

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE BILL 89  
State Government, Local Government, and Veterans' Affairs Committee  
Substitute Adopted 5/14/03  
Finance Committee Substitute Adopted 5/28/03

Short Title: Lake Lure Marine Commission.

(Public)

Sponsors:

Referred to:

February 19, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE LAKE LURE MARINE COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 77 of the General Statutes is amended by adding a new Article to read:

"Article 7A.

"Lake Lure Marine Commission.

**"§ 77-80. Definitions.**

For purposes of this Article:

- (1) "Board" means the Board of Commissioners of the Town of Lake Lure.
- (2) "Commission" means the Lake Lure Marine Commission or its governing board, as the case may be.
- (3) "Commissioner" means a member of the governing board of the Lake Lure Marine Commission.
- (4) Lake Lure Reservoir, known for purposes of this Article as "Lake Lure" or "the waters of Lake Lure", means the body of water along the Broad River in Rutherford County, impounded by the dam at Tumbling Shoals, and lying below the 995-foot contour line above sea level.
- (5) "Shoreline area" means the area submerged by the dam at Tumbling Shoals, lying below 955 feet above mean sea level of the normal full pond elevation of 992 feet above mean sea level, on Lake Lure.
- (6) "Wildlife Commission" means the North Carolina Wildlife Resources Commission.

**"§ 77-81. Creation of Commission authorized.**

1        The Board of Commissioners of the Town of Lake Lure may by ordinance create the  
2 Lake Lure Marine Commission. The Board shall hold a public hearing on the ordinance  
3 to create the Commission. The location of the public hearing shall be determined by the  
4 Boards and established by resolution. The Board shall cause notice of the hearing to be  
5 published once a week for two successive calendar weeks in a newspaper of general  
6 circulation in Rutherford County. The notice shall be published the first time not less  
7 than 10 days nor more than 25 days before the date fixed for the hearing. Upon its  
8 creation the Commission shall enjoy the powers and have the duties and responsibilities  
9 conferred upon it by the Lake Lure municipal ordinance, subject to the provisions of  
10 this Article and the laws of the State of North Carolina. The provisions of any ordinance  
11 may be modified, amended, or rescinded by a subsequent ordinance.

12 **"§ 77-82. Governing board.**

13        Upon its creation, the Commission shall have a governing board. The governing  
14 board shall, unless otherwise stated by ordinance, be the Board of Commissioners of the  
15 Town of Lake Lure.

16 **"§ 77-83. Compensation; budgetary and accounting procedures.**

17        The municipal ordinance shall state the terms relating to compensation to  
18 commissioners, if any, compensation of consultants and staff members employed by the  
19 Commission, and reimbursement of expenses incurred by commissioners, consultants,  
20 and employees. The Commission shall be governed by these budgetary and accounting  
21 procedures as may be specified by the municipal ordinance and the applicable laws of  
22 North Carolina.

23 **"§ 77-84. Organization and meetings.**

24        Upon creation of the Commission, its governing board shall meet at a time and place  
25 set by the Town of Lake Lure ordinance. Unless otherwise stated in the ordinance, the  
26 mayor of the Town of Lake Lure shall act as the presiding officer. The governing board  
27 shall adopt such rules and regulations as it may consider necessary, not inconsistent  
28 with the provisions of this Article or of any ordinance of the Town of Lake Lure or the  
29 laws of the State of North Carolina, for the proper discharge of its duties and for the  
30 governance of the Commission. In order to conduct business, a quorum must be present.  
31 The presiding officer may appoint those committees as may be authorized by such rules  
32 and regulations. The Commission shall meet regularly at those times and places as may  
33 be specified in its rules and regulations or in the Town of Lake Lure municipal  
34 ordinance. Special meetings may be called as specified in the rules and regulations. The  
35 provisions of the Open Meetings Law, Article 33C of Chapter 143 of the General  
36 Statutes, apply.

37 **"§ 77-85. Powers of Commission; administrative provision.**

38        (a) Within the limits of funds available to it, and subject to the provisions of this  
39 Article and of the Town of Lake Lure municipal ordinance, the Commission may:

- 40            (1) Hire and fix the compensation of permanent and temporary employees  
41            and staff as it may consider necessary in carrying out its duties;
- 42            (2) Contract with consultants for such services as it may require;
- 43            (3) Contract with the State of North Carolina or the federal government, or  
44            any agency or department or subdivision of them, for property or

1 services as may be provided to or by these agencies, and carry out the  
2 provisions of such contracts;

3 (4) Contract with persons, firms, and corporations generally as to all  
4 matters over which it has a proper concern, and carry out the  
5 provisions of such contracts;

6 (5) Lease, rent, purchase, or otherwise obtain suitable quarters and office  
7 space for its employees and staff, and lease, rent, purchase, or  
8 otherwise obtain furniture, fixtures, vehicles, uniforms, and other  
9 supplies and equipment necessary or desirable for carrying out the  
10 duties imposed in or under the authority of this Article; and

11 (6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate,  
12 repair, and replace, either on its own or in cooperation with other  
13 public or private agencies or individuals, any of the following: boat  
14 docks, navigation aids, waterway markers, public information signs  
15 and notices, and other items of real and personal property designed to  
16 enhance public recreation, public safety on the waters of Lake Lure  
17 and its shoreline area, or protection of property in the shoreline area,  
18 subject, however, to the provisions of Chapter 113 of the General  
19 Statutes and rules promulgated under that Chapter as to property  
20 within North Carolina.

21 (b) The Commission may accept, receive, and disburse in furtherance of its  
22 functions any funds, grants, services, or property made available by the federal  
23 government or its agencies or subdivisions, or by private and civic sources.

24 (c) The Board of Commissioners of the Town of Lake Lure may appropriate  
25 funds to the Commission out of surplus funds or funds derived from nontax sources. It  
26 may appropriate funds out of tax revenues and may also levy annually taxes for the  
27 payment of such appropriation as a special purpose, in addition to any allowed by the  
28 North Carolina Constitution or as provided by G.S. 160A-209.

29 (d) The Commission shall be subject to such audit requirements as may be  
30 specified in the municipal ordinance.

31 (e) In carrying out its duties, and either in addition to or in lieu of exercising  
32 various provisions of the above authorizations, the Commission may, with the  
33 agreement of the Board of Commissioners of the Town of Lake Lure, utilize personnel  
34 and property of or assign responsibilities to any officer or employee of the Town of  
35 Lake Lure. Such contribution in kind, if substantial, may with agreement between the  
36 Board and the Commission be considered to substitute in whole or in part for the  
37 financial contribution required of the Town in support of the Commission.

38 **"§ 77-86. Filing and publication of applicable municipal ordinances.**

39 (a) A copy of the initial municipal ordinance creating the Commission and of any  
40 ordinance amending or repealing the resolution creating the Commission shall be filed  
41 with:

42 (1) The Executive Director of the Wildlife Commission.

43 (2) The Secretary of State.

44 (3) The clerk to the Town of Lake Lure.

1           (4) The clerk of superior court of Rutherford County. Upon request, the  
2           Executive Director shall also send a certified single copy of any and all  
3           applicable ordinances to the chairman of the Commission.

4           (5) A newspaper of general circulation in Rutherford County.

5           (b) Unless the municipal ordinance specifies a later date, it shall take effect when  
6           the text has been submitted to the Secretary of State for filing. Certifications of the  
7           Board under the seal of the Commission as to the text or amended text of any municipal  
8           ordinance and of the date or dates of submission to the Secretary of State shall be  
9           admissible in evidence in any court. Certifications by the clerk of superior court of  
10           Rutherford County of the text of any certified ordinance filed with the clerk by the  
11           Board is admissible in evidence and the Board's submission of the resolution for filing  
12           to the clerk shall constitute prima facie evidence that such resolution was on the date of  
13           submission also submitted for filing with the Secretary of State. Except for the  
14           certificate of a clerk as to receipt and date of submission, no evidence may be admitted  
15           in court concerning the submission of the certified text of any ordinance by the Board to  
16           any person other than the Secretary of State.

17           **"§ 77-87. Regulatory authority.**

18           (a) Except as limited in subsection (b) of this section, by restrictions in any  
19           municipal ordinance, and by other supervening provisions of law, the Commission may  
20           make regulations applicable to Lake Lure and its shoreline area concerning all matters  
21           relating to or affecting the use of Lake Lure. These regulations may not conflict with  
22           provisions of general or special acts or of regulations of State agencies promulgated  
23           under the authority of general law. No regulations adopted under the provisions of this  
24           section may be adopted by the Commission except after public hearing, with publication  
25           of notice of the hearing in a newspaper of general circulation in Rutherford County at  
26           least 10 days before the hearing. In lieu of or in addition to passing regulations  
27           supplementary to State law and regulations concerning the operation of vessels on Lake  
28           Lure, the Commission may, after public notice, request that the Wildlife Resources  
29           Commission pass local regulations on this subject in accordance with the procedure  
30           established by appropriate State law.

31           (b) Violation of any regulation of the Commission commanding or prohibiting an  
32           act shall be a Class 3 misdemeanor.

33           (c) The regulations promulgated under this section take effect upon passage or  
34           upon such dates as may be stipulated in the regulations except that no regulation may be  
35           enforced unless adequate notice of the regulation has been posted in or on Lake Lure or  
36           its shoreline area. Ordinances providing regulations for specific areas shall clearly  
37           establish the boundaries of the affected area by including a map of the regulated area,  
38           with the boundaries clearly drawn, by setting out the boundaries in a written description,  
39           or by a combination of these techniques. Adequate notice as to a regulation affecting  
40           only a particular location shall be given in the following manner. When an ordinance  
41           providing regulations for a specific area is proposed, owners of the parcel of land  
42           involved as shown on the county tax listing, and the owners of land within 500 feet of  
43           the proposed area to be regulated, as shown on the county tax listing, shall be mailed a  
44           notice of the proposed classification by first-class mail at the last addresses listed for

1 such owners on the county tax abstracts. This mailing requirement does not apply in  
2 regulations affecting the entire lake. Notice shall also be given by a sign, uniform  
3 waterway marker, posted notice, or other effective method of communicating the  
4 essential provisions of the regulation in the immediate vicinity of the location in  
5 question. Where a regulation applies generally as to the waters of Lake Lure or its  
6 shoreline area, or both, there must be a posting of notices, signs, or markers  
7 communicating the essential provisions in at least three different places throughout the  
8 area, and it shall be printed in a newspaper of general circulation in Rutherford County.

9 (d) A copy of each regulation promulgated under this section must be filed by the  
10 Commission with the following persons:

11 (1) The Secretary of State;

12 (2) The clerk of superior court of Rutherford County;

13 (3) The Executive Director of the Wildlife Resources Commission; and

14 (4) The federal Energy Regulatory Commission licensee for Lake Lure, if  
15 other than the Town of Lake Lure.

16 (e) Any official designated in subsection (d) of this section may issue certified  
17 copies of regulations filed with the official under the seal of the official's office. Such  
18 certified copies may be received in evidence in any proceeding.

19 (f) Publication and filing of regulations promulgated under this section as  
20 required above are for informational purposes and are a prerequisite to their validity if  
21 they in fact have been duly promulgated, the public has been notified as to the substance  
22 of the regulations, a copy of the text of all regulations is in fact available to any person  
23 who may be affected, and no party to any proceeding has been prejudiced by any defect  
24 that may exist with respect to publication and filing. Rules and regulations promulgated  
25 by the Commission under the provisions of other sections of this Article relating to  
26 internal governance of the Commission need not be filed or published. Where posting of  
27 any sign, notice, or marker, or the making of other communication is essential to the  
28 validity of a regulation duly promulgated, it is presumed in any proceeding that prior  
29 notice was given and maintained, and the burden lies upon the party asserting to the  
30 contrary to prove lack of adequate notice of any regulation.

31 **"§ 77-88. Enforcement.**

32 (a) Where a municipal ordinance so provides, all law enforcement officers, or  
33 those officers as may be designated in the municipal ordinance, with territorial  
34 jurisdiction as to any part of the waters of Lake Lure or its shoreline area within the  
35 limitations of their subject matter jurisdiction, have the authority of peace officers in  
36 enforcing the laws over all of the waters of Lake Lure and its shoreline area. A  
37 certificate of training issued by the North Carolina Criminal Justice Education and  
38 Training Standards Commission or the North Carolina Sheriffs' Education and Training  
39 Standards Commission will suffice for certification for the purposes of this Article.

40 (b) Where a law enforcement officer with jurisdiction over any part of the waters  
41 of Lake Lure or its shoreline area is performing duties relating to the enforcement of the  
42 laws on the waters of Lake Lure or in its shoreline area, the officer shall have such  
43 extraterritorial jurisdiction as may be necessary to perform the officer's duties. These  
44 duties include investigations of crimes an officer reasonably believes have been, or are

1 about to be, committed within the area in question. This includes traversing by  
2 reasonable routes from one portion of this area to another although across territory not  
3 within the boundaries of the waters of Lake Lure and its shoreline area; conducting  
4 prisoners in custody to a court or to detention facilities as may be authorized by law,  
5 although this may involve going outside the area in question; execution of process  
6 connected with any criminal offense alleged to have been committed within the  
7 boundaries in question, except that this process may not be executed by virtue of this  
8 provision beyond the boundaries of Rutherford County. This also includes continuing  
9 pursuit of and arresting any violator or suspected violator as to which grounds for arrest  
10 arose within the area in question.

11 (d) Where law enforcement officers are given additional territorial jurisdiction  
12 under the provisions of this section, this shall be considered an extension of the duties of  
13 the office held, and no officer shall take any additional oath or title of office."

14 **SECTION 2.** This act is effective when it becomes law.