

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE DRS75174-SB-19 (03/14)

Short Title: Amend Interbasin Transfer Law.

(Public)

Sponsors: Senator Rabon (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH AN EXPEDITED PROCESS FOR THE MODIFICATION OF  
3 INTERBASIN TRANSFER CERTIFICATES AND FOR THE ISSUANCE OF  
4 INTERBASIN TRANSFER CERTIFICATES IN THE CENTRAL COASTAL PLAIN  
5 CAPACITY USE AREA AND THE COASTAL AREA COUNTIES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 143-215.22G reads as rewritten:

8 **"§ 143-215.22G. Definitions.**

9 In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following  
10 definitions apply to this Part.

11 (1) "River basin" means any of the following river basins designated on the map  
12 entitled "Major River Basins and Sub-basins in North Carolina" and filed in  
13 the Office of the Secretary of State on 16 April 1991. The term "river basin"  
14 includes any portion of the river basin that extends into another state. Any  
15 area outside North Carolina that is not included in one of the river basins  
16 listed in this subdivision comprises a separate river basin.

- |    |    |     |                                |
|----|----|-----|--------------------------------|
| 17 | a. | 1-1 | Broad River.                   |
| 18 | b. | 2-1 | Haw River.                     |
| 19 | c. | 2-2 | Deep River.                    |
| 20 | d. | 2-3 | Cape Fear River.               |
| 21 | e. | 2-4 | South River.                   |
| 22 | f. | 2-5 | Northeast Cape Fear River.     |
| 23 | g. | 2-6 | New River.                     |
| 24 | h. | 3-1 | Catawba River.                 |
| 25 | i. | 3-2 | South Fork Catawba River.      |
| 26 | j. | 4-1 | Chowan River.                  |
| 27 | k. | 4-2 | Meherrin River.                |
| 28 | l. | 5-1 | Nolichucky River.              |
| 29 | m. | 5-2 | French Broad River.            |
| 30 | n. | 5-3 | Pigeon River.                  |
| 31 | o. | 6-1 | Hiwassee River.                |
| 32 | p. | 7-1 | Little Tennessee River.        |
| 33 | q. | 7-2 | Tuskasegee (Tuckasegee) River. |
| 34 | r. | 8-1 | Savannah River.                |
| 35 | s. | 9-1 | Lumber River.                  |
| 36 | t. | 9-2 | Big Shoe Heel Creek.           |



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- 1 u. 9-3 Waccamaw River.
- 2 v. 9-4 Shallotte River.
- 3 w. 10-1 Neuse River.
- 4 x. 10-2 Contentnea Creek.
- 5 y. 10-3 Trent River.
- 6 z. 11-1 New River.
- 7 aa. 12-1 Albemarle Sound.
- 8 bb. 13-1 Ocoee River.
- 9 cc. 14-1 Roanoke River.
- 10 dd. 15-1 Tar River.
- 11 ee. 15-2 Fishing Creek.
- 12 ff. 15-3 Pamlico River and Sound.
- 13 gg. 16-1 Watauga River.
- 14 hh. 17-1 White Oak River.
- 15 ii. 18-1 Yadkin (Yadkin-Pee Dee) River.
- 16 jj. 18-2 South Yadkin River.
- 17 kk. 18-3 Uwharrie River.
- 18 ll. 18-4 Rocky River.

19 (2) "Surface water" means any of the waters of the State located on the land  
20 surface that are not derived by pumping from groundwater.

21 (3) "Transfer" means the withdrawal, diversion, or pumping of surface water  
22 from one river basin and discharge of all or any part of the water in a river  
23 basin different from the origin. However, notwithstanding the basin  
24 definitions in G.S. 143-215.22G(1), the following are not transfers under this  
25 Part:

- 26 a. The discharge of water upstream from the point where it is  
27 withdrawn.
- 28 b. The discharge of water downstream from the point where it is  
29 withdrawn.

30 (4) "Public water system" means any unit of local government or large  
31 community water system subject to the requirements of G.S. 143-355(l).

32 (5) "Mainstem" means that portion of a river having the same name as a river  
33 basin defined in subdivision (1) of this section. "Mainstem" does not include  
34 named or unnamed tributaries."

35 **SECTION 2.** G.S. 143-215.22L reads as rewritten:

36 **"§ 143-215.22L. Regulation of surface water transfers.**

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

- 39 (1) Initiate a transfer of 2,000,000 gallons of water or more per day—day,  
40 calculated as a daily average of a calendar month and not to exceed  
41 5,000,000 gallons per day in any one day, from one river basin to another.
- 42 (2) ~~Increase the amount of an existing transfer of water from one river basin to~~  
43 ~~another by twenty five percent (25%) or more above the average daily~~  
44 ~~amount transferred during the year ending 1 July 1993 if the total transfer~~  
45 ~~including the increase is 2,000,000 gallons or more per day.~~
- 46 (3) Increase an existing transfer of water from one river basin to another above  
47 the amount approved by the Commission in a certificate issued under  
48 G.S. 162A-7 prior to 1 July 1993.

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

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

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

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

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

- 20 a. Each county in this State located in whole or in part of the area of the  
21 source river basin upstream from the proposed point of withdrawal.  
22 b. Each city or county located in a state located in whole or in part of  
23 the surface drainage basin area of the source river basin that also falls  
24 within, in whole or in part, the area denoted by one of the following  
25 eight-digit cataloging units as organized by the United States  
26 Geological Survey:

27 03050105 (Broad River: NC and SC);

28 03050106 (Broad River: SC);

29 03050107 (Broad River: SC);

30 03050108 (Broad River: SC);

31 05050001 (New River: NC and VA);

32 05050002 (New River: VA and WV);

33 03050101 (Catawba River: NC and SC);

34 03050103 (Catawba River: NC and SC);

35 03050104 (Catawba River: SC);

36 03010203 (Chowan River: NC and VA);

37 03010204 (Chowan River: NC and VA);

38 06010105 (French Broad River: NC and TN);

39 06010106 (French Broad River: NC and TN);

40 06010107 (French Broad River: TN);

41 06010108 (French Broad River: NC and TN);

42 06020001 (Hiwassee River: AL, GA, TN);

43 06020002 (Hiwassee River: GA, NC, TN);

44 06010201 (Little Tennessee River: TN);

45 06010202 (Little Tennessee River: TN, GA, and NC);

46 06010204 (Little Tennessee River: NC and TN);

47 03060101 (Savannah River: NC and SC);

48 03060102 (Savannah River: GA, NC, and SC);

49 03060103 (Savannah River: GA and SC);

50 03060104 (Savannah River: GA);

51 03060105 (Savannah River: GA);

- 1 03040203 (Lumber River: NC and SC);
- 2 03040204 (Lumber River: NC and SC);
- 3 03040206 (Lumber River: NC and SC);
- 4 03040207 (Lumber River: NC and SC);
- 5 03010205 (Albemarle Sound: NC and VA);
- 6 06020003 (Ocoee River: GA, NC, and TN);
- 7 03010101 (Roanoke River: VA);
- 8 03010102 (Roanoke River: NC and VA);
- 9 03010103 (Roanoke River: NC and VA);
- 10 03010104 (Roanoke River: NC and VA);
- 11 03010105 (Roanoke River: VA);
- 12 03010106 (Roanoke River: NC and VA);
- 13 06010102 (Watauga River: TN and VA);
- 14 06010103 (Watauga River: NC and TN);
- 15 03040101 (Yadkin River: VA and NC);
- 16 03040104 (Yadkin River: NC and SC);
- 17 03040105 (Yadkin River: NC and SC);
- 18 03040201 (Yadkin River: NC and SC);
- 19 03040202 (Yadkin River: NC and SC).
- 20 c. Each county in this State located in whole or in part of the area of the
- 21 source river basin downstream from the proposed point of
- 22 withdrawal.
- 23 d. Any area in the State in a river basin for which the source river basin
- 24 has been identified as a future source of water in a local water supply
- 25 plan prepared pursuant to G.S. 143-355(l).
- 26 e. Each county in the State located in whole or in part of the receiving
- 27 river basin.
- 28 (3) By giving notice by first-class mail or electronic mail to each of the
- 29 following:
- 30 a. The board of commissioners of each county in this State or the
- 31 governing body of any county or city that is politically independent
- 32 of a county in any state that is located entirely or partially within the
- 33 source river basin of the proposed transfer and that also falls within,
- 34 in whole or in part, the area denoted by one of the eight-digit
- 35 cataloging units listed in sub-subdivision b. of subdivision (2) of this
- 36 subsection.
- 37 b. The board of commissioners of each county in this State or the
- 38 governing body of any county or city that is politically independent
- 39 of a county in any state that is located entirely or partially within the
- 40 receiving river basin of the proposed transfer and that also falls
- 41 within, in whole or in part, the area denoted by one of the eight-digit
- 42 cataloging units listed in sub-subdivision b. of subdivision (2) of this
- 43 subsection.
- 44 c. The governing body of any public water ~~supply~~-system that
- 45 withdraws water upstream or downstream from the withdrawal point
- 46 of the proposed transfer.
- 47 d. If any portion of the source or receiving river basins is located in
- 48 another state, all state water management or use agencies,
- 49 environmental protection agencies, and the office of the governor in
- 50 that state upstream or downstream from the withdrawal point of the
- 51 proposed transfer.

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

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

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

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

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

- 1 (g) Petition. – An applicant for a certificate shall petition the Commission for the  
2 certificate. The petition shall be in writing and shall include all of the following:
- 3 (1) A general description of the facilities to be used to transfer the water,  
4 ~~including the location and capacity of water intakes, pumps, pipelines, and~~  
5 ~~other facilities including current and projected areas to be served by the~~  
6 transfer, current and projected capacities of intakes, and other relevant  
7 facilities.
- 8 (2) A description of all the proposed consumptive and nonconsumptive uses of  
9 the water to be transferred.
- 10 (3) A description of the water quality of the source river and receiving river,  
11 including information on aquatic habitat for rare, threatened, and endangered  
12 species; in-stream flow data for segments of the source and receiving rivers  
13 that may be affected by the transfer; and any waters that are impaired  
14 pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. §  
15 1313(d)).
- 16 (4) A description of the water conservation measures used by the applicant at  
17 the time of the petition and any additional water conservation measures that  
18 the applicant will implement if the certificate is granted.
- 19 (5) A description of all sources 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 basin,  
22 that is a practicable alternative to the proposed transfer that would meet the  
23 applicant's water supply needs. The description of water sources shall  
24 include sources available at the time of the petition for a certificate and any  
25 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 pursuant  
28 to G.S. 143-355(l) from the source river basin, including transfers and  
29 withdrawals at the time of the petition for a certificate and any planned or  
30 reasonably foreseeable transfers or withdrawals by a public water system  
31 with service area located within the source river basin.
- 32 (7) A demonstration that the proposed transfer, if added to all other transfers and  
33 withdrawals required to be registered under G.S. 143-215.22H or included in  
34 any local water supply plan prepared by a public water system with service  
35 area located within the source basin pursuant to G.S. 143-355(l) from the  
36 source river basin at the time of the petition for a certificate, would not  
37 reduce the amount of water available for use in the source river basin to a  
38 degree that would impair existing uses, pursuant to the antidegradation  
39 policy set out in 40 Code of Federal Regulation § 131.12 (Antidegradation  
40 Policy) (1 July 2006 Edition) and the statewide antidegradation policy  
41 adopted pursuant thereto, or existing and planned consumptive and  
42 nonconsumptive uses of the water in the source river basin. If the proposed  
43 transfer would impact a reservoir within the source river basin, the  
44 demonstration must include a finding that the transfer would not result in a  
45 water level in the reservoir that is inadequate to support existing uses of the  
46 reservoir, including recreational uses.
- 47 (8) The applicant's future water supply needs and the present and reasonably  
48 foreseeable future water supply needs for public water systems with service  
49 area located within the source river basin. The analysis of future water  
50 supply needs shall include agricultural, recreational, and industrial uses, and  
51 electric power generation. Local water supply plans prepared pursuant to

1 G.S. 143-355(l) for water systems with service area located within the  
2 source river basin shall be used to evaluate the projected future water needs  
3 in the source river basin that will be met by public water systems.

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

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

10 (h) Settlement Discussions. – Upon the request of the applicant, any interested party, or  
11 the Department, or upon its own motion, the Commission may appoint a mediation officer. The  
12 mediation officer may be a member of the Commission, an employee of the Department, or a  
13 neutral third party but shall not be a hearing officer under subsections (e) or (j) of this section.  
14 The mediation officer shall make a reasonable effort to initiate settlement discussions between  
15 the applicant and all other interested parties. Evidence of statements made and conduct that  
16 occurs in a settlement discussion conducted under this subsection, whether attributable to a  
17 party, a mediation officer, or other person shall not be subject to discovery and shall be  
18 inadmissible in any subsequent proceeding on the petition for a certificate. The Commission  
19 may adopt rules to govern the conduct of the mediation process.

20 (i) Draft Determination. – Within 90 days after the Commission determines that the  
21 environmental document prepared in accordance with subsection (d) of this section is adequate  
22 or the applicant submits its petition for a certificate, whichever occurs later, the Commission  
23 shall issue a draft determination on whether to grant the certificate. The draft determination  
24 shall be based on the criteria set out in this section and shall include the conditions and  
25 limitations, findings of fact, and conclusions of law that would be required in a final  
26 determination. Notice of the draft determination shall be given as provided in subsection (c) of  
27 this section.

28 (j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the  
29 draft determination as provided in subsection (i) of this section, the Commission shall hold  
30 public hearings on the draft determination. At least one hearing shall be held in the affected  
31 area of the source river basin, and at least one hearing shall be held in the affected area of the  
32 receiving river basin. In determining whether more than one public hearing should be held  
33 within either the source or receiving river basins, the Commission shall consider the differing  
34 or conflicting interests that may exist within the river basins, including the interests of both  
35 upstream and downstream parties potentially affected by the proposed transfer. The public  
36 hearings shall be conducted by one or more hearing officers appointed by the Chair of the  
37 Commission. The hearing officers may be members of the Commission or employees of the  
38 Department. The Commission shall give at least 30 days' written notice of the public hearing as  
39 provided in subsection (c) of this section. The Commission shall accept written comment on the  
40 draft determination for a minimum of 30 days following the last public hearing. The  
41 Commission shall prepare a record of all comments and written responses to questions posed in  
42 writing. The record shall include complete copies of scientific or technical comments related to  
43 the potential impact of the interbasin transfer. The applicant who petitions the Commission for  
44 a certificate under this section shall pay the costs associated with the notice and public hearing  
45 on the draft determination.

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

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

- 1           (2)    The present and reasonably foreseeable future detrimental effects on the  
2           source river basin, including present and future effects on public, industrial,  
3           economic, recreational, and agricultural water supply needs, wastewater  
4           assimilation, water quality, fish and wildlife habitat, electric power  
5           generation, navigation, and recreation. Local water supply plans for public  
6           water systems with service area located within the source river basin  
7           prepared pursuant to G.S. 143-355(l) shall be used to evaluate the projected  
8           future water needs in the source river basin that will be met by public water  
9           systems. Information on projected future water needs for public water  
10          systems with service area located within the source river basin that is more  
11          recent than the local water supply plans may be used if the Commission  
12          finds the information to be reliable. The determination shall include a  
13          specific finding as to measures that are necessary or advisable to mitigate or  
14          avoid detrimental impacts on the source river basin.
- 15          (3)    The cumulative effect on the source major river basin of any water transfer  
16          or consumptive water use that, at the time the Commission considers the  
17          petition for a certificate is occurring, is authorized under this section, or is  
18          projected in any local water supply plan for public water systems with  
19          service area located within the source river basin that has been submitted to  
20          the Department in accordance with G.S. 143-355(l).
- 21          (4)    The present and reasonably foreseeable future beneficial and detrimental  
22          effects on the receiving river basin, including present and future effects on  
23          public, industrial, economic, recreational, and agricultural water supply  
24          needs, wastewater assimilation, water quality, fish and wildlife habitat,  
25          electric power generation, navigation, and recreation. Local water supply  
26          plans prepared pursuant to G.S. 143-355(l) that affect the receiving river  
27          basin shall be used to evaluate the projected future water needs in the  
28          receiving river basin that will be met by public water systems. Information  
29          on projected future water needs that is more recent than the local water  
30          supply plans may be used if the Commission finds the information to be  
31          reliable. The determination shall include a specific finding as to measures  
32          that are necessary or advisable to mitigate or avoid detrimental impacts on  
33          the receiving river basin.
- 34          (5)    The availability of reasonable alternatives to the proposed transfer, including  
35          the potential capacity of alternative sources of water, the potential of each  
36          alternative to reduce the amount of or avoid the proposed transfer, probable  
37          costs, and environmental impacts. In considering alternatives, the  
38          Commission is not limited to consideration of alternatives that have been  
39          proposed, studied, or considered by the applicant. The determination shall  
40          include a specific finding as to why the applicant's need for water cannot be  
41          satisfied by alternatives within the receiving basin, including unused  
42          capacity under a transfer for which a certificate is in effect or that is  
43          otherwise authorized by law at the time the applicant submits the petition.  
44          The determination shall consider the extent to which access to potential  
45          sources of surface water or groundwater within the receiving river basin is  
46          no longer available due to depletion, contamination, or the declaration of a  
47          capacity use area under Part 2 of Article 21 of Chapter 143 of the General  
48          Statutes. The determination shall consider the feasibility of the applicant's  
49          purchase of water from other water suppliers within the receiving basin and  
50          of the transfer of water from another sub-basin within the receiving major  
51          river basin. Except in circumstances of technical or economic infeasibility or



1 adverse environmental impact, the Commission's determination as to  
2 reasonable alternatives shall give preference to alternatives that would  
3 involve a transfer from one sub-basin to another within the major receiving  
4 river basin over alternatives that would involve a transfer from one major  
5 river basin to another major river basin.

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

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

14 (8) Whether the service area of the applicant is located in both the source river  
15 basin and the receiving river basin.

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

18 (l) Final Determination: Information to be Considered. – In determining whether a  
19 certificate may be issued for the transfer, the Commission shall consider all of the following  
20 sources of information:

21 (1) The petition.

22 (2) The environmental document prepared pursuant to subsection (d) of this  
23 section.

24 (3) All oral and written comment and all accompanying materials or evidence  
25 submitted pursuant to subsections (e) and (j) of this section.

26 (4) Information developed by or available to the Department on the water  
27 quality of the source river basin and the receiving river basin, including  
28 waters that are identified as impaired pursuant to section 303(d) of the  
29 federal Clean Water Act (33 U.S.C. § 1313(d)), that are subject to a total  
30 maximum daily load (TMDL) limit under subsections (d) and (e) of section  
31 303 of the federal Clean Water Act, or that would have their assimilative  
32 capacity impaired if the certificate is issued.

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

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

38 (1) The benefits of the proposed transfer outweigh the detriments of the  
39 proposed transfer. In making this determination, the Commission shall be  
40 guided by the approved environmental document and the policy set out in  
41 subsection (t) of this section.

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

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

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

48 (n) Final Determination: Certificate Conditions and Limitations. – The Commission  
49 may grant the certificate in whole or in part, or deny the certificate. The Commission may  
50 impose any conditions or limitations on a certificate that the Commission finds necessary to  
51 achieve the purposes of this Part including a limit on the period for which the certificate is

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

- 4 (1) A water conservation plan that specifies the water conservation measures  
5 that will be implemented by the applicant in the receiving river basin to  
6 ensure the efficient use of the transferred water. Except in circumstances of  
7 technical or economic infeasibility or adverse environmental impact, the  
8 water conservation plan shall provide for the mandatory implementation of  
9 water conservation measures by the applicant that equal or exceed the most  
10 stringent water conservation plan implemented by a ~~community water~~  
11 ~~system, as defined in G.S. 143-355(1),~~ public water system that withdraws  
12 water from the source river basin.
- 13 (2) A drought management plan that specifies how the transfer shall be managed  
14 to protect the source river basin during drought conditions or other  
15 emergencies that occur within the source river basin. Except in  
16 circumstances of technical or economic infeasibility or adverse  
17 environmental impact, this drought management plan shall include  
18 mandatory reductions in the permitted amount of the transfer based on the  
19 severity and duration of a drought occurring within the source river basin  
20 and shall provide for the mandatory implementation of a drought  
21 management plan by the applicant that equals or exceeds the most stringent  
22 water conservation plan implemented by a ~~community water system, as~~  
23 ~~defined in G.S. 143-355(1),~~ public water system that withdraws water from  
24 the source river basin.
- 25 (3) The maximum amount of water that may be ~~transferred on a daily~~  
26 ~~basis, transferred, calculated as a daily average of a calendar month,~~ and  
27 methods or devices required to be installed and operated that measure the  
28 amount of water that is transferred.
- 29 (4) A provision that the Commission may amend a certificate to reduce the  
30 maximum amount of water authorized to be transferred whenever it appears  
31 that an alternative source of water is available to the certificate holder from  
32 within the receiving river basin, including, but not limited to, the purchase of  
33 water from another water supplier within the receiving basin or to the  
34 transfer of water from another sub-basin within the receiving major river  
35 basin.
- 36 (5) A provision that the Commission shall amend the certificate to reduce the  
37 maximum amount of water authorized to be transferred if the Commission  
38 finds that the applicant's current projected water needs are significantly less  
39 than the applicant's projected water needs at the time the certificate was  
40 granted.
- 41 (6) A requirement that the certificate holder report the quantity of water  
42 transferred during each calendar quarter. The report required by this  
43 subdivision shall be submitted to the Commission no later than 30 days after  
44 the end of the quarter.
- 45 (7) Except as provided in this subdivision, a provision that the applicant will not  
46 resell the water that would be transferred pursuant to the certificate to  
47 another public water ~~supply~~-system. This limitation shall not apply in the  
48 case of a proposed resale or transfer among public water ~~supply~~-systems  
49 within the receiving river basin as part of an interlocal agreement or other  
50 regional water supply arrangement, provided that each participant in the  
51 interlocal agreement or regional water supply arrangement is a co-applicant

1 for the certificate and will be subject to all the terms, conditions, and  
2 limitations made applicable to any lead or primary applicant.

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

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

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

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

32 (s) Planning Requirements. – When any transfer for which a certificate was issued  
33 under this section equals or exceeds eighty percent (80%) of the maximum amount authorized  
34 in the certificate, the applicant shall submit to the Department a detailed plan that specifies how  
35 the applicant intends to address future foreseeable water needs. If the applicant is required to  
36 have a local water supply plan, then this plan shall be an amendment to the local water supply  
37 plan required by G.S.143-355(1). When the transfer equals or exceeds ninety percent (90%) of  
38 the maximum amount authorized in the certificate, the applicant shall begin implementation of  
39 the plan submitted to the Department.

40 (t) Statement of Policy. – It is the public policy of the State to maintain, protect, and  
41 enhance water quality within North Carolina. It is the public policy of this State that the  
42 reasonably foreseeable future water needs of a public water system with its service area located  
43 primarily in the receiving river basin are subordinate to the reasonably foreseeable future water  
44 needs of a public water system with its service area located primarily in the source river basin.  
45 Further, it is the public policy of the State that the cumulative impact of transfers from a source  
46 river basin shall not result in a violation of the antidegradation policy set out in 40 Code of  
47 Federal Regulations § 131.12 (1 July 2006 Edition) and the statewide antidegradation policy  
48 adopted pursuant thereto.

49 ~~(u) Renewal of Certificate. – A petition to extend or renew a certificate shall be treated~~  
50 ~~as a new petition.~~

- 1        (v) Modification of Certificate. – A certificate may be modified as provided in this  
2 subsection.
- 3            (1) The Commission or the Department may make any of the following  
4 modifications to a certificate after providing electronic notice to persons who  
5 have identified themselves in writing as interested parties:
- 6            a. Correction of typographical errors.  
7            b. Clarification of existing conditions or language.  
8            c. Updates to a conservation plan, drought management plan, or  
9 compliance and monitoring plan.  
10           d. Modifications requested by the certificate holder to reflect altered  
11 requirements due to the amendment of this section.
- 12           (2) The Commission may make modifications that it deems to be minor after  
13 providing electronic notice to persons who have identified themselves in  
14 writing as interested parties.
- 15           (3) A person who holds a certificate for an interbasin transfer of water may  
16 request that the Commission modify the certificate. The request shall be  
17 considered and a determination made according to the following procedures:
- 18           a. The certificate must have been issued pursuant to  
19 G.S. 162A-7, 143-215.22I, or 143-215.22L and the certificate holder  
20 must be in substantial compliance with the certificate.
- 21           b. The certificate holder shall file a notice of intent to file a request for  
22 modification that includes a nontechnical description of the  
23 certificate holder's request and identification of the proposed water  
24 source.
- 25           c. The certificate holder shall prepare an environmental document  
26 pursuant to subsection (d) of this section, except that an  
27 environmental impact statement shall not be required for the  
28 modification of a certificate unless it would otherwise be required by  
29 Article 1 of Chapter 113A of the General Statutes.
- 30           d. Upon determining that the documentation submitted by the certificate  
31 holder is adequate to satisfy the requirements of this subsection, the  
32 Department shall publish a notice of the request for modification in  
33 the North Carolina Register and shall hold a public hearing at a  
34 location convenient to both the source and receiving river basins. The  
35 Department shall provide written notice of the request for the  
36 modification and the public hearing in the Environmental Bulletin, a  
37 newspaper of general circulation in the source river basin, a  
38 newspaper of general circulation in the receiving river basin, and as  
39 provided in subdivision (3) of subsection (c) of this section. The  
40 certificate holder who petitions the Commission for a modification  
41 under this subdivision shall pay the costs associated with the notice  
42 and public hearing.
- 43           e. The Department shall accept comments on the requested  
44 modification for a minimum of 30 days following the public hearing.
- 45           f. The Commission or the Department may require the certificate  
46 holder to provide any additional information or documentation it  
47 deems reasonably necessary in order to make a final determination.
- 48           g. The Commission shall make a final determination whether to grant  
49 the requested modification based on the factors set out in subsection  
50 (k) of this section, information provided by the certificate holder, and  
51 any other information the Commission deems relevant. The

1 Commission shall state in writing its findings of fact and conclusions  
2 of law with regard to each factor.

3 h. The Commission shall grant the requested modification if it finds that  
4 the certificate holder has established by a preponderance of the  
5 evidence that the requested modification satisfies the requirements of  
6 subsection (m) of this section. The Commission may grant the  
7 requested modification in whole or in part, or deny the request, and  
8 may impose such limitations and conditions on the modified  
9 certificate as it deems necessary and relevant to the modification.

10 i. The Commission shall not grant a request for modification if the  
11 modification would result in the transfer of water to an additional  
12 major river basin.

13 (w) Requirements for Coastal Counties. – A petition for a certificate to transfer surface  
14 water to supplement ground water supplies in the 15 counties designated as the Central  
15 Capacity Use Area under 15A NCAC 2E .0501, or to transfer surface water withdrawn from  
16 the mainstem of a river to provide service to one of the coastal area counties designated  
17 pursuant to G.S. 113A-103, shall be considered and a determination made according to the  
18 following procedures:

19 (1) The applicant shall file a notice of intent that includes a nontechnical  
20 description of the applicant's request and identification of the proposed water  
21 source.

22 (2) The applicant shall prepare an environmental document pursuant to  
23 subsection (d) of this section, except that an environmental impact statement  
24 shall not be required unless it would otherwise be required by Article 1 of  
25 Chapter 113A of the General Statutes.

26 (3) Upon determining that the documentation submitted by the applicant is  
27 adequate to satisfy the requirements of this subsection, the Department shall  
28 publish a notice of the petition in the North Carolina Register and shall hold  
29 a public hearing at a location convenient to both the source and receiving  
30 river basins. The Department shall provide written notice of the petition and  
31 the public hearing in the Environmental Bulletin, a newspaper of general  
32 circulation in the source river basin, a newspaper of general circulation in  
33 the receiving river basin, and as provided in subdivision (3) of subsection (c)  
34 of this section. The applicant who petitions the Commission for a certificate  
35 under this subdivision shall pay the costs associated with the notice and  
36 public hearing.

37 (4) The Department shall accept comments on the petition for a minimum of 30  
38 days following the public hearing.

39 (5) The Commission or the Department may require the applicant to provide any  
40 additional information or documentation it deems reasonably necessary in  
41 order to make a final determination.

42 (6) The Commission shall make a final determination whether to grant the  
43 certificate based on the factors set out in subsection (k) of this section,  
44 information provided by the applicant, and any other information the  
45 Commission deems relevant. The Commission shall state in writing its  
46 findings of fact and conclusions of law with regard to each factor.

47 (7) The Commission shall grant the certificate if it finds that the applicant has  
48 established by a preponderance of the evidence that the petition satisfies the  
49 requirements of subsection (m) of this section. The Commission may grant  
50 the certificate in whole or in part, or deny the request, and may impose such

1 limitations and conditions on the certificate as it deems necessary and  
2 relevant."

3 **SECTION 3.(a)** Section 1 of S.L. 2011-298 reads as rewritten:

4 "**SECTION 1.** Notwithstanding G.S. 143-215.22I and G.S. 143-215.22L, a certificate  
5 issued pursuant to G.S. 143-215.22L is not required for a transfer of water from one river basin  
6 to another river basin to supplement groundwater supplies in the 15 counties designated as the  
7 Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501."

8 **SECTION 3.(b)** Section 4 of S.L. 2011-298 reads as rewritten:

9 "**SECTION 4.(a)** This act is effective when it becomes law and applies to any transfer of  
10 water from one river basin to another river basin to supplement groundwater supplies in the 15  
11 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501  
12 initiated on or after August 31, 2007.

13 "**SECTION 4.(b)** Section 1 of this act shall expire if the cumulative volume of water  
14 transfers from one river basin to another river basin to supplement groundwater supplies in the  
15 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E  
16 .0501 initiated on or after August 31, 2007, ~~by any person that does not hold a certificate for an~~  
17 ~~interbasin transfer on or before the effective date of this act, exceeds 8,000,000 gallons per~~  
18 ~~day exceeds 20,300,000 gallons per day.~~

19 "**SECTION 4.(c)** Any transfer of water from one river basin to another river basin to  
20 supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain  
21 Capacity Use Area under 15A NCAC 2E .0501 initiated while Section 1 of this act is effective  
22 shall not require certification pursuant to G.S. 143-215.22L upon expiration of Section 1 of this  
23 act."

24 **SECTION 3.(c)** Section 7 of S.L. 2007-518, as amended by Section 4 of S.L.  
25 2010-155 and Section 2 of S.L. 2011-298, reads as rewritten:

26 "~~**SECTION 7.(a)** Except as provided in subsections (b), (c) and (d) of this section, this~~  
27 **SECTION 7.** This act becomes effective when it becomes law and applies to any petition for a  
28 certificate for a transfer of surface water from one river basin to another river basin first made  
29 on or after that date.

30 "~~**SECTION 7.(c)** For purposes of this subsection, "isolated river basin" means each of the~~  
31 ~~following river basins set out in G.S. 143-215.22G(1):~~

32 g. 2-6 New River.  
33 v. 9-4 Charlotte River.  
34 aa. 12-1 Albemarle Sound.  
35 hh. 17-1 White Oak River.

36 ~~For a petition for a certificate for transfer of surface water from a river basin to an isolated~~  
37 ~~river basin, this act becomes effective 1 July 2020. Prior to 1 July 2020, a petition for a~~  
38 ~~certificate for transfer of surface water from a river basin to an isolated river basin shall be~~  
39 ~~considered and acted upon by the Environmental Management Commission pursuant to the~~  
40 ~~procedures and standards set out in G.S. 143-215.22I on 1 July 2007.~~

41 "~~**SECTION 7.(d)** Notwithstanding subsection (c) of this section, an applicant for a~~  
42 ~~certificate for transfer of surface water from a river basin to an isolated river basin may request~~  
43 ~~that the applicant be subject to the certification process that would apply if the transfer was not~~  
44 ~~into an isolated river basin."~~

45 **SECTION 4.** This act is effective when it becomes law.