

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1041

Short Title: Minimum Streamflow/Small Hydropower Dams.

(Public)

Sponsors: Senator Blackmon.

Referred to: Agriculture/Environment/Natural Resources

May 4, 1995

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH THE MINIMUM STREAMFLOW IN THE LENGTH OF
2 THE STREAM AFFECTED BY CERTAIN DAMS OPERATED BY SMALL
3 HYDROELECTRIC POWER PRODUCERS AND TO PROVIDE THAT THE
4 MINIMUM STREAMFLOWS THUS SPECIFIED ARE THE POLICY OF THE
5 STATE FOR SUCH DAMS, WHETHER OR NOT A PARTICULAR DAM IS
6 SUBJECT TO THE DAM SAFETY LAW OF 1967.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 143-215.31 reads as rewritten:

9 **"§ 143-215.31. Supervision over maintenance and operation of dams.**

10 (a) The Commission shall have jurisdiction and supervision over the maintenance
11 and operation of dams to safeguard life and property and to satisfy minimum streamflow
12 requirements. The Commission may adopt standards for the maintenance and operation
13 of dams as may be necessary for the purposes of this Part. The Commission may vary the
14 standards applicable to various dams, giving due consideration to the minimum flow
15 requirements of the stream, the type and location of the structure, the hazards to which it
16 may be exposed, and the peril of life and property in the event of failure of a dam to
17 perform its function.

18 (b) The Department, consistent with rules adopted by the Commission, may
19 impose any condition or requirement in orders and written approvals issued under this
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1 Part that is necessary to ensure that stream classifications, water quality standards, and
2 aquatic habitat requirements are met and maintained, including conditions and
3 requirements relating to the release or discharge of designated flows from dams, the
4 location and design of water intakes and outlets, the amount and timing of the withdrawal
5 of water from a reservoir, and the construction of submerged weirs or other devices
6 intended to maintain minimum streamflows.

7 (e) The Commission shall adopt rules that specify the minimum streamflow in the
8 length of the stream affected.

9 (c) ~~In adopting rules that specify~~ The minimum streamflow in the length of the
10 stream affected by a dam that is operated by a small power producer, as defined in G.S.
11 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where
12 the water is returned to the same stream, the Commission shall establish a schedule for
13 increasing or decreasing the minimum streamflow above or below the baseline minimum
14 streamflow. The baseline minimum streamflow in the length of the stream affected by a dam
15 that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from
16 4,000 feet or less of the natural streambed and where the water is returned to the same stream is
17 the stream shall be:

18 (1) The minimum average flow for a period of seven consecutive days that
19 would have an average occurrence of once in 10 years in the absence of
20 the dam, or ten percent (10%) of the average annual flow of the
21 stream in the absence of the dam, whichever is less, if prior to 1 January
22 1995 the small power producer was either licensed by the Federal
23 Energy Regulatory Commission or held a certificate of public
24 convenience and necessity issued by the North Carolina Utilities
25 Commission.

26 (2) The minimum average flow for a period of seven consecutive days that
27 would have an average occurrence of once in 10 years in the absence of
28 the dam, or ten percent (10%) of the average annual flow of the stream
29 in the absence of the dam, whichever is greater, if subdivision (1) of this
30 subsection does not apply.

31 (3) To protect the habitat of the Cape Fear Shiner and other aquatic species,
32 28 cubic feet per second for any dam that diverts water from 2,500 feet
33 or more of the natural streambed of any stream on which six or more
34 dams operated by small power producers were located on 1 January
35 1995, notwithstanding subdivisions (1) and (2) of this subsection.

36 (d) Subsection (c) of this section establishes the policy of this State with respect to
37 minimum streamflows in the length of the stream affected by a dam that is operated by a
38 small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or
39 less of the natural streambed and where the water is returned to the same stream, whether
40 the dam is subject to or exempt from this Part. In its comments and recommendations to
41 the Federal Energy Regulatory Commission regarding the minimum streamflow in the
42 length of the stream affected by a dam that is operated by a small power producer, as
43 defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural

1 streambed and where the water is returned to the same stream, the Commission and the
2 Department shall not advocate or recommend a minimum streamflow that exceeds the
3 minimum streamflow that would be required under subsection (c) of this section."

4 Sec. 2. This act is effective upon ratification.