

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

H

1

HOUSE BILL 1054

Short Title: Swift Creek Mgt. Plan/Standing to Enforce. (Local)

Sponsors: Representatives Stam, Ross, Dollar (Primary Sponsors); and Weiss.

Referred to: Judiciary I.

March 31, 2005

A BILL TO BE ENTITLED

1
2 AN ACT TO PROVIDE THAT LOCAL GOVERNMENTS THAT ARE A PARTY TO
3 THE SWIFT CREEK MANAGEMENT PLAN AND CERTAIN CITIZENS OF
4 THOSE LOCAL GOVERNMENTS HAVE STANDING TO ENFORCE THE
5 PROVISIONS OF S.L. 1998-192.

6 Whereas, in 1988, representatives of the County of Wake, the City of
7 Raleigh, and the Towns of Apex, Cary, and Garner developed the Swift Creek
8 Management Plan, a coordinated land-use plan for the Swift Creek watershed; and

9 Whereas, the local governments having jurisdiction over the area approved
10 the Swift Creek Management Plan through appropriate action of their respective
11 governing bodies; and

12 Whereas, in 1998, the General Assembly found that it was in the best interest
13 of the citizens of the Swift Creek area and those local governments to maintain the
14 Swift Creek Management Plan as agreed to by those local governments; and

15 Whereas, in order to maintain the Swift Creek Management Plan, the General
16 Assembly enacted S.L. 1998-192, which provides that the local governments that are
17 parties to the Swift Creek Management Plan shall not adopt, amend, or repeal any
18 ordinance authorized by Article 18 of Chapter 153A of the General Statutes, Article 19
19 of Chapter 160A of the General Statutes, or under any local act or charter provision
20 relating to the subject of those Articles, nor grant any permit or approval pursuant to
21 those ordinances, that would be inconsistent with the standards and provisions of the
22 Swift Creek Management Plan; and

23 Whereas, the General Assembly finds that it is in the best interests of the
24 citizens of the Swift Creek area and the local governments that have agreed to maintain
25 the Swift Creek Management Plan that the standing of these local governments and
26 certain citizens of the Swift Creek area to enforce the provisions of S.L. 1998-192 be
27 clarified; Now, therefore,

28 The General Assembly of North Carolina enacts:

1 **SECTION 1.(a)** The provisions of Sections 1 through 3 of S.L. 1998-192
2 may be enforced as provided in this section.

3 **SECTION 1.(b)** Any local government that is a party to the Swift Creek
4 Management Plan shall have standing to contest an action of another party to the Swift
5 Creek Management Plan that the local government believes is inconsistent with the
6 standards and provisions of the Swift Creek Management Plan in violation of the
7 provisions of Sections 1 through 3 of S.L. 1998-192.

8 **SECTION 1.(c)** Any person who resides in the jurisdiction of a local
9 government that is a party to the Swift Creek Management Plan and who also resides in
10 the Swift Creek watershed shall have standing to contest an action of any party to the
11 Swift Creek Management Plan that the person believes is inconsistent with the standards
12 and provisions of the Swift Creek Management Plan in violation of the provisions of
13 Sections 1 through 3 of S.L. 1998-192, provided that the person has a specific personal
14 or legal interest in the action and is adversely affected thereby.

15 **SECTION 1.(d)** A local government or person who has standing under
16 subsection (b) or (c) of this section may file a petition in the superior court of Wake
17 County seeking review of the action of a local government that the local government or
18 person believes to be inconsistent with the standards and provisions of the Swift Creek
19 Management Plan in violation of the provisions of Sections 1 through 3 of S.L.
20 1998-192. A petition under this section shall be filed no later than 60 days after the
21 adoption, amendment, or repeal of the ordinance, the grant of the permit or approval, an
22 extension of any utility, or other action the local government or person believes to be
23 inconsistent with the standards and provisions of the Swift Creek Management Plan in
24 violation of the provisions of Sections 1 through 3 of S.L. 1998-192.

25 **SECTION 1.(e)** A petition filed under this section shall state with specificity
26 what exceptions are taken to the action of the respondent local government and what
27 relief the petitioner seeks. Within 15 days after receipt of the copy of the petition for
28 review, or within such additional time as the court may allow, the respondent local
29 government shall transmit to the court a copy of the ordinance, permit, or approval and
30 any other minutes or documents that constitute the record of the challenged action.

31 **SECTION 1.(f)** The court may hear oral arguments, receive written briefs,
32 and take evidence on the question of whether or not there has been a violation of
33 Sections 1 through 3 of S.L. 1998-192.

34 **SECTION 1.(g)** If the court determines that there has been a violation of
35 Sections 1 through 3 of S.L. 1998-192, it shall declare the ordinance, permit, approval,
36 or other action void and may order any additional relief that appears appropriate.

37 **SECTION 2.** This act shall not be construed to preclude a judicial
38 determination, based on common-law principles, statutory provisions, or other law, that
39 standing exists in a particular case for a person to bring an action to challenge an alleged
40 violation of the Swift Creek Management Plan and the provisions of Sections 1 through
41 3 of S.L. 1998-192.

42 **SECTION 3.** This act is effective when it becomes law.