

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H

3

HOUSE BILL 1057\*  
Committee Substitute Favorable 6/18/14  
Third Edition Engrossed 6/25/14

Short Title: DENR Study IBT/EMC Eco Flow Study.

(Public)

Sponsors:

Referred to:

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO (1) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE STATUTES AND RULES GOVERNING INTERBASIN TRANSFERS; (2) DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO STUDY THE STATE'S POLICY FOR ESTABLISHING THE QUANTITY OF SURFACE WATER TO BE PROTECTED FOR ECOLOGICAL INTEGRITY AND TO REPORT TO THE ENVIRONMENTAL REVIEW COMMISSION ON THE STATUS OF HYDROLOGIC MODELS PROPOSED FOR USE IN ESTABLISHING THE WATER QUANTITY TO BE RESERVED FOR ECOLOGICAL FLOW; AND (3) PROVIDE FOR AN EXPEDITED INTERBASIN TRANSFER PROCESS FOR CERTAIN RESERVOIRS.

The General Assembly of North Carolina enacts:

**SECTION 1.** The Department of Environment and Natural Resources shall study the statutes and rules governing interbasin transfers and make recommendations as to whether the statutes and rules should be amended. The study shall specifically examine all of the following:

- (1) Whether and to what extent temporary and emergency interbasin transfers, including interbasin transfers to provide drought relief, should be subject to different regulatory requirements than long-term interbasin transfers.
- (2) Whether and to what extent interbasin transfers between river subbasins should be subject to different regulatory requirements than interbasin transfers between major river basins.
- (3) Whether there are types of interbasin transfers that should be exempt from the interbasin certification or other regulatory requirements.

**SECTION 2.** No later than October 1, 2014, the Department of Environment and Natural Resources shall report its findings and recommendations to the Environmental Review Commission.

**SECTION 3.** The Environmental Management Commission shall study the means by which the State establishes the quantity of surface water set aside for protection of ecological integrity to determine whether the quantity of water set aside exceeds the amount required for ecological integrity and interferes with other essential water uses as those terms are defined in Article 38 of Chapter 143 of the General Statutes. In its study, the Commission shall determine how to establish the minimum amount of water necessary to satisfy federal and State laws for the protection of the environment and natural resources. The Commission shall consider each of the provisions of S.L. 2010-143, the existing means for determining ecological flow, and recommendations of the Department of Environment and Natural Resources for



\* H 1 0 5 7 - V - 3 \*

1 establishing a policy to include a determination of ecological flow in the basinwide hydrologic  
2 models required pursuant to S.L. 2010-143. If the Commission concurs in the recommendation  
3 of the Ecological Flow Science Advisory Board that it is not feasible to create a separate model  
4 based on the conditions in each river basin, the Commission shall recommend amendments to  
5 S.L. 2010-143. The Commission shall analyze existing information, including the report issued  
6 by the Ecological Flow Science Advisory Board dated November 2013 and report its findings  
7 and recommendations to the Environmental Review Commission on or before January 1, 2016.

8 **SECTION 4.** The Environmental Management Commission may create a science  
9 advisory board to assist the Commission with its preparation of the report to the Environmental  
10 Review Commission required pursuant to Section 3 of this act. If a science advisory board is  
11 created, members shall be appointed by the Chair of the Commission as follows:

- 12 (1) One member who is a scientist whose background includes the study of or  
13 experience with the use of water necessary for firefighting, health, and  
14 safety.
- 15 (2) One member who is a scientist whose background includes the study of or  
16 experience with the use of water needed to sustain human and animal life.
- 17 (3) One member who is a scientist whose background includes the study of or  
18 experience with the water necessary to satisfy federal, State, and local laws  
19 for the protection of public health, safety, and welfare; the environment; and  
20 natural resources.
- 21 (4) One member who is a scientist whose background includes the study of or  
22 experience with the minimum amount of water necessary to support and  
23 sustain the economy of the State, region, or area.
- 24 (5) One member who is a scientist whose background includes the study of or  
25 experience with the economic issues important to consumers of potable  
26 water.

27 State employees may provide staff and technical assistance to the science advisory  
28 board. However, State employees, other than university system employees, shall be ineligible  
29 for appointment to the science advisory board.

30 **SECTION 5.** None of the activities undertaken pursuant to Section 3 and Section 4  
31 of this act shall prevent the Environmental Management Commission and the Department of  
32 Environment and Natural Resources from exercising the authorities granted in Article 21 and  
33 Article 38 of Chapter 143 and Part 1 and Part 4 of Article 7 of Chapter 143B of the General  
34 Statutes, except pursuant to Section 6 of this act. The Commission and the Department are  
35 authorized to continue to use hydrologic models in planning decisions and, as required in order  
36 to comply with required statutes or rules, to make decisions on permit applications or other  
37 matters concerning water allocations, except as limited by Section 6 of this act.

38 **SECTION 6.** While the study required pursuant to Section 3 of this act is  
39 underway and until the General Assembly has adjourned the session following the submission  
40 of the Environmental Management Commission's report to the Environmental Review  
41 Commission, the Environmental Management Commission shall only consider or approve  
42 basinwide hydrologic models pursuant to G.S. 143-355(o)(6) that do not include ecological  
43 flow based on the report entitled "Recommendations for Estimating Flows to Maintain  
44 Ecological Integrity in Streams and Rivers in North Carolina" dated November 2013 as a  
45 component of the model and the Commission, and the Department shall not make ecological  
46 flow determinations based on the report entitled "Recommendations for Estimating Flows to  
47 Maintain Ecological Integrity in Streams and Rivers in North Carolina" dated November 2013.

48 **SECTION 7.** G.S. 143-215.22L(w) reads as rewritten:

49 "(w) Requirements for Coastal ~~Counties~~ Counties and Reservoirs Constructed by the  
50 United States Army Corps of Engineers. – A petition for a certificate (i) to transfer surface  
51 water to supplement ground water supplies in the 15 counties designated as the Central

1 Capacity Use Area under 15A NCAC 2E.0501, ~~or (ii)~~ to transfer surface water withdrawn from  
2 the mainstem of a river to provide service to one of the coastal area counties designated  
3 pursuant to G.S. 113A-103, or (iii) to withdraw or transfer water stored in any multipurpose  
4 reservoir constructed by the United States Army Corps of Engineers and partially located in a  
5 state adjacent to North Carolina, provided the United States Army Corps of Engineers approved  
6 the withdrawal or transfer on or before July 1, 2014, shall be considered and a determination  
7 made according to the following procedures:

- 8 (1) The applicant shall file a notice of intent that includes a nontechnical  
9 description of the applicant's request and identification of the proposed water  
10 source.
- 11 (2) The applicant shall prepare an environmental document pursuant to  
12 subsection (d) of this section, except that an environmental impact statement  
13 shall not be required unless it would otherwise be required by Article 1 of  
14 Chapter 113A of the General Statutes.
- 15 (3) Upon determining that the documentation submitted by the applicant is  
16 adequate to satisfy the requirements of this subsection, the Department shall  
17 publish a notice of the petition in the North Carolina Register and shall hold  
18 a public hearing at a location convenient to both the source and receiving  
19 river basins. The Department shall provide written notice of the petition and  
20 the public hearing in the Environmental Bulletin, a newspaper of general  
21 circulation in the source river basin, a newspaper of general circulation in  
22 the receiving river basin, and as provided in subdivision (3) of subsection (c)  
23 of this section. The applicant who petitions the Commission for a certificate  
24 under this subdivision shall pay the costs associated with the notice and  
25 public hearing.
- 26 (4) The Department shall accept comments on the petition for a minimum of 30  
27 days following the public hearing.
- 28 (5) The Commission or the Department may require the applicant to provide any  
29 additional information or documentation it deems reasonably necessary in  
30 order to make a final determination.
- 31 (6) The Commission shall make a final determination whether to grant the  
32 certificate based on the factors set out in subsection (k) of this section,  
33 information provided by the applicant, and any other information the  
34 Commission deems relevant. The Commission shall state in writing its  
35 findings of fact and conclusions of law with regard to each factor.
- 36 (7) The Commission shall grant the certificate if it finds that the applicant has  
37 established by a preponderance of the evidence that the petition satisfies the  
38 requirements of subsection (m) of this section. The Commission may grant  
39 the certificate in whole or in part, or deny the request, and may impose such  
40 limitations and conditions on the certificate as it deems necessary and  
41 relevant."

42 **SECTION 8.** This act is effective when it becomes law.