

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1023

Short Title: Interbasin Transfers.

(Public)

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Sponsors: Senator Cochrane.

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Referred to: Agriculture/Environment/Natural Resources

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May 4, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCEDURE FOR OBTAINING AN INTERBASIN  
TRANSFER PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.22I reads as rewritten:

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

(a) No person, without first securing a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.

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

(2a) Construct a facility designed to increase an existing transfer of water from one river basin to another if the increase equals or exceeds twenty-five percent (25%) of the capacity of the existing facilities or if the increase would cause the transfer to equal or exceed 2,000,000 gallons per day.

- 1           (3)    Increase an existing transfer of water from one river basin to another  
2                    above the amount approved by the Commission in a certificate issued  
3                    under G.S. 162A-7 prior to July 1, 1993.
- 4           (b)    Notwithstanding the provisions of subsection (a) of this section, a certificate  
5 shall not be required to transfer water from one river basin to another up to the full  
6 capacity of a facility to transfer water from one basin to another if the facility was  
7 existing or under construction on July 1, 1993.
- 8           (c)    An applicant for a certificate shall petition the Commission for the certificate.  
9 The petition shall be in writing and shall include the following:
- 10           (1)    A description of the facilities to be used to transfer the water, including  
11                    the location and capacity of water intakes, pumps, pipelines, and other  
12                    facilities.
- 13           (2)    A description of the proposed uses of the water to be transferred.
- 14           (3)    The water conservation measures to be used by the applicant to assure  
15                    efficient use of the water and avoidance of waste.
- 16           (4)    Any other information deemed necessary by the Commission for review  
17                    of the proposed water transfer.
- 18           (d)    Upon receipt of the petition, the Commission shall hold a public hearing on the  
19 proposed transfer after giving at least 30 days' written notice of the hearing as follows:
- 20           (1)    By publishing notice in the North Carolina Register.
- 21           (2)    By publishing notice in a newspaper of general circulation in the area of  
22                    the river basin downstream from the point of withdrawal.
- 23           (3)    By giving notice by first-class mail to each of the following:
- 24                    a.    A person who has registered under this Part a water withdrawal  
25                            or transfer from the same river basin where the water for the  
26                            proposed transfer would be withdrawn.
- 27                    b.    A person who secured a certificate under this Part for a water  
28                            transfer from the same river basin where the water for the  
29                            proposed transfer would be withdrawn.
- 30                    c.    A person holding a National Pollutant Discharge Elimination  
31                            System (NPDES) wastewater discharge permit exceeding  
32                            100,000 gallons per day for a discharge located downstream from  
33                            the proposed withdrawal point of the proposed transfer.
- 34                    d.    The board of county commissioners of each county that is  
35                            located entirely or partially within the river basin that is the  
36                            source of the proposed transfer.
- 37                    e.    The governing body of any public water supply system that  
38                            withdraws water downstream from the withdrawal point of the  
39                            proposed transfer.
- 40           (e)    The notice of the public hearing shall include a nontechnical description of the  
41 applicant's request and a conspicuous statement in bold type as to the effects of the water  
42 transfer on the source and receiving river basins. The notice shall further indicate the

1 procedure to be followed by anyone wishing to submit comments on the proposed water  
2 transfer.

3 (f) In determining whether a certificate may be issued for the transfer, the  
4 Commission shall specifically consider each of the following items and state in writing  
5 its findings of fact with regard to each item:

6 (1) The necessity, reasonableness, and beneficial effects of the amount of  
7 surface water proposed to be transferred and its proposed uses.

8 (2) The present and reasonably foreseeable future detrimental effects on the  
9 source river basin, including present and future effects on public,  
10 industrial, and agricultural water supply needs, wastewater assimilation,  
11 water quality, fish and wildlife habitat, hydroelectric power generation,  
12 navigation, and recreation.

13 (2a) The protection of the availability of water in the source river basin to  
14 respond to emergencies, including drought.

15 (3) The detrimental effects on the receiving river basin, including effects on  
16 water quality, wastewater assimilation, fish and wildlife habitat,  
17 navigation, recreation, and flooding.

18 (4) Reasonable alternatives to the proposed transfer, including their  
19 probable costs, and environmental impacts.

20 (4a) Mitigation measures proposed to minimize the detrimental effects.

21 ~~(5) If applicable to the proposed project, the applicant's present and~~  
22 ~~proposed use of impoundment storage capacity to store water during~~  
23 ~~high flow periods for use during low flow periods and the applicant's~~  
24 ~~right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.~~

25 (5a) The applicant's present efforts and plans to impound water.

26 ~~(6) If the water to be withdrawn or transferred is stored in a multipurpose~~  
27 ~~reservoir constructed by the United States Army Corps of Engineers, the~~  
28 ~~purposes and water storage allocations established for the reservoir at~~  
29 ~~the time the reservoir was authorized by the Congress of the United~~  
30 ~~States.~~

31 (7) Any other facts and circumstances that are reasonably necessary to carry  
32 out the purposes of this Part.

33 (g) ~~A No~~ certificate shall be granted for a water transfer unless the Commission  
34 concludes by a preponderance of the evidence based upon the findings of fact made under  
35 subsection (f) of this section ~~that the potential detriments of the proposed transfer outweigh the~~  
36 ~~benefits of the transfer. that:~~

37 (1) The present and reasonably foreseeable future water needs of the source  
38 river basin are protected for the duration of the certificate including  
39 municipal, industrial, and agricultural water supply, wastewater  
40 assimilation, water quality, fish and wildlife habitat, hydroelectric  
41 power generation, navigation, recreation, emergency water needs, and  
42 any other significant factors.

43 (2) The benefits of the proposed transfer outweigh its potential detriments.

- 1           (3)   Significant detrimental effects have been mitigated to the extent  
2           reasonably possible and all reasonable alternatives have been  
3           considered.
- 4           (4)   The amount of water to be transferred and its proposed uses are both  
5           necessary and reasonable.
- 6           (5)   The applicant, or any parent, subsidiary, or other affiliate of the  
7           applicant or parent is financially qualified to implement its  
8           responsibilities under the certificate. As used in this subdivision, the  
9           words 'affiliate', 'parent', and 'subsidiary' have the same meaning as in  
10          17 Code of Federal Regulations § 240.12b-2 (April 1, 1990 Edition).
- 11          (6)   The applicant, or any parent, subsidiary, or other affiliate of the  
12          applicant or parent has been in substantial compliance with other federal  
13          and state laws, regulations, and rules for the protection of the  
14          environment. As used in this subdivision, the words 'affiliate', 'parent',  
15          and 'subsidiary' have the same meaning as in 17 Code of Federal  
16          Regulations § 240.12b-2 (April 1, 1990 Edition).

17          (h)   The Commission may grant the certificate in whole or in part, or deny the  
18          certificate. The Commission may also grant a certificate with any conditions attached  
19          that the Commission believes are necessary to achieve the purposes of this Part. The  
20          conditions may include mitigation measures proposed to minimize any detrimental  
21          effects of the proposed transfer and measures to protect the availability of water in the  
22          source river basin during a drought or other emergency. The certificate shall indicate the  
23          maximum amount of water that may be transferred. No person shall transfer an amount  
24          of water that exceeds the amount in the certificate.

25          (i)   In cases where an applicant requests approval to increase a transfer that existed  
26          on July 1, 1993, the Commission shall have authority to approve or disapprove only the  
27          amount of the increase. If the Commission approves the increase, however, the  
28          certificate shall be issued for the amount of the existing transfer plus the requested  
29          increase. Certificates for transfers approved by the Commission under G.S. 162A-7 shall  
30          remain in effect as approved by the Commission and shall have the same effect as a  
31          certificate issued under this Part.

32          (j)   In the case of water supply problems caused by drought, a pollution incident,  
33          temporary failure of a water plant, or any other temporary condition in which the public  
34          health requires a transfer of water, the Secretary of the Department of Environment,  
35          Health, and Natural Resources may grant approval for a temporary transfer. Prior to  
36          approving a temporary transfer, the Secretary of the Department of Environment, Health,  
37          and Natural Resources shall consult with those parties listed in G.S. 143-215.22I(d)(3)  
38          that are likely to be affected by the proposed transfer. However, the Secretary of the  
39          Department of Environment, Health, and Natural Resources shall not be required to  
40          satisfy the public notice requirements of this section or make written findings of fact and  
41          conclusions in approving a temporary transfer under this subsection. If the Secretary of  
42          the Department of Environment, Health, and Natural Resources approves a temporary  
43          transfer under this subsection, the Secretary shall specify conditions to protect other

1 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 of the Department  
3 of Environment, Health, and Natural Resources based on demonstrated need as set forth  
4 in this subsection."

5           Sec. 2. This act becomes effective July 1, 1995.