

NORTH CAROLINA GENERAL ASSEMBLY
1963 SESSION

CHAPTER 1086
SENATE BILL 409

1 AN ACT TO AMEND ARTICLE 21 OF CHAPTER 143 OF THE GENERAL STATUTES
2 OF NORTH CAROLINA RELATING TO STREAM SANITATION.

3
4 The General Assembly of North Carolina do enact:

5
6 **Section 1.** Subsection (a) of G.S. 143-215.3 as the same appears in the 1961
7 Supplement to the General Statutes, is hereby amended by adding thereto a new subdivision to
8 be designated as subdivision (7) and to read as follows:

9 "(7) To investigate any killing of fish and wildlife which, in the opinion of the
10 Committee, is of sufficient magnitude to justify investigation, and is known
11 or believed to have resulted from the pollution of waters as defined in this
12 Article, and whenever any person, whether or not he shall have been issued a
13 certificate of approval, permit or other document of approval authorized by
14 this or any other State law, has negligently, or carelessly, or unlawfully, or
15 willfully and unlawfully, caused pollution of waters as defined in this
16 Article, in such quantity, concentration or manner that fish or wildlife are
17 killed as a result thereof, the Committee may recover, in the name of the
18 State, damages from such person.

19 "The measures of damages shall be the amount determined by the
20 Committee and the North Carolina Wildlife Resources Commission or the
21 North Carolina Department of Conservation and Development, whichever
22 has jurisdiction over the fish or wildlife destroyed, to be the replacement
23 cost thereof plus the cost of all reasonable and necessary investigations made
24 or caused to be made by the State in connection therewith.

25 "Upon receipt of the estimate of damages caused, the Committee shall notify
26 the persons responsible for the destruction of the fish or wildlife in question
27 and may effect such settlement as it deems proper and reasonable and if no
28 settlement is reached within a reasonable time, the Committee shall bring 1 a
29 civil action to recover such damages in the Superior Court in the county in
30 which the discharge took place. Upon such action being brought the Superior
31 Court shall have jurisdiction to hear and determine all issues or questions of
32 law or fact, arising on the pleadings, including issues of liability and the
33 amount of damages.

34 "The State of North Carolina shall be deemed the owner of the fish or
35 wildlife killed and all actions for recovery shall be brought by the
36 Committee on behalf of the State as the owner of the fish or wildlife. The
37 fact that the person or persons alleged to be responsible for the pollution
38 which killed the fish or wildlife holds or has held a certificate of approval,
39 permit or other document of approval authorized by this Article or any other
40 law of the State shall not bar any such action.

41 "The proceeds of any recovery had, less the cost of investigations recovered
42 and retained or otherwise disbursed by the Committee to the appropriate
43 investigating agencies, shall be paid to the appropriate State agency to be

1 used to replace, insofar as and as promptly as possible, the fish and wildlife
2 killed, or in cases where replacement is not practicable, the proceeds shall be
3 used in whatever manner the responsible agency deems proper for improving
4 the fish and wildlife habitat in the waters in question. Any such funds
5 received are hereby appropriated for these designated purposes.

6 "Nothing in this subdivision shall be construed in any way to limit or prevent
7 any other action which is now authorized by this Article."

8 **Sec. 2.** All laws and clauses of laws in conflict with this Act are hereby repealed.

9 **Sec. 3.** This Act shall be in full force and effect from and after its ratification.

10 In the General Assembly read three times and ratified, this the 21st day of June,

11 1963.