

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 151

Environment and Natural Resources Committee Substitute Adopted 5/14/91

House Committee Substitute Favorable 7/1/91

Short Title: Protect Natural/Scenic Rivers.

(Public)

Sponsors:

Referred to:

February 20, 1991

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE NATURAL AND SCENIC RIVERS SYSTEM AND TO REQUIRE ZONING AND OTHER LAND-USE CONTROLS TO PROTECT DESIGNATED RIVERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-32 reads as rewritten:

"§ 113A-32. Declaration of purpose.

The purpose of this Article is to implement the policy as set out in G.S. 113A-31 by instituting a North Carolina ~~natural and scenic rivers system~~, Natural and Scenic Rivers System, and by prescribing methods for inclusion of components to the ~~system~~ System from time to time."

Sec. 2. G.S. 113A-33 reads as rewritten:

"§ 113A-33. Definitions.

As used in this Article, unless the context requires otherwise:

(1) 'Component' means any river or segment approved by the General Assembly for inclusion in the System.

~~(1)~~(2) 'Department' means the Department of Environment, Health, and Natural Resources.

~~(2)~~(3) 'Free-flowing,' as applied to any river or ~~section of a river, segment,~~ means existing or flowing in natural condition without substantial impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence of low dams, diversion

works, and other minor structures at the time any river is proposed for inclusion in the ~~North Carolina natural and scenic rivers system~~ System shall not automatically bar its consideration for such ~~inclusion~~. ~~Provided, inclusion, provided~~ that this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the ~~system~~ System.

(3)(4) 'River' means a typically flowing body of water or estuary or a section, portion, or tributary thereof, water, including rivers, streams, creeks, runs, kills, rills, estuaries, and small lakes.

(4)(5) 'Road' means public or private highway, hard-surface road, dirt road, or railroad.

(5)(6) 'Scenic easement' means a perpetual easement in land which (i) is held for the benefit of the people of North Carolina, (ii) is specifically enforceable by its holder or beneficiary, and (iii) limits or obligates the holder of the servient estate, his heirs, and assigns with respect to their use and management of the land and activities conducted thereon. The object of such limitations and obligations is the maintenance or enhancement of the natural beauty of the land in question or of the areas affected by it.

(6)(7) 'Secretary' means the Secretary of the ~~Department of Environment, Health, and Natural Resources.~~

(8) 'Segment' means any portion or part of a river having specified upstream and downstream boundaries.

(9) 'System' means the North Carolina Natural and Scenic Rivers System.'

Sec. 3. G.S. 113A-34 reads as rewritten:

"§ 113A-34. Types of scenic rivers.

The following types of rivers and segments are eligible for inclusion in the North Carolina ~~natural and scenic rivers system~~ Natural and Scenic Rivers System:

(1) Class I. ~~Natural river areas~~ River Areas. Those free-flowing rivers or segments ~~of rivers~~ and adjacent lands existing in a natural condition. Those rivers or segments ~~of rivers~~ that are free of man-made impoundments and generally inaccessible except by trail, with the lands within the boundaries essentially primitive and the waters essentially unpolluted. ~~These~~ Natural River Areas represent vestiges of primitive America.

(2) Class II. ~~Scenic river areas~~ River Areas. Those rivers or segments ~~of rivers~~ that are largely free of impoundments, with the lands within the boundaries largely primitive and largely undeveloped, but accessible in places by roads. Scenic River Areas provide beautiful views and aesthetically pleasing vistas that may include forested landscapes and agricultural or pastoral areas.

(3) Class III. ~~Recreational river areas~~ River Areas. Those rivers or segments ~~of rivers~~ that offer outstanding recreation and scenic values

1 and that are largely free of impoundments. They may have some
 2 development along their shorelines and have more extensive public
 3 access than ~~natural or scenic river segments~~. Natural River Areas or
 4 Scenic River Areas. Recreational ~~river segments~~ River Areas may also
 5 link two or more ~~natural and/or scenic river segments~~ Natural River
 6 Areas or Scenic River Areas to provide a contiguous designated ~~river~~
 7 area component. ~~No provision of this section shall interfere with flood~~
 8 ~~control measures; provided that recreational river users can continue to~~
 9 ~~travel the river."~~

10 Sec. 4. G.S. 113A-35 reads as rewritten:

11 **"§ 113A-35. Criteria for ~~system~~ System.**

12 For the inclusion of any river or segment ~~of river~~ in the ~~natural and scenic river system,~~
 13 North Carolina Natural and Scenic River System, the following criteria must be present:

- 14 (1) River or segment length —must be no less than one mile.
 15 (2) ~~Boundaries~~ —~~of the system shall be the visual horizon or such distance~~
 16 ~~from each shoreline as may be determined to be necessary by the~~
 17 ~~Secretary, but shall not be less than 20 feet.~~
 18 (3) Water quality —shall not be less than that required for Class 'C' waters
 19 as established by the North Carolina Environmental Management
 20 Commission.
 21 (4) Water flow —shall be sufficient to assure a continuous flow and shall
 22 not be subjected to withdrawal or regulation to the extent of
 23 substantially altering the natural ecology of the stream.
 24 (5) Public access —shall be ~~limited~~, limited as provided in G.S. 113A-34.
 25 ~~but~~ Public access to a component may be permitted to the extent
 26 deemed ~~proper~~ appropriate by the ~~Secretary~~, and in keeping ~~Secretary~~
 27 and consistent with the ~~any~~ property interest acquired by the
 28 Department and the policies and purpose of this Article."

29 Sec. 5. G.S. 113A-35.1 reads as rewritten:

30 **"§ 113A-35.1. Components of ~~system~~; System; management plan; acquisition of**
 31 **land and easements; inclusion in national system. National System.**

32 (a) That segment of the south fork of the New River extending from its
 33 confluence with Dog Creek in Ashe County downstream through Ashe and Alleghany
 34 Counties to its confluence with the north fork of the New River and the main fork of the
 35 New River in Ashe and Alleghany Counties downstream to the Virginia State line ~~shall~~
 36 ~~be a scenic river area and shall be included in the North Carolina Natural and Scenic Rivers~~
 37 System. ~~is hereby designated a Scenic River Area within the North Carolina Natural and~~
 38 Scenic Rivers System.

39 (b) The Department shall prepare and implement a management plan for ~~said river~~
 40 section. the New River Scenic River Area. This management plan shall recognize and
 41 provide for the protection of the existing undeveloped scenic and pastoral features of the
 42 river. Furthermore, it shall specifically provide for continued use of the lands adjacent
 43 to the river for normal agricultural activities, including, but not limited to, cultivation of

1 crops, raising of cattle, growing of trees and other practices necessary to such
2 agricultural pursuits.

3 (c) For purposes of implementing this section and the management plan, the
4 Department is authorized to acquire lands or interests in lands not to exceed 2,200 acres,
5 to acquire such lands in fee simple or to acquire such interests in lands as easements, to
6 provide for protection of scenic values as described in G.S. 113A-38, and to provide for
7 public access. Easements obtained for the purpose of implementing this section and the
8 management plan shall not abridge the water rights being exercised on ~~May 26, 1975.~~
9 May 1975.

10 (d) Should the Governor seek inclusion of ~~the said river segment~~ the New River
11 Scenic River Area in the National ~~System of Wild and Scenic Rivers~~ System pursuant to
12 the Wild and Scenic Rivers Act, Pub. L. No. 90-542, 82 Stat. 906, 16 U.S.C. § 1271 et
13 seq., by action of the Secretary of Interior, such inclusion shall be at no cost to the federal
14 government, ~~as prescribed in the National~~ United States as required by the Wild and Scenic
15 Rivers Act, and therefore shall be ~~under the terms described in this section of the North~~
16 ~~Carolina Wild and Scenic Rivers Act and in~~ managed pursuant to this Article and the
17 management plan developed pursuant thereto.

18 (e) The Department shall prepare an annual status report on the progress
19 made in implementing the management plan required pursuant to subsection ~~(a)-(b)~~ of
20 this section and the progress in implementing the management plan submitted by the
21 Department in support of the request to the Secretary of the Interior for the river's
22 inclusion of the New River Scenic River Area in the National ~~System of Wild and Scenic~~
23 ~~Rivers.~~ Rivers System. The status report shall evaluate the extent to which current
24 implementation of the management plans has in fact maintained the ~~river's free-flowing~~
25 state of the New River Scenic River Area and protected the scenic conditions of ~~the river~~
26 the New River Scenic River Area and the adjacent lands consistent with the policies and
27 purpose of this Article. If implementation of either management plan is incomplete at
28 the time the report is filed, the Secretary shall submit a schedule for implementing the
29 remainder of the plan. The status report shall be filed with the General Assembly no
30 later than ~~January 15 of each year, beginning in 1990.~~ 15 January of each year beginning 15
31 January 1990."

32 Sec. 6. G.S. 113A-35.2 reads as rewritten:

33 "**§ 113A-35.2. Additional ~~components.~~ components of the System.**

34 (a) That segment of the Linville River beginning at the State Highway 183 bridge
35 over the Linville River and extending approximately 13 miles downstream to the
36 boundary between the United States Forest Service lands and lands of Duke Power
37 Company (latitude 35° 50' 20") ~~shall be a natural river area and shall be included in-is~~
38 hereby designated a Natural River Area within the North Carolina Natural and Scenic
39 River System.

40 (b) That segment of the Horsepasture River in Transylvania County extending
41 downstream from Bohaynee Road (N.C. 281) to Lake Jocassee ~~shall be a natural river and~~
42 ~~shall be included in-is~~ hereby designated a Natural River Area within the North Carolina
43 Natural and Scenic Rivers System.

1 (c) That segment of the Lumber River extending from county road 1412 in
2 Scotland County downstream to the North Carolina-South Carolina state line, a distance
3 of approximately 102 river miles, ~~shall be included in the~~ is hereby designated a
4 component of the North Carolina Natural and Scenic Rivers System and classified as
5 follows: the segment from county road 1412 in Scotland County downstream to the
6 junction of the Lumber River and Back Swamp shall be classified as scenic; is designated
7 a Scenic River Area; the segment from the junction of the Lumber River and Back
8 Swamp downstream to the junction of the Lumber River and Jacob Branch and the river
9 within the Fair Bluff town limits shall be classified as recreational; is designated a
10 Recreational River Area; and the segment from the junction of the Lumber River and
11 Jacob Branch downstream to the North Carolina-South Carolina state line, excepting the
12 Fair Bluff town limits, shall be classified as natural. is designated a Natural River Area."

13 Sec. 7. G.S. 113A-36 reads as rewritten:

14 "**§ 113A-36. Administrative agency; federal grants; additions to the system;**
15 **regulations. System.**

16 (a) The Department ~~is the agency of the State of North Carolina with the duties~~
17 ~~and responsibilities to~~ shall administer and control the North Carolina natural and scenic
18 rivers system. Natural and Scenic Rivers System.

19 (b) The Department ~~shall be the agency of the State with the authority to accept~~
20 ~~federal grants of assistance in planning, developing (which would include the~~
21 ~~may accept grants from the United States or from any other source for use in planning,~~
22 ~~development, acquisition of land or an interest in land), land, and administering the~~
23 ~~natural and scenic rivers system. System.~~

24 (c) The Secretary of the Department ~~shall study and from time to time submit to~~
25 ~~the Governor and to the General Assembly proposals for the additions to the system of~~
26 ~~rivers and segments of rivers which, in his judgment, fall within one or more of the~~
27 ~~categories set out in G.S. 113A-34. Each proposal shall specify the category of the~~
28 ~~proposed addition and shall be accompanied by a detailed report of the facts which, in~~
29 ~~the Secretary's judgment, makes the area a worthy addition to the system. The Secretary~~
30 shall periodically assess the condition of the rivers within the State and shall determine
31 whether any river or segment should be designated a component of the System. The
32 Secretary may propose that a river or segment be designated a component of the System
33 by submitting to the Governor and to the General Assembly a proposal which includes
34 the following:

35 (1) A description of the river or segment including the approximate width
36 of the proposed boundaries;

37 (2) The proposed classification of the river or segment under G.S. 113A-
38 34;

39 (3) An analysis of the manner and extent to which designation of the river
40 or segment as a component of the System would further the policies
41 and purpose of this Article;

42 (4) An analysis of the feasibility of including the river or segment in the
43 System;

1 (5) An analysis of the manner and extent to which designation of the river
2 or segment as a component of the System would compliment and be
3 consistent with the State Parks System Plan prepared and adopted
4 pursuant to G.S. 113-44.11;

5 (6) An estimate of the cost of planning, acquisition of land and interests in
6 land, capital improvements, maintenance, operations, management,
7 and administration;

8 (7) Local government action necessary to protect the river or segment; and

9 (8) Any other relevant information.

10 (d) ~~Before submitting any proposal to the Governor or and the General Assembly~~
11 ~~for the addition to the system of a river or segment of a river, under this section, the~~
12 ~~Secretary or his authorized representative, shall hold a public hearing in the county or~~
13 ~~counties where said river or segment of river is situated. each county through which or along~~
14 ~~the border of which any part of the river or segment that is proposed for designation as a~~
15 ~~component flows. Notice of such public hearing shall be given by publishing a notice~~
16 ~~once each week for two consecutive weeks in a newspaper having general circulation in~~
17 ~~the county where said the hearing is to be held, the second of said notices notice~~
18 ~~appearing not less than 10 days before said the hearing. Any person attending said the~~
19 ~~hearing shall be given an opportunity to be heard. Notwithstanding the provisions of the~~
20 ~~foregoing, no No public hearing shall be required with respect to a river or segment~~
21 ~~bounded solely by the property of one owner, who consents in writing to the addition of~~
22 ~~such river or segment to the system. System.~~

23 ~~The Department shall also conduct an investigation on the feasibility of the inclusion~~
24 ~~of a river or a segment of river within the system and file a written report with the~~
25 ~~Governor when submitting a proposal.~~

26 (e) ~~The Department shall also, before submitting such a proposal to the Governor or the~~
27 ~~General Assembly, Before proposing to the Governor and the General Assembly that a~~
28 ~~river or segment be included in the System, the Secretary shall notify in writing the~~
29 ~~owner, lessee, or tenant of any lands adjoining said the river or segment of river of its the~~
30 ~~intention to make such proposal. In the event the Department, Secretary, after due~~
31 ~~diligence, is unable to determine the owner or lessee of any such land, the Department~~
32 ~~may Secretary shall publish a notice for four successive weeks in a newspaper having~~
33 ~~general circulation in the county where the land is situated of its the intention to make a~~
34 ~~proposal to the Governor or and to the General Assembly for the addition of a river or~~
35 ~~segment of river to the system. that the river or segment be included in the System.~~

36 (e) (f) ~~Upon receipt of a request in the form of a resolution from the commissioners~~
37 ~~of the county or counties in which a river or segment is located and upon studying the~~
38 ~~river or segment and determining that it meets the criteria set forth in G.S. 113A-35, the~~
39 ~~Secretary may designate the river or segment a potential component of the natural and~~
40 ~~scenic rivers system. System. The resolution from the commissioners of the county or~~
41 ~~counties in which a river or segment is located shall specify the scenic river~~
42 ~~classification under G.S. 113A-34 requested by the commissioners. The Secretary may~~
43 ~~not designate the river or segment as a potential component in a class of scenic rivers~~
44 ~~higher than the class requested by the commissioners. The designation as a potential~~

1 component shall be transmitted to the Governor and all appropriate State agencies. Any
2 river or segment so designated is subject to the provisions of this Article and rules
3 adopted pursuant to this Article applicable to designated rivers, components, except for
4 acquisition by condemnation or otherwise, and to any rules adopted pursuant to this Article.
5 by any other means. A designation of a river or segment as a potential component shall
6 be temporary and shall expire after two years. The Secretary shall make a full report and, if
7 appropriate, a proposal for an addition to the natural and scenic rivers system to the General
8 Assembly within 90 days after the convening of the next session following issuance of the
9 designation, and the

10 (g) Within one year after designating a river or segment as a potential component, the
11 Secretary shall either remove the designation as a potential component or shall propose
12 that the designation be made permanent pursuant to G.S. 113A-36. The General
13 Assembly shall determine whether to designate the river or segment as a component of
14 the natural and scenic rivers system. System. If the next session of the General Assembly
15 fails to take affirmative action on the designation, the designation as a potential
16 component shall expire.

17 (d) ~~The Department may adopt rules to implement this Article."~~

18 Sec. 8. G.S. 113A-37 is repealed.

19 Sec. 9. G.S. 113A-38 reads as rewritten:

20 **"§ 113A-38. Land acquisition.**

21 (a) ~~The Department of Administration is authorized to acquire for the~~
22 ~~Department, within the boundaries of a river or segment of river as set out in G.S.~~
23 ~~113A-35 on behalf of the State of North Carolina, lands in fee title or a lesser interest in~~
24 ~~land, preferably 'scenic easements.' Upon the recommendation of the Secretary, the~~
25 Department of Administration is authorized to acquire lands necessary and appropriate
26 to implement the policies and purpose of this Article. Lands may be acquired in fee
27 simple or in any lesser interest. Acquisition of land or interest therein may be by
28 donation, purchase with donated or appropriated funds, ~~exchange~~ exchange, or
29 otherwise.

30 (b) ~~The Department of Administration in~~ In acquiring real property or a property
31 interest therein as set out in this ~~Article~~ section, the Department of Administration shall
32 have and may exercise the power of eminent domain in accordance with Article 3 of
33 Chapter 40A of the General Statutes."

34 Sec. 10. G.S. 113A-39 reads as rewritten:

35 **"§ 113A-39. Claim and allowance of charitable deduction for contribution or gift of**
36 **easement.**

37 The contribution or donation of a ~~'scenic easement,' right-of-way or any other easement~~
38 ~~or scenic easement, right-of-way, any other easement, land, or any interest in land to~~
39 the State of North Carolina, as provided in this Article, shall be deemed a contribution
40 to the State of North Carolina within the provisions of G.S. 105-130.9 and 105-147(16).
41 The value of the contribution or donation shall be the fair market value of the easement
42 or other interest in land when the contribution or donation is made."

43 Sec. 11. G.S. 113A-40 reads as rewritten:

44 **"§ 113A-40. Component as part of State park, wildlife refuge, etc.**

1 Any component of the ~~State natural and scenic rivers system that is or shall become~~
2 System that is or becomes a part of any State park, wildlife refuge, or state-owned area
3 shall be subject to the provisions of this Article and ~~the Articles under which the other areas~~
4 may be administered, and Article, rules adopted pursuant to this Article, all other
5 applicable provisions of law, and any applicable local ordinances and, in the case of a
6 conflict between the provisions of these Articles applicable provisions, the more restrictive
7 provisions shall apply."

8 Sec. 12. G.S. 113A-41 reads as rewritten:

9 "**§ 113A-41. Component as part of ~~national wild and scenic river system.~~ National**
10 **Wild and Scenic Rivers System.**

11 Nothing in this Article shall preclude a river or segment of a river from becoming
12 part of the ~~national wild and scenic river system.~~ National Wild and Scenic Rivers System.
13 The Secretary of the Department is ~~directed to~~ shall encourage and assist any federal
14 studies for the inclusion of North Carolina rivers in the national system. The Secretary
15 may enter into cooperative agreements for joint federal-state administration of a North
16 Carolina river or segment of river. ~~Provided,~~ provided that such agreements relating to
17 water and land use are not less restrictive than the requirements of this Article."

18 Sec. 13. G.S. 113A-43 reads as rewritten:

19 "**§ 113A-43. Authorization of advances.**

20 The Department of Administration is hereby authorized to advance from land-
21 purchase appropriations necessary amounts for the purchase of land in those cases
22 where reimbursement will be ~~later effected by the Bureau of Outdoor Recreation of the~~
23 made by the National Park Service or the United States Department of the Interior."

24 Sec. 14. G.S. 113A-44 reads as rewritten:

25 "**§ 113A-44. Restrictions on ~~project works on natural or scenic river.~~ projects in**
26 **components.**

27 (a) Every State agency shall act in a manner consistent with the policies and
28 purpose of this Article and shall take those steps necessary to protect and enhance the
29 natural, scenic, and recreational qualities of components of the System.

30 (b) The State—North Carolina Utilities Commission may not permit the
31 construction of any dam, water conduit, reservoir, powerhouse transmission line, or any
32 other project works on or directly affecting any river that is designated as a component or
33 potential component of the State Natural and Scenic Rivers System. component. No
34 department or agency of the State may assist by loan, grant, license, permit, or
35 otherwise in the construction of any ~~water resources~~ project that would have a direct and
36 adverse effect on any ~~river that is designated as a component or potential component of the~~
37 State Natural and Scenic Rivers System. component. This section shall not, however,
38 preclude licensing of or assistance to a development below or above a ~~designated~~
39 component or potential component. No department or agency of the State may
40 recommend authorization of any ~~water resources~~ project that would have a direct and
41 adverse effect on any ~~river that is designated as a component or potential component of the~~
42 State Natural and Scenic Rivers System, component, or request appropriations to begin
43 construction of any such project, regardless of when authorized, without advising the
44 Secretary in writing of its intention to do so at least 60 days in ~~advance.~~ advance of

1 taking such action. Such a department or agency making such recommendation or
2 request shall submit a written impact statement to the General Assembly to accompany
3 the recommendation or request specifically describing how construction of the project
4 would be in conflict with the purposes of this act policies and purpose of this Article and
5 how it would affect the component or potential component."

6 Sec. 15. Article 3 of Chapter 113A of the General Statutes is amended by
7 adding a new section to read:

8 **"§ 113A-45. Land-use controls.**

9 (a) In addition to the acquisition of lands in fee simple or lesser interest as
10 authorized by G.S. 113A-38, land along components may be protected by land-use
11 controls that regulate the use and development of land along the river corridor. The
12 Department shall adopt land-use rules to establish minimum standards for use by units
13 of local government in adopting ordinances to control the use of land along components.
14 Land-use rules established by the Department pursuant to this section must be adopted
15 by the Department before the Secretary may designate a river or segment as a potential
16 component of the System under G.S. 113A-36(f).

17 (b) For rivers or segments included in the System after 1 July 1991, each unit of
18 local government with jurisdiction over land along rivers or segments has a two-year
19 period after permanent designation to certify to the Department that land-use controls in
20 effect in its jurisdiction are at least as restrictive as the minimum standards established
21 pursuant to subsection (a) of this section. Land-use controls adopted pursuant to this
22 section shall be designed to affect the minimum amount of land necessary to protect the
23 river corridor and to allow compatible uses as determined by the Department.
24 Certification shall be accompanied by a copy of the ordinance and a zoning or other
25 land-use control map.

26 (c) A designation as a component shall continue in effect if land-use controls are
27 adopted, as required by subsection (b) of this section, by a unit or units of local
28 government having jurisdiction over land adjacent to either side of a river or segment
29 designated as a component, or any part thereof that meets the minimum length criteria
30 set out in G.S. 113A-35, and so long as such land-use controls remain in force.

31 (d) Failure to meet the requirements of subsections (b) and (c) of this section
32 shall result in the repeal of the designation of the river or segment, or such part of a
33 river or segment for which such requirements are not met, as a component."

34 Sec. 16. Article 3 of Chapter 113A of the General Statutes is amended by
35 adding a new section to read:

36 **"§ 113A-46. Delegation of powers and duties by the Secretary; adoption of rules.**

37 (a) The Secretary may delegate any power or duty under this Article to
38 appropriate officials of the Department.

39 (b) The Department may adopt rules to implement this Article pursuant to
40 Chapter 150B of the General Statutes."

41 Sec. 17. This act becomes effective 1 October 1991.