

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 156  
Committee Substitute Favorable 3/22/89

Short Title: Watershed Protection Rules.

(Public)

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Sponsors:

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Referred to:

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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 WATER SUPPLY WATERSHED MANAGEMENT  
4 REQUIREMENTS FOR PROTECTION OF THE STATE'S SURFACE WATER  
5 SUPPLIES.  
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 protection and watershed management to be administered by local governments,  
13 consistent with minimum requirements provided by the Environmental Management  
14 Commission. When local governments fail to adopt a water supply watershed  
15 protection program or do not adequately carry out their responsibilities to enforce the  
16 minimum watershed management requirements of their approved program, it shall  
17 become the responsibility of the Commission to administer and enforce the minimum  
18 statewide requirements.

19 (b) Development and Adoption of Classifications and Watershed Management  
20 Requirements. The Commission is authorized and directed to develop and adopt by rule  
21 a series of classifications for water supply watersheds and the minimum watershed  
22 management requirements applicable to each classification to protect surface water

1 supplies. The Commission may also classify water supply watersheds to designate  
2 those or portions thereof that are critical water supply watersheds and shall adopt  
3 management requirements for critical water supply watersheds that are more stringent  
4 than those applicable to other water supply watersheds. Water supply watershed  
5 classifications, the applicable management requirements, and the proposed classification  
6 of all existing water supply watersheds, shall be developed by the Commission no later  
7 than January 1, 1991.

8 (c) By July 1, 1992, each local government with all or a portion of a water supply  
9 watershed within its jurisdiction shall submit to the Commission local land-use plans,  
10 implementing ordinances, maintenance and inspection procedures (if needed), and  
11 enforcement procedures for compliance with this section and the water supply  
12 watershed protection rules adopted by the Commission. To the extent possible, the  
13 Department shall provide assistance to local government units, upon request, in  
14 developing appropriate plans, ordinances and procedures. The Commission shall  
15 approve the submittals only if they are consistent with or more stringent than the  
16 minimum watershed management requirements. If the Commission finds any local  
17 regulation inconsistent with the State rules for water supply watershed protection, the  
18 Commission shall transmit recommendations for modification to the adopting local  
19 government.

20 (d) Assignment of Classifications to Identified Water Supply Watersheds. The  
21 Commission shall assign to each water supply watershed in the State the appropriate  
22 classification with the applicable minimum protective management requirements.  
23 Reclassification for all existing water supply watersheds shall be complete no later than  
24 January 1, 1992. Additional reclassification may occur as needed to protect future  
25 water supplies or improve protection at existing water supplies, provided that a local  
26 government unit shall have not less than 270 days to make appropriate submittals after  
27 notice of a reclassification.

28 (e) Local Government Administration and Enforcement of Minimum  
29 Management Requirements. It shall be the responsibility of local governments to  
30 administer and enforce the minimum management requirements developed by the  
31 Commission for protecting water supply watersheds within their jurisdiction. Local  
32 governments shall be required to adopt regulations or ordinances at least as stringent as  
33 the minimum requirements. Local governments may adopt regulations or ordinances  
34 more stringent than the minimum management requirements should they desire to  
35 provide additional protection.

36 (f) State Government Enforcement Authority - Assumption of Local Programs.  
37 Where a local program has been adopted pursuant to this section, the Commission shall  
38 reserve the right to take appropriate preventive or remedial enforcement action against a  
39 person performing an activity in a classified water supply watershed in clear violation of  
40 the minimum management requirements where the responsible local government unit  
41 has unlawfully issued a permit to or has failed to take appropriate enforcement action  
42 against the person.

43 The Commission shall assume the responsibility of a water supply watershed  
44 protection program whenever a local government fails to adopt a program or fails to

1 adequately administer and enforce the provisions of its program. No such assumption  
2 shall occur until after the Commission, or its designee, has provided the local  
3 government unit by certified mail, return receipt requested, with written notice of the  
4 deficiencies and remedial recommendations, and the deadline for compliance. The  
5 Commission may order assumption of a local program upon a finding, not less than 120  
6 days after receipt of the written notice and recommendations, that no substantial  
7 progress toward compliance has been made. The Commission may make such a finding  
8 at any time within 365 days of receipt of the notice by the local government unit, with  
9 no further notice.

10 Local governments who fail to adopt local water supply watershed protection  
11 programs required by this section shall be subject to a civil penalty pursuant to G.S.  
12 143-215.6(a)(5). In areas without locally adopted water supply protection programs,  
13 any person who violates or fails to act in accordance with the statewide minimum  
14 requirements established pursuant to this section shall be subject to a civil penalty as  
15 specified in G.S. 143-215.6(a)(1)(g).

16 (g) Planning Grants to Local Governments. The Secretary of Natural Resources  
17 and Community Development shall be authorized to make annual grants to local  
18 government units for the purpose of assisting in the development of local watershed  
19 protection plans and management programs. The Secretary shall develop and  
20 administer generally applicable criteria under which local governments may qualify for  
21 such assistance, giving priority to local government units which are not then  
22 administering zoning in affected water supply watershed areas."

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

25 **"§ 143-214.6. Watershed Protection Advisory Council.**

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

27 (b) Membership. The Council shall consist of not more than 20 members  
28 appointed or designated as follows:

29 (1) The Secretary of Natural Resources and Community  
30 Development or designee;

31 (2) The Secretary of Transportation or designee;

32 (3) The Secretary of Human Resources or designee;

33 (4) The Commissioner of Agriculture or designee;

34 (5) One member each from two different lead regional  
35 organizations to be appointed by the Commission from  
36 nominations submitted by lead regional organizations;

37 (6) Three representatives from county government, one to be  
38 appointed by the Senate on recommendation of the President  
39 Pro Tempore, one to be appointed by the House of  
40 Representatives on recommendation of the Speaker and one to  
41 be appointed by the Commission, from three lists of three  
42 nominees each submitted by the North Carolina Association of  
43 County Commissioners;

- 1           (7) Three representatives of municipal government, one to be  
2 appointed by the Senate on recommendation of the President  
3 Pro Tempore, one to be appointed by the House of  
4 Representatives on recommendation of the Speaker and one to  
5 be appointed by the Commission, from three lists of three  
6 nominees each submitted by the North Carolina League of  
7 Municipalities;
- 8           (8) One member selected by the Commission who has technical or  
9 professional expertise in the area of land use planning;
- 10          (9) One member who is a local health director selected by the  
11 Commission upon recommendations of the Secretary of Human  
12 Resources;
- 13          (10) Two members selected by the Commission who shall be  
14 actively involved with or have had extensive experience in the  
15 field of land development upon the recommendation of the  
16 North Carolina Home Builders Association;
- 17          (11) One member selected by the Commission who has technical or  
18 professional expertise in the area of water resources;
- 19          (12) One soil and water conservation District Supervisor selected by  
20 the Secretary of Natural Resources and Community  
21 Development;
- 22          (13) Two members selected by the Commission representing the  
23 interests of the environmental and conservation community.

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

- 26           (1) On development of necessary water supply watershed  
27 protection rules, and
- 28           (2) On such other water supply watershed protection matters as the  
29 Council or Secretary consider appropriate.

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

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

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

39            Sec. 3. G.S. 143-215.2(a) reads as rewritten:

40        "(a) Issuance. – The Commission is hereby empowered, after the effective date of  
41 classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S.  
42 143-215, or a water supply watershed management requirement adopted pursuant to  
43 G.S. 143-214.5 to issue (and from time to time to modify or revoke) a special order, or  
44 other appropriate instrument, to any person whom it finds responsible for causing or

1 contributing to any pollution of the waters of the State within the area for which  
2 standards have been established. Such an order or instrument may direct such person to  
3 take, or refrain from taking such action, or to achieve such results, within a period of  
4 time specified by such special order, as the Commission deems necessary and feasible  
5 in order to alleviate or eliminate such pollution. The Commission is authorized to enter  
6 into consent special orders, assurances of voluntary compliance or other similar  
7 documents by agreement with the person responsible for pollution of the water and such  
8 document shall have the same force and effect as a special order of the Commission  
9 issued pursuant to hearing. Provided, however, that the provisions of this section shall  
10 not apply to any agricultural operation, such as the use or preparation of any land for the  
11 purposes of planting, growing, or harvesting plants, crops, trees or other agricultural  
12 products, or raising livestock or poultry."

13 Sec. 4. G.S. 143-215.6(a) reads as rewritten:

14 "(a) Civil Penalties.—

- 15 (1) A civil penalty of not more than ten thousand dollars (\$10,000) may be  
16 assessed by the Commission against any person who:
- 17 a. Violates any classification, standard, limitation or management  
18 practice established pursuant to G.S. 143-214.1, 143-214.2, or  
19 143-215.
  - 20 b. Is required but fails to apply for or to secure a permit required  
21 by G.S. 143-215.1, or who violates or fails to act in accordance  
22 with the terms, conditions, or requirements of such permit.
  - 23 c. Violates or fails to act in accordance with the terms, conditions,  
24 or requirements of any special order or other appropriate  
25 document issued pursuant to G.S. 143-215.2.
  - 26 d. Fails to file, submit, or make available, as the case may be, any  
27 documents, data or reports required by this Article or G.S. 143-  
28 355(k) relating to water use information.
  - 29 e. Refuses access to the Commission or its duly designated  
30 representative to any premises for the purpose of conducting a  
31 lawful inspection provided for in this Article.
  - 32 f. Violates a rule of the Commission implementing this Part or  
33 G.S. 143-355(k).
  - 34 g. Violates or fails to act in accordance with the statewide  
35 minimum water supply watershed management requirements  
36 adopted pursuant to G.S. 143-214.5, whether enforced by the  
37 Commission or a local government unit.
- 38 (2) If any action or failure to act for which a penalty may be assessed  
39 under this subsection is continuous, the Commission may assess a  
40 penalty not to exceed ten thousand dollars (\$10,000) per day for so  
41 long as the violation continues, unless otherwise stipulated.
- 42 (3) In determining the amount of the penalty the Commission shall  
43 consider the degree and extent of harm caused by the violation and the  
44 cost of rectifying the damage.

1 (4) The Commission may assess the penalties provided for in this  
2 subsection. Any person assessed shall be notified of the assessment by  
3 registered or certified mail, and the notice shall specify the reasons for  
4 the assessment. If the person assessed fails to pay the amount of the  
5 assessment to the Department within 30 days after receipt of notice, or  
6 such longer period, not to exceed 180 days, as the Commission may  
7 specify, the Commission may institute a civil action in the superior  
8 court of the county in which the violation occurred or, in the discretion  
9 of the Commission, in the superior court of the county in which the  
10 person assessed resides or has his or its principal place of business, to  
11 recover the amount of the assessment.

12 (5) A civil penalty of not more than ten thousand dollars (\$10,000) per  
13 month may be assessed by the Commission against any local  
14 government which fails to adopt or enforce a water supply watershed  
15 protection program as required by G.S. 143-214.5. No such penalty  
16 shall be imposed against a local government unit unless and until the  
17 Commission has assumed the responsibility of administering and  
18 enforcing the local water supply watershed protection program.  
19 Thereafter the civil penalties imposed shall be pursuant to a uniform  
20 schedule adopted by the Commission, based on acreage and other  
21 relevant cost factors, designed to recoup the costs of administration  
22 and enforcement."

23 Sec. 5. This act shall not affect the validity of any county or city ordinance  
24 relating to watershed protection adopted prior to the effective date of this act. Nothing  
25 in this act shall be construed to prohibit a county or city from adopting and enforcing an  
26 ordinance relating to the protection of a classified watershed prior to, and until the  
27 review process by the Commission is complete.

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