservation plan shall provide for the mandatory  
8 implementation of water conservation measures by the applicant that  
9 equal or exceed the most stringent water conservation plan  
10 implemented by a public water system that withdraws water from the  
11 source river basin.

12 (2) A drought management plan that specifies how the transfer shall be  
13 managed to protect the source river basin during drought conditions or  
14 other emergencies that occur within the source river basin. This  
15 drought management plan shall include mandatory reductions in the  
16 permitted amount of the transfer based on the severity and duration of  
17 a drought occurring within the source river basin and shall provide for  
18 the mandatory implementation of a drought management plan by the  
19 applicant that equals or exceeds the most stringent water conservation  
20 plan implemented by a public water system that withdraws water from  
21 the source river basin.

22 (3) The maximum amount of water that may be transferred on a daily  
23 basis, and methods or devices required to be installed and operated that  
24 measure the amount of water that is transferred.

25 (4) A provision that the Commission may amend a certificate to reduce the  
26 maximum amount of water authorized to be transferred whenever it  
27 appears that an alternative source of water is available to the certificate  
28 holder from within the receiving river basin, including, but not limited  
29 to, the purchase of water from another water supplier within the  
30 receiving basin or to the transfer of water from another sub-basin  
31 within the receiving major river basin.

32 (5) A provision that the Commission shall amend the certificate to reduce  
33 the maximum amount of water authorized to be transferred if the  
34 Commission finds that the applicant's current projected water needs  
35 are significantly less than the applicant's projected water needs at the  
36 time the certificate was granted.

37 (6) Except as provided in this subdivision, a provision that the applicant  
38 will not resell the water that would be transferred pursuant to the  
39 certificate to another public water supply system. In the case of a  
40 petition where the applicant proposes to furnish water to another  
41 public water supply system within the receiving river basin, the  
42 Commission may approve a certificate that contemplates the resale if  
43 each jurisdiction included within the regional water supply system is a

1           co-applicant for the transfer and will be subject to all the terms,  
2           conditions, and limitations made applicable to the primary applicant.

3           (n) Administrative and Judicial Review. – Administrative and judicial review of  
4           a final decision by the Commission on a petition for a certificate under this section shall  
5           be governed by Chapter 150B of the General Statutes.

6           (o) Certain Preexisting Transfers. – In cases where an applicant requests approval  
7           to increase a transfer that existed on 1 July 1993, the Commission may approve or  
8           disapprove only the amount of the increase. If the Commission approves the increase,  
9           the certificate shall be issued for the amount of the preexisting transfer plus any increase  
10           approved by the Commission. A certificate for a transfer approved by the Commission  
11           under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have  
12           the same effect as a certificate issued under this Part. A certificate for the increase of a  
13           preexisting transfer shall contain all of the conditions and limitations required by  
14           subsection (m) of this section.

15           (p) Emergency Transfers. – In the case of water supply problems caused by  
16           drought, a pollution incident, temporary failure of a water plant, or any other temporary  
17           condition in which the public health requires a transfer of water, the Secretary of  
18           Environment and Natural Resources may grant approval for a temporary transfer. Prior  
19           to approving a temporary transfer, the Secretary shall consult with those parties listed in  
20           subdivision (3) of subsection (c) of this section that are likely to be affected by the  
21           proposed transfer. However, the Secretary shall not be required to satisfy the public  
22           notice requirements of this section or make written findings of fact and conclusions of  
23           law in approving a temporary transfer under this subsection. If the Secretary approves a  
24           temporary transfer under this subsection, the Secretary shall specify conditions to  
25           protect other water users. A temporary transfer shall not exceed six months in duration,  
26           but the approval may be renewed for a period of six months by the Secretary based on  
27           demonstrated need as set forth in this subsection.

28           (q) Relationship to Federal Law. – The substantive restrictions, conditions, and  
29           limitations upon surface water transfers authorized in this section may be imposed  
30           pursuant to any federal law that permits the State to certify, restrict, or condition any  
31           new or continuing transfers or related activities licensed, relicensed, or otherwise  
32           authorized by the federal government. This section shall govern the transfer of water  
33           from one river basin to another unless preempted by federal law.

34           (r) Planning Requirements. – When any transfer for which a certificate was  
35           issued under this section equals or exceeds eighty percent (80%) of the maximum  
36           amount authorized in the certificate, the applicant shall submit to the Department a  
37           detailed plan that specifies how the applicant intends to address future foreseeable water  
38           needs. If the applicant is required to have a local water supply plan, then this plan shall  
39           be an amendment to the local water supply plan required by G.S.143-355(l). When the  
40           transfer equals or exceeds ninety percent (90%) of the maximum amount authorized in  
41           the certificate, the applicant shall begin implementation of the plan submitted to the  
42           Department.

43           (s) Statement of Policy. – It is the public policy of the State to maintain, protect,  
44           and enhance water quality within North Carolina. It is the public policy of this State that

1 projected future water needs in a receiving river basin are subordinate to projected  
2 future water needs in a source river basin. Further, it is the public policy of the State that  
3 the cumulative impact of transfers from a source river basin shall not result in a  
4 violation of the antidegradation policy set out in 40 Code of Federal Regulations §  
5 131.12 (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant  
6 thereto.

7 (t) Fee. – An applicant for a certificate under this section shall pay a fee of ten  
8 thousand dollars (\$10,000) to the Commission for processing a petition for a certificate.  
9 The applicant shall pay the fee at the time the applicant submits the petition for a  
10 certificate to the Commission."

11 **SECTION 4.** G.S. 113A-8.1 reads as rewritten:

12 **"§ 113A-8.1. Surface water transfers.**

13 An environmental assessment shall be prepared for any transfer for which a petition  
14 is filed in accordance with ~~G.S. 143-215.22I~~G.S. 143-215.22L. The determination of  
15 whether an environmental impact statement is needed with regard to the proposed  
16 transfer shall be made in accordance with the provisions of this Article."

17 **SECTION 5.** G.S. 143-215.6A(a)(9) reads as rewritten:

18 "(9) Is required, but fails, to apply for or to secure a certificate required by  
19 ~~G.S. 143-215.22I~~G.S. 143-215.22L, or who violates or fails to act in  
20 accordance with the terms, conditions, or requirements of the  
21 certificate."

22 **SECTION 6.** This act becomes effective when it becomes law and applies to  
23 any petition for a certificate for a transfer of surface water from one river basin to  
24 another river basin first made on or after that date.