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HOUSE BILL 820*
Senate Finance Committee Substitute Adopted 7/26/07
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Short Title: Amend Interbasin Transfer Laws.

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

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

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.(a)** The Environmental Review Commission, with the
10 assistance of the Department of Environment and Natural Resources, shall study the
11 allocation of surface water resources and their availability and maintenance in the State,
12 including issues related to the transfer of water from one river basin to another and the
13 withdrawal of water for consumptive use. The Commission shall evaluate the benefits
14 of establishing formal and informal procedures for negotiating transfers of water from
15 one river basin to another. The Commission shall also study and recommend measures
16 to: (i) ensure that the purposes of the Regional Water Supply Planning Act of 1971, as
17 set out in G.S. 162A-21, are fulfilled; (ii) provide for a comprehensive system for
18 regulating surface water withdrawals for consumptive and nonconsumptive uses; (iii)
19 provide for the establishment of a statewide plan for water resources development
20 projects; (iv) provide for adequate resources for the Department so that it may develop
21 and implement a comprehensive approach to water resources management; (v) ensure
22 that all State laws regulating water resources are consistent with and fully integrated
23 into the comprehensive system for regulating surface water withdrawals and the
24 statewide plan for water resources development projects; and (vi) ensure that potential
25 interstate conflicts related to water resources are avoided or minimized. In the conduct
26 of this study, the Environmental Review Commission may employ independent
27 consultants as provided in G.S. 120-32.02 and G.S. 120-70.44. The Environmental
28 Review Commission may submit an interim report to the 2008 Regular Session of the

1 General Assembly and shall submit a final report of its findings and recommendations,
2 including any legislative proposals, to the 2009 General Assembly.

3 **SECTION 1.(b)** The Division of Water Resources of the Department of
4 Environment and Natural Resources, in consultation with the Environmental Review
5 Commission, shall prepare a revised map entitled "Major River Basins and Sub-basins
6 in North Carolina". The revised map shall be prepared as a recommended replacement
7 for the map referenced in G.S. 143-215.22G. The revised map shall define the extent to
8 which any river basin that encompasses any river that flows from another state into
9 North Carolina or that flows from North Carolina into another state extends into an
10 adjacent state. The Environmental Review Commission shall recommend a revised map
11 and a conforming legislative proposal to amend the definition of "river basin" set out in
12 G.S. 143-215.22G to the 2008 Regular Session of the General Assembly.

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

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

16 **"§ 143-215.22L. Regulation of surface water transfers.**

17 (a) Certificate Required. – No person, without first obtaining a certificate from
18 the Commission, may:

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

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

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

29 (b) Exception. – Notwithstanding the provisions of subsection (a) of this section,
30 a certificate shall not be required to transfer water from one river basin to another up to
31 the full capacity of a facility to transfer water from one basin to another if the facility
32 was in existence or under construction on 1 July 1993.

33 (c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of
34 intent to file a petition that includes a nontechnical description of the applicant's request
35 and an identification of the proposed water source. Within 90 days after the applicant
36 files a notice of intent to file a petition, the applicant shall hold at least one public
37 meeting in the source river basin upstream from the proposed point of withdrawal, at
38 least one public meeting in the source river basin downstream from the proposed point
39 of withdrawal, and at least one public meeting in the receiving river basin to provide
40 information to interested parties and the public regarding the nature and extent of the
41 proposed transfer and to receive comment on the scope of the environmental
42 documents. Written notice of the public meetings shall be provided at least 30 days
43 before the public meetings. At the time the applicant gives notice of the public
44 meetings, the applicant shall request comment on the alternatives and issues that should

1 be addressed in the environmental documents required by this section. The applicant
2 shall accept written comment on the scope of the environmental documents for a
3 minimum of 30 days following the public meetings. Notice of the public meetings and
4 opportunity to comment on the scope of the environmental documents shall be provided
5 as follows:

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

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

8 a. Each county in this State located in whole or in part of the area
9 of the source river basin upstream from the proposed point of
10 withdrawal.

11 a1. Each county in an adjacent state located in whole or in part of
12 the area of the source river basin upstream from the proposed
13 point of withdrawal, up to the point of the last impoundment
14 upstream from the point of withdrawal. This sub-subdivision
15 shall not apply if there are no impoundments located in the
16 source river basin upstream from the proposed point of
17 withdrawal.

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

21 c. Any area in the State in a river basin for which the source river
22 basin has been identified as a future source of water in a local
23 water supply plan prepared pursuant to G.S. 143-355(1).

24 d. Each county in the State located in whole or in part of the
25 receiving river basin.

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

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

31 b. The board of commissioners of each county in this State or any
32 adjacent state that is located entirely or partially within the
33 receiving river basin of the proposed transfer.

34 c. The governing body of any public water supply system that
35 withdraws water upstream or downstream from the withdrawal
36 point of the proposed transfer.

37 d. If any portion of the source or receiving river basins is located
38 in an adjacent state, all state water management or use agencies,
39 environmental protection agencies, and the office of the
40 governor in each adjacent state upstream or downstream from
41 the withdrawal point of the proposed transfer.

42 e. All persons who have registered a water withdrawal or transfer
43 from the proposed source river basin under this Part or under
44 similar law in an adjacent state.

- 1 f. All persons who hold a certificate for a transfer of water from
2 the proposed source river basin under this Part or under similar
3 law in an adjacent state.
- 4 g. All persons who hold a National Pollutant Discharge
5 Elimination System (NPDES) wastewater discharge permit for
6 a discharge of 100,000 gallons per day or more upstream or
7 downstream from the proposed point of withdrawal.
- 8 h. To any other person who submits to the applicant a written
9 request to receive all notices relating to the petition.

10 (d) Environmental Documents. – The definitions set out in G.S. 113A-9 apply to
11 this section. The Department shall conduct a study of the environmental impacts of any
12 proposed transfer of water for which a certificate is required under this section. The
13 study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted
14 pursuant to G.S. 113A-4. An environmental assessment shall be prepared for any
15 petition for a certificate under this section. The determination of whether an
16 environmental impact statement shall also be required shall be made in accordance with
17 the provisions of Article 1 of Chapter 113A of the General Statutes; except that an
18 environmental impact statement shall be prepared for every proposed transfer of water
19 from one major river basin to another for which a certificate is required under this
20 section. The applicant who petitions the Commission for a certificate under this section
21 shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A
22 of the General Statutes. An environmental impact statement prepared pursuant to this
23 subsection shall include all of the following:

- 24 (1) A comprehensive analysis of the impacts that would occur in the
25 source river basin and the receiving river basin if the petition for a
26 certificate is granted.
- 27 (2) An evaluation of alternatives to the proposed interbasin transfer,
28 including water supply sources that do not require an interbasin
29 transfer and use of water conservation measures.
- 30 (3) A description of measures to mitigate any adverse impacts that may
31 arise from the proposed interbasin transfer.

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

42 (f) Determination of Adequacy of Environmental Document. – The Commission
43 shall not act on any petition for an interbasin transfer until the Commission has
44 determined that the environmental document is complete and adequate. A decision on

1 the adequacy of the environmental document is subject to review in a contested case on
2 the decision of the Commission to issue or deny a certificate under this section.

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

5 (1) A description of the facilities to be used to transfer the water, including
6 the location and capacity of water intakes, pumps, pipelines, and other
7 facilities.

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

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

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

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

26 (6) A description of water transfers and withdrawals registered under
27 G.S. 143-215.22H or included in a local water supply plan prepared
28 pursuant to G.S. 143-355(l) from the source river basin, including
29 transfers and withdrawals at the time of the petition for a certificate
30 and any planned or reasonably foreseeable transfers or withdrawals.

31 (7) A demonstration that the proposed transfer, if added to all other
32 transfers and withdrawals required to be registered under
33 G.S. 143-215.22H or included in any local water supply plan prepared
34 pursuant to G.S. 143-355(l) from the source river basin at the time of
35 the petition for a certificate, would not reduce the amount of water
36 available for use in the source river basin to a degree that would impair
37 existing uses, pursuant to the antidegradation policy set out in 40 Code
38 of Federal Regulation § 131.12 (Antidegradation Policy) (1 July 2006
39 Edition) and the statewide antidegradation policy adopted pursuant
40 thereto, or existing and planned consumptive and nonconsumptive uses
41 of the water in the source river basin. If the proposed transfer would
42 impact a reservoir within the source river basin, the demonstration
43 must include a finding that the transfer would not result in a water

1 level in the reservoir that is inadequate to support existing uses of the
2 reservoir, including recreational uses.

3 (8) The applicant's future water supply needs and the present and
4 reasonably foreseeable future water supply needs in the source river
5 basin. The analysis of future water supply needs shall include
6 agricultural, recreational, industrial, and hydropower uses. Local water
7 supply plans prepared pursuant to G.S. 143-355(l) for water systems in
8 the source river basin shall be used to evaluate the projected future
9 water needs in the source river basin that will be met by public water
10 systems.

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

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

17 (g1) Settlement Discussions. – Within 30 days after an applicant files a petition
18 under this section, the Commission shall appoint a mediation officer. The mediation
19 officer may be a member of the Commission, an employee of the Department, or a
20 neutral third party but shall not be a hearing officer under subsections (e) or (i) of this
21 section. The mediation officer shall make a reasonable effort to initiate settlement
22 discussions between the applicant and all other interested parties. Evidence of
23 statements made and conduct that occurs in a settlement discussion conducted under this
24 subsection, whether attributable to a party, a mediation officer, or other person shall not
25 be subject to discovery and shall be inadmissible in any subsequent proceeding on the
26 petition for a certificate. The Commission may adopt rules to govern the conduct of the
27 mediation process.

28 (h) Draft Determination. – Within 90 days after the Commission determines that
29 the environmental document prepared in accordance with subsection (d) of this section
30 is adequate or the applicant submits its petition for a certificate, whichever occurs later,
31 the Commission shall issue a draft determination on whether to grant the certificate. The
32 draft determination shall be based on the criteria set out in this section and shall include
33 the conditions and limitations, findings of fact, and conclusions of law that would be
34 required in a final determination. Notice of the draft determination shall be given as
35 provided in subsection (c) of this section.

36 (i) Public Hearing on the Draft Determination. – Within 60 days of the issuance
37 of the draft determination as provided in subsection (h) of this section, the Commission
38 shall hold public hearings on the draft determination. At least one hearing shall be held
39 in the affected area of the source river basin, and at least one hearing shall be held in the
40 affected area of the receiving river basin. In determining whether more than one public
41 hearing should be held within either the source or receiving river basins, the
42 Commission shall consider the differing or conflicting interests that may exist within the
43 river basins, including the interests of both upstream and downstream parties potentially
44 affected by the proposed transfer. The public hearings shall be conducted by one or

1 more hearing officers appointed by the Chair of the Commission. The hearing officers
2 may be members of the Commission or employees of the Department. The Commission
3 shall give at least 30 days' written notice of the public hearing as provided in subsection
4 (c) of this section. The Commission shall prepare a record of all comments and written
5 responses to questions posed in writing. The record shall include complete copies of
6 scientific or technical comments related to the potential impact of the interbasin
7 transfer.

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

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

14 (2) The present and reasonably foreseeable future detrimental effects on
15 the source river basin, including present and future effects on public,
16 industrial, economic, recreational, and agricultural water supply needs,
17 wastewater assimilation, water quality, fish and wildlife habitat,
18 hydroelectric power generation, navigation, and recreation. Local
19 water supply plans prepared pursuant to G.S. 143-355(l) that affect the
20 source river basin shall be used to evaluate the projected future water
21 needs in the source river basin that will be met by public water
22 systems. Information on projected future water needs that is more
23 recent than the local water supply plans may be used if the
24 Commission finds the information to be reliable. The determination
25 shall include a specific finding as to measures that are necessary or
26 advisable to mitigate or avoid detrimental impacts on the source river
27 basin.

28 (3) The cumulative effect on the source major river basin of any water
29 transfer or consumptive water use that, at the time the Commission
30 considers the petition for a certificate is occurring, is authorized under
31 this section, or is projected in any local water supply plan that has been
32 submitted to the Department in accordance with G.S. 143-355(l).

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

1 are necessary or advisable to mitigate or avoid detrimental impacts on
2 the receiving river basin.

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

27 (6) If applicable to the proposed project, the applicant's present and
28 proposed use of impoundment storage capacity to store water during
29 high-flow periods for use during low-flow periods and the applicant's
30 right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

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

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

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

41 (1) The petition.

42 (2) The environmental document prepared pursuant to subsection (d) of
43 this section.

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

3 (4) Information developed by or available to the Department on the water
4 quality of the source river basin and the receiving river basin,
5 including waters that are identified as impaired pursuant to section
6 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)), that are
7 subject to a total maximum daily load (TMDL) limit under subsections
8 (d) and (e) of section 303 of the federal Clean Water Act, or that would
9 have their assimilative capacity impaired if the certificate is issued.

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

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

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

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

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

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

26 (m) Final Determination: Certificate Conditions and Limitations. – The
27 Commission may grant the certificate in whole or in part, or deny the certificate. The
28 Commission may impose any conditions or limitations on a certificate that the
29 Commission finds necessary to achieve the purposes of this Part. The conditions and
30 limitations shall include any mitigation measures proposed by the applicant to minimize
31 any detrimental effects within the source and receiving river basins. In addition, the
32 certificate shall require all of the following conditions and limitations:

33 (1) A water conservation plan that specifies the water conservation
34 measures that will be implemented by the applicant in the receiving
35 river basin to ensure the efficient use of the transferred water. The
36 water conservation plan shall provide for the mandatory
37 implementation of water conservation measures by the applicant that
38 equal or exceed the most stringent water conservation plan
39 implemented by a public water system that withdraws water from the
40 source river basin.

41 (2) A drought management plan that specifies how the transfer shall be
42 managed to protect the source river basin during drought conditions or
43 other emergencies that occur within the source river basin. This
44 drought management plan shall include mandatory reductions in the

1 permitted amount of the transfer based on the severity and duration of
2 a drought occurring within the source river basin and shall provide for
3 the mandatory implementation of a drought management plan by the
4 applicant that equals or exceeds the most stringent water conservation
5 plan implemented by a public water system that withdraws water from
6 the source river basin.

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

10 (4) A provision that the Commission may amend a certificate to reduce the
11 maximum amount of water authorized to be transferred whenever it
12 appears that an alternative source of water is available to the certificate
13 holder from within the receiving river basin, including, but not limited
14 to, the purchase of water from another water supplier within the
15 receiving basin or to the transfer of water from another sub-basin
16 within the receiving major river basin.

17 (5) A provision that the Commission shall amend the certificate to reduce
18 the maximum amount of water authorized to be transferred if the
19 Commission finds that the applicant's current projected water needs
20 are significantly less than the applicant's projected water needs at the
21 time the certificate was granted.

22 (6) Except as provided in this subdivision, a provision that the applicant
23 will not resell the water that would be transferred pursuant to the
24 certificate to another public water supply system. In the case of a
25 petition where the applicant proposes to furnish water to another
26 public water supply system within the receiving river basin, the
27 Commission may approve a certificate that contemplates the resale if
28 each jurisdiction included within the regional water supply system is a
29 co-applicant for the transfer and will be subject to all the terms,
30 conditions, and limitations made applicable to the primary applicant.

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

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

43 (p) Emergency Transfers. – In the case of water supply problems caused by
44 drought, a pollution incident, temporary failure of a water plant, or any other temporary

1 condition in which the public health requires a transfer of water, the Secretary of
2 Environment and Natural Resources may grant approval for a temporary transfer. Prior
3 to approving a temporary transfer, the Secretary shall consult with those parties listed in
4 subdivision (3) of subsection (c) of this section that are likely to be affected by the
5 proposed transfer. However, the Secretary shall not be required to satisfy the public
6 notice requirements of this section or make written findings of fact and conclusions of
7 law in approving a temporary transfer under this subsection. If the Secretary approves a
8 temporary transfer under this subsection, the Secretary shall specify conditions to
9 protect other water users. A temporary transfer shall not exceed six months in duration,
10 but the approval may be renewed for a period of six months by the Secretary based on
11 demonstrated need as set forth in this subsection.

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

18 (r) Planning Requirements. – When any transfer for which a certificate was
19 issued under this section equals or exceeds eighty percent (80%) of the maximum
20 amount authorized in the certificate, the applicant shall submit to the Department a
21 detailed plan that specifies how the applicant intends to address future foreseeable water
22 needs. If the applicant is required to have a local water supply plan, then this plan shall
23 be an amendment to the local water supply plan required by G.S.143-355(l). When the
24 transfer equals or exceeds ninety percent (90%) of the maximum amount authorized in
25 the certificate, the applicant shall begin implementation of the plan submitted to the
26 Department.

27 (s) Statement of Policy. – It is the public policy of the State to maintain, protect,
28 and enhance water quality within North Carolina. It is the public policy of this State that
29 projected future water needs in a receiving river basin are subordinate to projected
30 future water needs in a source river basin. Further, it is the public policy of the State that
31 the cumulative impact of transfers from a source river basin shall not result in a
32 violation of the antidegradation policy set out in 40 Code of Federal Regulations §
33 131.12 (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant
34 thereto.

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

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

40 **"§ 113A-8.1. Surface water transfers.**

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

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

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

6 **SECTION 6.(a)** Except as provided in subsection (b) of this section, this act
7 becomes effective when it becomes law and applies to any petition for a certificate for a
8 transfer of surface water from one river basin to another river basin first made on or
9 after that date.

10 **SECTION 6.(b)** For a petition for a certificate for transfer of surface water
11 from one river basin to another river basin to supplement ground water supplies in the
12 fifteen counties designated as the Central Coastal Plain Capacity Use Area under 15A
13 NCAC 2E .0501, this act becomes effective 1 January 2011. Prior to 1 January 2011, a
14 petition for a certificate for transfer of surface water from one river basin to another
15 river basin to supplement ground water supplies in the fifteen counties designated as the
16 Central Coastal Plain Capacity Use Area shall be considered and acted upon by the
17 Environmental Management Commission pursuant to the procedures and standards set
18 out in G.S. 143-215.22I on 1 July 2007.