

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 156

Short Title: Watershed Protection Rules.

(Public)

Sponsors: Representatives Fussell, B. Ethridge; Blue, Bowman, Cunningham, DeVane, Easterling, Edwards, Fletcher, Gibson, Hackney, Hardaway, R. Hunter, Hurley, Kennedy, Locks, Perdue, Privette, Stamey, Warner, Wicker, and Wisner.

Referred to: Infrastructure.

February 6, 1989

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE AND DIRECT THE ENVIRONMENTAL
2 MANAGEMENT COMMISSION TO DEVELOP AND ADOPT RULES
3 ESTABLISHING MINIMUM STATE STANDARDS, LIMITATIONS, AND
4 MANAGEMENT PRACTICES FOR THE PROTECTION OF WATER SUPPLY
5 WATERSHEDS.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. Article 21 of Chapter 143 is amended by adding a new section to
9 read:

10 "**§ 143-214.5. Water supply watershed protection.**

11 (a) Policy Statement. This section establishes a cooperative program of water
12 supply watershed protection and management between local and State governments.
13 Local governments shall be responsible for land use planning under guidelines, criteria,
14 and standards provided by State government. With regard to planning, State
15 government shall act primarily in a supportive standard-setting and review capacity,
16 except where local governments do not carry out their responsibilities to enforce the
17 minimum standards, limitations, and management practices that are developed.
18 Enforcement shall be primarily a local responsibility.

19 (b) Development and Adoption of Classifications and Standards. The
20 Commission is authorized and directed to develop and adopt by rule a series of
21 classifications for water supply watersheds and the minimum standards, limitations, and
22 management practices applicable to each classification to protect water supply

1 watersheds. The Commission may classify water supply watersheds to designate those
2 or portions thereof that are critical water supply watersheds and shall adopt standards,
3 limitations, and management practices for critical water supply watersheds that are more
4 stringent than those applicable to other water supply watersheds. Water supply
5 watershed classifications and the applicable standards, limitations, and management
6 practices shall be developed by the Commission no later than October 1, 1989. The
7 rules adopted by the Commission for the classification of water supply watersheds and
8 the standards, limitations, and management practices to protect water supply watersheds
9 shall apply throughout the State, from the time of their adoption.

10 (c) Assignment of Classifications to Identified Water Supply Watersheds. The
11 Commission shall identify each water supply watershed in the State and shall assign to
12 it the appropriate classification with the applicable minimum standards, limitations, and
13 management practices to protect the water supply watershed no later than January 1,
14 1990.

15 (d) Local Administration and Enforcement of Standards. The administration and
16 enforcement of rules adopted by the Commission establishing standards, limitations,
17 and management practices for the protection of water supply watersheds may be
18 delegated to local governments as follows: A local government may adopt regulations
19 consistent with or more stringent than those of the State to protect a water supply
20 watershed within its jurisdiction for the control and abatement of water pollution in
21 compliance with the State's policy in G.S. 143-211. If the administration and
22 enforcement of such rules is delegated to a local government, the local enforcement
23 procedures shall be used and the enforcement provisions of G.S. 143-215.6 shall not
24 apply.

25 Within 120 days after the adoption by the Commission of water supply watershed
26 protection rules and the assignment of water supply watershed classifications, each local
27 government within a water supply watershed that wishes to adopt its own land use
28 plans, implementing ordinances, and enforcement procedures for the protection of a
29 water supply watershed within its jurisdiction in lieu of those adopted by the State shall
30 submit to the Commission a written statement of its intent to adopt such local plans and
31 ordinances. The local government shall complete the preparation and adoption of its
32 land-use plan, implementing ordinances, and enforcement procedures for water supply
33 watershed protection within 480 days after the adoption and assignment of State water
34 supply watershed classifications and applicable standards, limitations, and management
35 practices and submit those local regulations to the Commission for review. The
36 Commission shall review local land-use plans, implementing ordinances, and
37 enforcement procedures for compliance with this section and water supply watershed
38 protection rules adopted by the Commission and shall approve them only if consistent
39 with or more stringent than the State water supply watershed protection rules. Upon
40 approval of the local regulations by the Commission, the local regulations adopted by
41 the local government requesting review shall supersede the State rules for the protection
42 of water supply watersheds in that local jurisdiction on a date specified by the
43 Commission.

1 If a local government requests review of local watershed protection regulations that
2 were in effect prior to the adoption of State rules for the protection of water supply
3 watersheds and those local regulations are approved by the Commission as being
4 consistent with or more stringent than State water supply watershed rules, the local
5 government may request and the Commission may specify that the local regulations
6 supersede State rules effective on the date the local regulations were originally adopted
7 by the local government. If the Commission finds any local regulation inconsistent with
8 the State rules for water supply watershed protection, the Commission shall transmit
9 recommendations for modification to the adopting local government. Unless a local
10 government adopts local regulations for water supply watershed protection that meet the
11 approval of the Commission, the State rules for water supply watershed protection shall
12 apply as provided in subsection (b) of this section."

13 Sec. 2. Article 21 of Chapter 143 is amended by adding a new section to
14 read:

15 "**§ 143-214.6. Watershed Protection Advisory Council.**

16 (a) Creation. There is created the Watershed Protection Advisory Council.

17 (b) Membership. The Council shall consist of not more than eighteen members
18 appointed or designated as follows:

- 19 (1) One individual appointed by the Secretary of Natural Resources and
20 Community Development from among the employees of the
21 Department;
- 22 (2) The Secretary of Commerce or his designee;
- 23 (3) The Secretary of Administration or his designee;
- 24 (4) The Secretary of Transportation or his designee;
- 25 (5) The Secretary of Human Resources or his designee, and one additional
26 member selected by him from his department;
- 27 (6) The Commissioner of Agriculture or his designee;
- 28 (7) One member each from four different lead regional organizations to be
29 appointed by the Commission from nominations submitted by lead
30 regional organizations;
- 31 (8) Two representatives from county government, one to be appointed by
32 the President Pro Tempore of the Senate and one to be appointed by
33 the Speaker of the House of Representatives from a list of six
34 nominees submitted by the North Carolina Association of County
35 Commissioners;
- 36 (9) Two representatives of municipal government, one to be appointed by
37 the President Pro Tempore of the Senate and one to be appointed by
38 the Speaker of the House of Representatives from among six nominees
39 submitted by the North Carolina League of Municipalities;
- 40 (10) Two members selected by the Commission who have technical or
41 professional expertise in the areas of water resources or land use
42 planning; and
- 43 (11) One member who is a local health director selected by the Commission
44 upon recommendations of the Secretary of Human Resources.

1 (c) Functions and Duties. The Advisory Council shall assist the Secretary of
2 Natural Resources and Community Development and the Commission in an advisory
3 capacity:

4 (1) On development of necessary water supply watershed protection
5 criteria, standards, rules, and regulations, and

6 (2) On such other water supply watershed protection matters as the
7 Council or Secretary consider appropriate.

8 (d) Multiple Offices. Membership on the Council is an office that may be held
9 concurrently with other elective or appointive offices (except the office of Commission
10 member) in addition to the maximum number of offices permitted to be held by one
11 person under G.S. 128-1.1.

12 (e) Chairman and Vice Chairman. A chairman and vice chairman shall be elected
13 annually by the Council from its membership.

14 (f) Compensation. The members of the Council who are not State employees
15 shall receive per diem and necessary travel and subsistence expenses in accordance with
16 the provisions of G.S. 138-5."

17 Sec. 3. G.S. 143-213(16) reads as rewritten:

18 "(16) The term 'standard' or 'standards' means such measure or measures of the
19 quality of water and air as are established by the Commission pursuant to G.S. ~~143-214.1~~
20 143-214.1, G.S. 143-214.5, and G.S. 143-215."

21 Sec. 4. G.S. 143-215.2(a) reads as rewritten:

22 "(a) Issuance. – The Commission is hereby empowered, after the effective date of
23 classifications, standards and limitations adopted pursuant to ~~G.S. 143-214.1~~ G.S. 143-
24 214.1, G.S. 143-214.5, or G.S. 143-215, to issue (and from time to time to modify or
25 revoke) a special order, or other appropriate instrument, to any person whom it finds
26 responsible for causing or contributing to any pollution of the waters of the State within
27 the area for which standards have been established. Such an order or instrument may
28 direct such person to take, or refrain from taking such action, or to achieve such results,
29 within a period of time specified by such special order, as the Commission deems
30 necessary and feasible in order to alleviate or eliminate such pollution. The Commission
31 is authorized to enter into consent special orders, assurances of voluntary compliance or
32 other similar documents by agreement with the person responsible for pollution of the
33 water and such document shall have the same force and effect as a special order of the
34 Commission issued pursuant to hearing. Provided, however, that the provisions of this
35 section shall not apply to any agricultural operation, such as the use or preparation of
36 any land for the purposes of planting, growing, or harvesting plants, crops, trees or other
37 agricultural products, or raising livestock or poultry."

38 Sec. 5. G.S. 143-215.6 reads as rewritten:

39 **"§ 143-215.6. Enforcement procedures.**

40 (a) Civil Penalties. –

41 (1) A civil penalty of not more than ten thousand dollars (\$10,000) may be
42 assessed by the Commission against any person who:

- 1 a. Violates any classification, standard, limitation or management
2 practice established pursuant to G.S. 143-214.1, 143-214.2,
3 143-214.5, or 143-215.
- 4 b. Is required but fails to apply for or to secure a permit required
5 by G.S. 143-215.1, or who violates or fails to act in accordance
6 with the terms, conditions, or requirements of such permit.
- 7 c. Violates or fails to act in accordance with the terms, conditions,
8 or requirements of any special order or other appropriate
9 document issued pursuant to G.S. 143-215.2.
- 10 d. Fails to file, submit, or make available, as the case may be, any
11 documents, data or reports required by this Article or G.S. 143-
12 355(k) relating to water use information.
- 13 e. Refuses access to the Commission or its duly designated
14 representative to any premises for the purpose of conducting a
15 lawful inspection provided for in this Article.
- 16 f. Violates a rule of the Commission implementing this Part or
17 G.S. 143-355(k).
- 18 (2) If any action or failure to act for which a penalty may be assessed
19 under this subsection is continuous, the Commission may assess a
20 penalty not to exceed ten thousand dollars (\$10,000) per day for so
21 long as the violation continues.
- 22 (3) In determining the amount of the penalty the Commission shall
23 consider the degree and extent of harm caused by the violation and the
24 cost of rectifying the damage.
- 25 (4) The Commission may assess the penalties provided for in this
26 subsection. Any person assessed shall be notified of the assessment by
27 registered or certified mail, and the notice shall specify the reasons for
28 the assessment. If the person assessed fails to pay the amount of the
29 assessment to the Department within 30 days after receipt of notice, or
30 such longer period, not to exceed 180 days, as the Commission may
31 specify, the Commission may institute a civil action in the superior
32 court of the county in which the violation occurred or, in the discretion
33 of the Commission, in the superior court of the county in which the
34 person assessed resides or has his or its principal place of business, to
35 recover the amount of the assessment.
- 36 (b) Criminal Penalties. –
- 37 (1) Any person who willfully or negligently violates any classification,
38 standard or limitation established pursuant to G.S. 143-214.1, 143-
39 214.2, 143-214.5, or 143-215; any term, condition, or requirement of a
40 permit issued pursuant to G.S. 143-215.1 or of a special order or other
41 appropriate document issued pursuant to G.S. 143-215.2; or any rule of
42 the Commission implementing any of the said sections, shall be guilty
43 of a misdemeanor punishable by a fine not to exceed fifteen thousand
44 dollars (\$15,000) per day of violation, provided that such fine shall not

- 1 exceed a cumulative total of two hundred thousand dollars (\$200,000)
2 for each period of 30 days during which a violation continues, or by
3 imprisonment not to exceed six months, or by both.
- 4 (2) Any person who knowingly makes any false statement, representation,
5 or certification in any application, record, report, plan, or other
6 document filed or required to be maintained under this Article or a rule
7 implementing this Article, or who falsifies, tampers with, or
8 knowingly renders inaccurate any recording or monitoring device or
9 method required to be operated or maintained under this Article or
10 regulations of the Commission implementing this Article, shall be
11 guilty of a misdemeanor punishable by a fine not to exceed ten
12 thousand dollars (\$10,000), or by imprisonment not to exceed six
13 months, or by both.
- 14 (3) Any person convicted of an offense under either subdivision (1) or
15 subdivision (2) of this subsection following a previous conviction
16 under such subdivision shall be subject to a fine, or imprisonment, or
17 both, not exceeding twice the amount of the fine, or twice the term of
18 imprisonment provided in the subdivision under which the second or
19 subsequent conviction occurs.
- 20 (4) For purposes of this subsection, the term 'person' shall mean, in
21 addition to the definition contained in G.S. 143-213, any responsible
22 corporate or public officer or employee; provided, however, that where
23 a vote of the people is required to effectuate the intent and purpose of
24 this Article by a county, city, town, or other political subdivision of the
25 State, and the vote on the referendum is against the means or
26 machinery for carrying said intent and purpose into effect, then, and
27 only then, this subsection shall not apply to elected officials or to any
28 responsible appointed officials or employees of such county, city,
29 town, or political subdivision.
- 30 (c) Injunctive Relief. – Whenever the Department has reasonable cause to believe
31 that any person has violated or is threatening to violate any of the provisions of this
32 Part, any of the terms of any permit issued pursuant to this Part, or a rule implementing
33 this Part, the Department may, either before or after the institution of any other action or
34 proceeding authorized by this Part, request the Attorney General to institute a civil
35 action in the name of the State upon the relation of the Department for injunctive relief
36 to restrain the violation or threatened violation and for such other and further relief in
37 the premises as the court shall deem proper. The Attorney General may institute such
38 action in the superior court of the county in which the violation occurred or may occur
39 or, in his discretion, in the superior court of the county in which the person responsible
40 for the violation or threatened violation resides or has his or its principal place of
41 business. Upon a determination by the court that the alleged violation of the provisions
42 of this Part or the regulations of the Commission has occurred or is threatened, the court
43 shall grant the relief necessary to prevent or abate the violation or threatened violation.
44 Neither the institution of the action nor any of the proceedings thereon shall relieve any

1 party to such proceedings from any penalty prescribed for violation of this Part. For
2 purposes of this subsection references to 'this Part' include G.S. 143-355(k) relating to
3 water use information."

4 Sec. 6. This act is effective upon ratification.