

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 990\*

Short Title: Regulate Interbasin Transfers.

(Public)

Sponsors: Representatives Gottovi; Bowman, Colton, DeVane, Gardner, McAllister, Richardson, and Spears.

Referred to: Environment.

April 19, 1993

A BILL TO BE ENTITLED  
AN ACT TO REGULATE INTERBASIN TRANSFERS.

The General Assembly of North Carolina enacts:

Section 1. Part 2A of Article 21 of Chapter 143 of the General Statutes reads as rewritten:

**"PART 2A. REGISTRATION OF WATER WITHDRAWALS AND TRANSFERS.**

**TRANSFERS; REGULATION OF SURFACE WATER TRANSFERS.**

**"§ 143-215.22G. Definitions.**

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

(1) 'River basin' means any of the following river basins designated on the map entitled 'Major River Basins and Sub-basins in North Carolina' and filed in the Office of the Secretary of State on 16 April 1991:

- a. 1-1 Broad River.
- b. 2-1 Haw River.
- c. 2-2 Deep River.
- d. 2-3 Cape Fear River.
- e. 2-4 South River.
- f. 2-5 Northeast Cape Fear River.
- g. 2-6 New River.
- h. 3-1 Catawba River.
- i. 3-2 South Fork Catawba River.

1	j.	4-1	Chowan River.
2	k.	4-2	Meherrin River.
3	l.	5-1	Nolichucky River.
4	m.	5-2	French Broad River.
5	n.	5-3	Pigeon River.
6	o.	6-1	Hiwassee River.
7	p.	7-1	Little Tennessee River.
8	q.	7-2	Tuskasegee (Tuckasegee) River.
9	r.	8-1	Savannah River.
10	s.	9-1	Lumber River.
11	t.	9-2	Big Shoe Heel Creek.
12	u.	9-3	Waccamaw River.
13	v.	9-4	Shalotte River.
14	w.	10-1	Neuse River.
15	x.	10-2	Contentnea Creek.
16	y.	10-3	Trent River.
17	z.	11-1	New River.
18	aa.	12-1	Albemarle Sound.
19	bb.	13-1	Ocoee River.
20	cc.	14-1	Roanoke River.
21	dd.	15-1	Tar River.
22	ee.	15-2	Fishing Creek.
23	ff.	15-3	Pamlico River and Sound.
24	gg.	16-1	Watauga River.
25	hh.	17-1	White Oak River.
26	ii.	18-1	Yadkin (Yadkin-Pee Dee) River.
27	jj.	18-2	South Yadkin River.
28	kk.	18-3	Uwharrie River.
29	ll.	18-4	Rocky River.

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

32 (3) 'Transfer' means the withdrawal, diversion, or pumping of surface  
33 water from one river basin and discharge of all or any part of the water  
34 in a river basin different from the origin.

35 **"§ 143-215.22H. Registration of water withdrawals and transfers required.**

36 (a) Any person who withdraws 1,000,000 gallons per day or more of water from  
37 the surface waters of the State or who transfers 1,000,000 gallons per day or more of  
38 water from one river basin to another shall register the withdrawal or transfer with the  
39 Commission. A person registering a water withdrawal or transfer shall provide the  
40 Commission with the following information:

41 (1) The maximum daily amount of the water withdrawal or transfer  
42 expressed in millions of gallons per day.

43 (2) The location of the points of withdrawal and discharge and the  
44 capacity of each facility used to make the withdrawal or transfer.

1 (b) Any person initiating a new surface water withdrawal or transfer of 1,000,000  
2 gallons per day or more shall register the withdrawal or transfer with the Commission  
3 not later than six months after the initiation of the withdrawal or transfer. The  
4 information required under subsection (a) of this section shall be submitted with respect  
5 to the new withdrawal or transfer.

6 **"§ 143-215.22I. Regulation of surface water transfers.**

7 (a) No person may do any of the following without first securing a certificate  
8 from the Commission:

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

11 (2) Construct a facility designed to increase an existing transfer of water  
12 from one river basin to another if the increase equals or exceeds  
13 twenty-five percent (25%) of the capacity of the existing facilities or if  
14 the increase would cause the transfer to equal or exceed 2,000,000  
15 gallons per day.

16 (b) An applicant for a certificate shall petition the Commission for the certificate.  
17 The petition shall be in writing and shall include the following:

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

21 (2) A description of the proposed uses of the water to be transferred.

22 (3) The water conservation measures to be used by the applicant to assure  
23 efficient use of the water and avoidance of waste.

24 (4) Any other information deemed necessary by the Commission for  
25 review of the proposed water transfer.

26 (c) Upon receipt of the petition, the Commission shall hold a public hearing on  
27 the proposed transfer after giving at least 30 days' written notice of the hearing as  
28 follows:

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

30 (2) By publishing notice in a newspaper of general circulation in the area  
31 of the river basin downstream from the point of withdrawal.

32 (3) By giving notice by first-class mail to each of the following:

33 a. A person who has registered under this Part a water withdrawal  
34 or transfer from the same river basin where the water for the  
35 proposed transfer would be withdrawn.

36 b. A person who secured a certificate under this Part for a water  
37 transfer from the same river basin where the water for proposed  
38 transfer would be withdrawn.

39 c. A person holding a National Pollutant Discharge Elimination  
40 System (NPDES) wastewater discharge permit exceeding  
41 100,000 gallons per day for a discharge located downstream  
42 from the proposed withdrawal point of the proposed transfer.

- 1           d. The board of county commissioners of each county that is  
2           located entirely or partially within the river basin that is the  
3           source of the proposed transfer.
- 4           e. The governing body of any municipality that: (i) withdraws  
5           water from the main stem of the river basin that is the source of  
6           the proposed transfer and (ii) is located downstream of the  
7           withdrawal point of the proposed transfer.
- 8           (d) The notice of the public hearing shall include a nontechnical description of  
9           the applicant's request and a conspicuous statement in bold type as to the effects of the  
10           water transfer on the source and receiving river basins. The notice shall further indicate  
11           the procedure to be followed by anyone wishing to submit comments on the proposed  
12           water transfer.
- 13           (e) In determining whether a certificate may be issued for the transfer, the  
14           Commission shall specifically consider each of the following items and state in writing  
15           its findings of fact with regard to each item:
- 16           (1) The necessity, reasonableness, and beneficial effects of the amount of  
17           surface water proposed to be transferred and its proposed uses.
- 18           (2) The present and reasonably foreseeable future detrimental effects on  
19           the source river basin, including effects on public, industrial, and  
20           agricultural water supply, wastewater assimilation, water quality, fish  
21           and wildlife habitat, hydroelectric power generation, navigation,  
22           recreation, and any other relevant factors.
- 23           (3) The detrimental effects on the receiving river basin, including effects  
24           on water quality, wastewater assimilation, fish and wildlife habitat,  
25           navigation, recreation, flooding, and any other relevant factors.
- 26           (4) The reasonable alternatives to the proposed transfer, including their  
27           probable cost, environmental impacts, and any other significant  
28           factors.
- 29           (5) Mitigation measures proposed to minimize the detrimental effects.
- 30           (6) The applicant's present efforts and plans to impound water.
- 31           (7) The protection of the availability of water in the source river basin to  
32           respond to emergencies, including drought.
- 33           (8) Any other facts and circumstances that are reasonably necessary to  
34           carry out the purposes of this Part.
- 35           (f) No certificate shall be granted for a water transfer unless the Commission  
36           concludes by a preponderance of the evidence based upon the preceding findings of fact  
37           that:
- 38           (1) The present and reasonably foreseeable future water needs of the  
39           source river basin are protected for the duration of the certificate  
40           including municipal, industrial, and agricultural water supply,  
41           wastewater assimilation, water quality, fish and wildlife habitat,  
42           hydroelectric power generation, navigation, recreation, emergency  
43           water needs, and any other significant factors.
- 44           (2) The benefits of the proposed transfer outweigh its potential detriments.

- 1           (3) Significant detrimental effects have been mitigated to the extent  
2           reasonably possible and all reasonable alternatives have been  
3           considered.
- 4           (4) The amount of water to be transferred and its proposed uses are both  
5           necessary and reasonable.
- 6           (5) The applicant, or any parent, subsidiary, or other affiliate of the  
7           applicant or parent is financially qualified to implement its  
8           responsibilities under the certificate. As used in this subdivision, the  
9           words 'affiliate,' 'parent,' and 'subsidiary' have the same meaning as in  
10           17 Code of Federal Regulations § 240.12b-2 (April 1, 1990 Edition).
- 11           (6) The applicant, or any parent, subsidiary, or other affiliate of the  
12           applicant or parent has been in substantial compliance with other  
13           federal and state laws, regulations, and rules for the protection of the  
14           environment. As used in this subdivision, the words 'affiliate,' 'parent,'  
15           and 'subsidiary' have the same meaning as in 17 Code of Federal  
16           Regulations § 240.12b-2 (April 1, 1990 Edition).
- 17           (g) The Commission may grant the certificate in whole or in part, or deny the  
18           certificate. No person shall transfer an amount of water that exceeds the amount in the  
19           certificate."
- 20           Sec. 2. G.S. 143-215.6A(a) reads as rewritten:
- 21           "(a) A civil penalty of not more than ten thousand dollars (\$10,000) may be  
22           assessed by the Secretary against any person who:
- 23           (1) Violates any classification, standard, limitation, or management  
24           practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-  
25           215.
- 26           (2) Is required but fails to apply for or to secure a permit required by G.S.  
27           143-215.1, or who violates or fails to act in accordance with the terms,  
28           conditions, or requirements of such permit or any other permit or  
29           certification issued pursuant to authority conferred by this Part,  
30           including pretreatment permits issued by local governments and  
31           laboratory certifications.
- 32           (3) Violates or fails to act in accordance with the terms, conditions, or  
33           requirements of any special order or other appropriate document issued  
34           pursuant to G.S. 143-215.2.
- 35           (4) Fails to file, submit, or make available, as the case may be, any  
36           documents, data, or reports required by this Article or G.S. 143-355(k)  
37           relating to water use information.
- 38           (5) Refuses access to the Commission or its duly designated representative  
39           to any premises for the purpose of conducting a lawful inspection  
40           provided for in this Article.
- 41           (6) Violates a rule of the Commission implementing this ~~Part~~ Part, Part 2A  
42           of this Article, or G.S. 143-355(k).
- 43           (7) Violates or fails to act in accordance with the statewide minimum  
44           water supply watershed management requirements adopted pursuant to

1 G.S. 143-214.5, whether enforced by the Commission or a local  
2 government.

3 (8) Violates the offenses set out in G.S. 143-215.6B.

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

7 Sec. 3. G.S. 153A-285 reads as rewritten:

8 "**§ 153A-285. Prerequisites to acquisition of water, water rights, etc.**

9 The word 'authority' as used in G.S. 162A-7(b) through (f) includes counties and  
10 cities acting jointly or through joint agencies to provide water services or sewer services  
11 or both. No county or city acting jointly and no joint agency may ~~divert water from one~~  
12 ~~stream or river to another nor~~ institute any proceeding in the nature of eminent domain to  
13 acquire water, water rights, or lands having water rights attached thereto until the  
14 ~~diversion or~~ acquisition is authorized by a certificate from the Environmental  
15 Management Commission pursuant to G.S. 162A-7. Any proceeding to secure a  
16 certificate from the Environmental Management Commission shall be governed by the  
17 provisions of G.S. 162A-7(b) through 162A-7(f)."

18 Sec. 4. G.S. 143B-282(a)(2) reads as rewritten:

19 "(2) The Environmental Management Commission shall adopt rules:

20 a. For air quality standards, emission control standards and  
21 classifications for air contaminant sources pursuant to G.S. 143-  
22 215.107;

23 b. For water quality standards and classifications pursuant to G.S.  
24 143-214.1 and G.S. 143-215;

25 c. To implement water and air quality reporting pursuant to G.S.  
26 143-215.68;

27 d. To be applied in capacity use areas pursuant to G.S. 143-  
28 215.14;

29 e. To implement the issuance of permits for water use within  
30 capacity use areas pursuant to G.S. 143-215.20;

31 f. Repealed by Session Laws 1983, c. 222, s. 3, effective April 25,  
32 1983;

33 g. For the protection of the land and the waters over which this  
34 State has jurisdiction from pollution by oil, oil products and oil  
35 by-products pursuant to Article 21A of Chapter 143.

36 h. Governing underground tanks used for the storage of hazardous  
37 substances or oil pursuant to Article 21 or Article 21A of  
38 Chapter 143 of the General Statutes.

39 i. To implement the provisions of Part 2A of Article 21 of  
40 Chapter 143 of the General Statutes."

41 Sec. 5. G.S. 153A-287 is repealed.

42 Sec. 6. G.S. 162A-7 is repealed.

43 Sec. 7. This act becomes effective July 1, 1993.