

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10221-MH-130

Short Title: Interbasin Transfer Clarifying Amends.

(Public)

Sponsors: Representative Yarborough.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE INTERBASIN TRANSFER STATUTES.
3 The General Assembly of North Carolina enacts:

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

5 "**§ 143-215.22L. Regulation of surface water transfers.**

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

8 (1) Initiate a transfer of 2,000,000 gallons of water or more per day, calculated as
9 a daily average of a calendar month and not to exceed 3,000,000 gallons per
10 day in any one day, from one river basin to another.

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

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

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

22 (b1) Impact of Regional Water Supply Agreement. – Public water systems within the same
23 receiving river basin that are part of an interlocal agreement or other regional water supply
24 arrangement shall not add together the individual transfer amounts for each system for the purpose
25 of determining whether a certificate is required from the Commission under subsection (a) of this
26 section.

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



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

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

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

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

10 b. Each city or county located in a state located in whole or in part of the
11 surface drainage basin area of the source river basin that also falls
12 within, in whole or in part, the area denoted by one of the following
13 eight-digit cataloging units as organized by the United States
14 Geological Survey:

15 03050105 (Broad River: NC and SC);

16 03050106 (Broad River: SC);

17 03050107 (Broad River: SC);

18 03050108 (Broad River: SC);

19 05050001 (New River: NC and VA);

20 05050002 (New River: VA and WV);

21 03050101 (Catawba River: NC and SC);

22 03050103 (Catawba River: NC and SC);

23 03050104 (Catawba River: SC);

24 03010203 (Chowan River: NC and VA);

25 03010204 (Chowan River: NC and VA);

26 06010105 (French Broad River: NC and TN);

27 06010106 (French Broad River: NC and TN);

28 06010107 (French Broad River: TN);

29 06010108 (French Broad River: NC and TN);

30 06020001 (Hiwassee River: AL, GA, TN);

31 06020002 (Hiwassee River: GA, NC, TN);

32 06010201 (Little Tennessee River: TN);

33 06010202 (Little Tennessee River: TN, GA, and NC);

34 06010204 (Little Tennessee River: NC and TN);

35 03060101 (Savannah River: NC and SC);

36 03060102 (Savannah River: GA, NC, and SC);

37 03060103 (Savannah River: GA and SC);

38 03060104 (Savannah River: GA);

39 03060105 (Savannah River: GA);

40 03040203 (Lumber River: NC and SC);

41 03040204 (Lumber River: NC and SC);

42 03040206 (Lumber River: NC and SC);

43 03040207 (Lumber River: NC and SC);

44 03010205 (Albemarle Sound: NC and VA);

45 06020003 (Ocoee River: GA, NC, and TN);

46 03010101 (Roanoke River: VA);

47 03010102 (Roanoke River: NC and VA);

48 03010103 (Roanoke River: NC and VA);

49 03010104 (Roanoke River: NC and VA);

50 03010105 (Roanoke River: VA);

51 03010106 (Roanoke River: NC and VA);

- 1 06010102 (Watauga River: TN and VA);
2 06010103 (Watauga River: NC and TN);
3 03040101 (Yadkin River: VA and NC);
4 03040104 (Yadkin River: NC and SC);
5 03040105 (Yadkin River: NC and SC);
6 03040201 (Yadkin River: NC and SC);
7 03040202 (Yadkin River: NC and SC).
- 8 c. Each county in this State located in whole or in part of the area of the
9 source river basin downstream from the proposed point of withdrawal.
- 10 d. Any area in the State in a river basin for which the source river basin
11 has been identified as a future source of water in a local water supply
12 plan prepared pursuant to G.S. 143-355(l).
- 13 e. Each county in the State located in whole or in part of the receiving
14 river basin.
- 15 f. The Department shall create, maintain, and annually update a list of
16 newspapers of general circulation for each county in the State. The
17 Department shall designate at least one newspaper for each county and
18 shall make the list available on its website. Publication of notice in the
19 newspaper designated by the Department for a particular county shall
20 be deemed compliant with the notice requirement of this subdivision
21 with respect to (i) an applicant's publication of the notice of intent to
22 file a petition, for each county in which notice must be published, (ii)
23 the Commission's publication of notice of the public hearing on the
24 draft environmental document, notice of its draft determination on the
25 applicant's environmental document, or notice of public hearing on the
26 Commission's draft determination, for the county or counties in which
27 these notices must be published, and (iii) any requirement that
28 publication also be made in a newspaper of general circulation in any
29 city within that county. The Department's designation of a newspaper
30 pursuant to this subsection is not an agency decision subject to
31 review in a contested case under Article 3 of Chapter 150B of the
32 General Statutes, nor is the designation of a newspaper subject to
33 review in any contested case challenging the Commission's grant of a
34 certificate pursuant to this section.
- 35 (3) By giving notice by first-class mail or electronic mail to each of the following:
- 36 a. The board of commissioners of each county in this State or the
37 governing body of any county or city that is politically independent of
38 a county in any state that is located entirely or partially within the
39 source river basin of the proposed transfer and that also falls within, in
40 whole or in part, the area denoted by one of the eight-digit cataloging
41 units listed in sub-subdivision b. of subdivision (2) of this subsection.
- 42 b. The board of commissioners of each county in this State or the
43 governing body of any county or city that is politically independent of
44 a county in any state that is located entirely or partially within the
45 receiving river basin of the proposed transfer and that also falls within,
46 in whole or in part, the area denoted by one of the eight-digit
47 cataloging units listed in sub-subdivision b. of subdivision (2) of this
48 subsection.
- 49 c. The governing body of any public water system that withdraws water
50 upstream or downstream from the withdrawal point of the proposed
51 transfer.

- 1 d. If any portion of the source or receiving river basins is located in
2 another state, all state water management or use agencies,
3 environmental protection agencies, and the office of the governor in
4 that state upstream or downstream from the withdrawal point of the
5 proposed transfer.
- 6 e. All persons who have registered a water withdrawal or transfer from
7 the proposed source river basin under this Part or under similar law in
8 an another state.
- 9 f. All persons who hold a certificate for a transfer of water from the
10 proposed source river basin under this Part or under similar law in an
11 another state.
- 12 g. All persons who hold a National Pollutant Discharge Elimination
13 System (NPDES) wastewater discharge permit for a discharge of
14 100,000 gallons per day or more upstream or downstream from the
15 proposed point of withdrawal.
- 16 h. To any other person who submits to the applicant a written request to
17 receive all notices relating to the petition.

18 ...

19 (e) Public Hearing on the Draft Environmental Document. – The Commission shall hold
20 a public hearing on the draft environmental document for a proposed interbasin transfer after
21 giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as
22 provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate (i)
23 where a copy of the environmental document can be reviewed and reviewed, (ii) the procedure
24 to be followed by anyone wishing to submit written comments and questions on the
25 environmental document, and (iii) that administrative review of the environmental
26 document will be limited to issues raised in submitted written comments. The Commission shall
27 prepare a record of all comments and written responses to questions posed in writing. The record
28 shall include complete copies of scientific or technical comments related to the potential impact
29 of the interbasin transfer. The Commission shall accept written comment on the draft
30 environmental document for a minimum of 30 days following the last public hearing. The
31 applicant who petitions the Commission for a certificate under this section shall pay the costs
32 associated with the notice and public hearing on the draft environmental document.

33 (f) Determination of Adequacy of Environmental Document. – The Commission shall
34 not act on any petition for an interbasin transfer until the Commission has determined that the
35 environmental document is complete and adequate. A decision on the completeness and
36 adequacy of the environmental document is only subject to review in a contested case on the
37 decision of the Commission to issue or deny a certificate under this section when the
38 petition for contested case is filed by a person who previously submitted written comments
39 pursuant to subsection (e) of this section objecting to the completeness or adequacy of the
40 environmental document and setting out the reason or reasons the environmental document is
41 incomplete or is inadequate, and any administrative hearing on the contested case shall consider only
42 the objections set out in the petitioner's previously submitted written comments.

43 ...

44 (h) Settlement Discussions. – ~~Upon the request of~~ During the comment period on the
45 draft environmental document and before the determination of its adequacy, the applicant, any
46 interested party, party who has timely submitted written comments regarding the petition, or the
47 Department, Department may request, or upon its own motion, motion the Commission may
48 appoint appoint, a mediation officer. The mediation officer may be a member of the Commission,
49 an employee of the Department, or a neutral third party but shall not be a hearing officer under
50 subsections (e) or (j) of this section. The mediation officer shall make a reasonable effort to
51 initiate settlement discussions between the applicant and all other interested parties. Evidence of

1 statements made and conduct that occurs in a settlement discussion conducted under this
2 subsection, whether attributable to a party, a mediation officer, or other person shall not be
3 subject to discovery and shall be inadmissible in any subsequent proceeding on the petition for a
4 certificate. The Commission may adopt rules to govern the conduct of the mediation process.

5 ...

6 (j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the
7 draft determination as provided in subsection (i) of this section, the Commission shall hold public
8 hearings on the draft determination. At least one hearing shall be held in the affected area of the
9 source river basin, and at least one hearing shall be held in the affected area of the receiving river
10 basin. In determining whether more than one public hearing should be held within either the
11 source or receiving river basins, the Commission shall consider the differing or conflicting
12 interests that may exist within the river basins, including the interests of both upstream and
13 downstream parties potentially affected by the proposed transfer. The public hearings shall be
14 conducted by one or more hearing officers appointed by the Chair of the Commission. The
15 hearing officers may be members of the Commission or employees of the Department. The
16 Commission shall give at least 30 days' written notice of the public hearing as provided in
17 subsection (c) of this ~~section~~-section, and the notice shall include a statement that administrative
18 review of the completeness, adequacy of notice, and alternatives analysis of the draft
19 determination will be limited to issues raised in submitted written comments. The Commission
20 shall accept written comment on the draft determination for a minimum of 30 days following the
21 last public hearing. The Commission shall prepare a record of all comments and written responses
22 to questions posed in writing. The record shall include complete copies of scientific or technical
23 comments related to the potential impact of the interbasin transfer. The applicant who petitions
24 the Commission for a certificate under this section shall pay the costs associated with the notice
25 and public hearing on the draft determination.

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

29 ...

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

32 (8a) Whether the applicant's petition for a certificate is materially and substantially
33 complete and in accordance with the requirements of this section.

34 (8b) Whether the applicant materially and substantially complied with all
35 requirements for notice to be given by the applicant pursuant to this section.

36 (9) Any other facts and circumstances that are reasonably necessary to carry out
37 the purposes of this Part. The Commission's determinations in subdivisions
38 (8a) and (8b) of this subsection shall be subject to review in a contested case
39 challenging the decision of the Commission to issue or deny a certificate under
40 this section initiated by a person who previously submitted written comments
41 pursuant to subsection (j) of this section objecting to the Commission's draft
42 findings and conclusions of law required by subdivisions (8a) and (8b) of this
43 subsection and setting out the basis for each objection, and any administrative
44 hearing on the contested case shall consider only the objections set out in the
45 petitioner's previously submitted written comments.

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

49 (1) The petition.

50 (2) The environmental document prepared pursuant to subsection (d) of this
51 section.

- 1 (3) All oral and written comment and all accompanying materials or evidence
2 submitted pursuant to subsections (e) and (j) of this section.
- 3 (4) Information developed by or available to the Department on the water quality
4 of the source river basin and the receiving river basin, including waters that
5 are identified as impaired pursuant to section 303(d) of the federal Clean
6 Water Act (33 U.S.C. § 1313(d)), that are subject to a total maximum daily
7 load (TMDL) limit under subsections (d) and (e) of section 303 of the federal
8 Clean Water Act, or that would have their assimilative capacity impaired if
9 the certificate is issued.
- 10 (5) Any other information that the Commission determines to be relevant and
11 useful.
- 12 (m) Final Determination: Burden and Standard of Proof; Specific Findings. – The
13 Commission shall grant a certificate for a water transfer if the Commission finds that the
14 applicant has established by a preponderance of the evidence all of the following:
- 15 (1) The benefits of the proposed transfer outweigh the detriments of the proposed
16 transfer. In making this determination, the Commission shall be guided by the
17 approved environmental document and the policy set out in subsection (t) of
18 this section.
- 19 (2) The detriments have been or will be mitigated to the maximum degree
20 practicable.
- 21 (3) The amount of the transfer does not exceed the amount of the projected
22 shortfall under the applicant's water supply plan after first taking into account
23 all other sources of water that are available to the applicant.
- 24 (4) There are no reasonable alternatives to the proposed transfer. The
25 Commission's findings under this subdivision are reviewable in a contested
26 case under Article 3 of Chapter 150B of the General Statutes challenging the
27 decision of the Commission to issue or deny a certificate under this section
28 when the petition for a contested case is filed by a person who previously
29 submitted written comments pursuant to subsection (j) of this section
30 objecting to the Commission's draft findings and conclusions of law required
31 by subdivision (k)(5) of this section and setting forth the basis for each
32 objection, and any administrative hearing on the contested case shall consider only
33 the objections set out in the petitioner's previously submitted written comments.
34 Nothing in this subdivision is intended to limit a contested case challenging
35 findings or conclusions of law regarding alternatives in the final determination
36 that were altered or supplemented as a result of comments received on the
37 draft determination.
- 38 ...
- 39 (o) Administrative and Judicial Review. – ~~Administrative~~ Except as otherwise limited in
40 this section, administrative and judicial review of a final decision on a petition for a certificate
41 under this section shall be governed by Chapter 150B of the General Statutes.
- 42 ...
- 43 (q) Emergency Transfers. – In the case of water supply problems caused by drought, a
44 pollution incident, temporary failure of a water plant, or any other temporary condition in which
45 the public health, safety, or welfare requires a transfer of water, the Secretary of Environmental
46 Quality may grant approval for a temporary transfer. Prior to approving a temporary transfer, the
47 Secretary shall consult with those parties listed in subdivision (3) of subsection (c) of this section
48 that are likely to be affected by the proposed transfer. However, the Secretary shall not be
49 required to satisfy the public notice requirements of this section or make written findings of fact
50 and conclusions of law in approving a temporary transfer under this subsection. If the Secretary
51 approves a temporary transfer under this subsection, the Secretary shall specify conditions to

1 protect other water users. A temporary transfer shall not exceed six months in duration, but the
2 approval may be renewed for a period of six months by the Secretary based on demonstrated
3 need as set forth in this subsection.

4 (q1) Time-Sensitive Emergency. – When the Secretary of Environmental Quality finds (i)
5 that an acute emergency event such as a major equipment failure or system damage caused by a
6 natural disaster has caused a water supply problem and (ii) that there is not adequate time to
7 comply with the provisions of subsection (q) of this section, the Secretary may grant approval
8 for a temporary transfer not to exceed twenty-five percent (25%) of any transfer limits of an
9 existing certificate, or, if there is no certificate, not to exceed twenty-five percent (25%) of any
10 transfer limits determined in accordance with subsection (a) of this section. Any such temporary
11 transfer shall not initially exceed two weeks in duration, and the Secretary may extend such
12 transfer for additional periods of two weeks, upon written request and for good cause shown,
13 provided that the temporary transfer shall not be permitted for greater than 60 days in total based
14 on the same facts and circumstances. The Secretary's grant of such approval shall be in writing,
15 and the Secretary shall not be required to make written findings of fact or conclusions of law in
16 approving a temporary transfer under this subsection. If the Secretary approves a temporary
17 transfer pursuant to this subsection, the Secretary may specify any conditions required to protect
18 other water users. For purposes of this subsection, a drought shall not be considered an acute
19 emergency event.

20"

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