

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

S

D

SENATE DRS15080-LH-47 (2/3)

Short Title: Interconnection of Public Water Systems. (Public)

Sponsors: Senator Hartsell.

Referred to:

A BILL TO BE ENTITLED

AN ACT REQUIRING THE INTERCONNECTION OF PUBLIC WATER SYSTEMS
OR WASTEWATER SYSTEMS TO REGIONAL SYSTEMS WHEN
NECESSARY TO PROMOTE PUBLIC HEALTH, PROTECT THE
ENVIRONMENT, AND ENSURE COMPLIANCE AND TO REQUIRE THAT
AN ANALYSIS OF REASONABLE ALTERNATIVES BE DONE BEFORE
CONSTRUCTING OR ALTERING A PUBLIC WATER SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-317(c) reads as rewritten:

"(c) No person or unit of local government shall begin construction or alteration
of a public water system or award a contract for construction or alteration unless:

- (1) The plans for construction or alteration have been prepared by an
engineer licensed by this State;
- (2) The Department has determined that the system, as constructed or
altered, will be capable of compliance with the drinking water rules;
- (3) The Department has determined that the system is capable of
interconnection at an appropriate time with an expanding municipal,
county or regional system; the Department may require
interconnection with a municipal, county, or regional system within a
county, or between or among counties if approved by the board of
commissioners of each county, if necessary to promote the public
health, protect the environment, or ensure compliance with drinking
water rules;

(3a) The Department has determined that an analysis was done, including a
financial analysis, of the reasonable alternatives to the proposed
construction or alteration of the public water system and that the

1 analysis indicates that the proposed construction or alteration is
2 appropriate;

3 (4) The Department has determined that adequate arrangements have been
4 made for the continued operation, service and maintenance of the
5 public water system; and

6 (5) The Department has approved the plans and specifications."

7 **SECTION 2.** G.S. 130A-317(d) reads as rewritten:

8 "(d) Municipalities, counties, local boards or commissions, water and sewer
9 authorities, or groups of municipalities and counties may establish and administer
10 within their utility service areas their own approval program in lieu of State approval of
11 water system plans required in subsection (c) of this section for construction or
12 alteration of the distribution system of a proposed or existing public water system,
13 subject to the prior certification of the Department. For purposes of this subsection, the
14 service area of a municipality shall include only that area within the corporate limits of
15 the municipality and that area outside a municipality in its extraterritorial jurisdiction
16 where water service is already being provided to the permit applicant by the
17 municipality or connection to the municipal water system is immediately available to
18 the applicant; the service areas of counties and the other entities or groups shall include
19 only those areas where water service is already being provided to the applicant by the
20 permitting authority or connection to the permitting authority's system is immediately
21 available. No later than the 180th day after the receipt of an approval program and
22 statement submitted by any local government, commission, authority, or board, the
23 Department shall certify any local program that:

24 (1) Provides by ordinance or local law for requirements compatible with
25 those imposed by this Article, and the standards and rules adopted
26 pursuant to this Article;

27 (2) Provides that the Department receives notice and a copy of each
28 application for approval and that the Department receives copies of
29 approved plans;

30 (3) Provides that plans and specifications for all construction and
31 alterations be prepared by or under the direct supervision of an
32 engineer licensed to practice in this State;

33 (4) Provides for the adequate enforcement of the program requirements by
34 appropriate administrative and judicial process;

35 (5) Provides for the adequate administrative organization, engineering
36 staff, financial and other resources necessary to effectively carry out its
37 plan review program;

38 (6) Provides that the system is capable of interconnection at an appropriate
39 time with an expanding municipal, county, or regional ~~system~~; system
40 and requires interconnection with a municipal, county, or regional
41 system when the Department determines interconnection is necessary
42 to promote the public health, protect the environment, or ensure
43 compliance with drinking water rules;

- 1 (7) Provides for the adequate arrangement for the continued operation,
2 service, and maintenance of the public water system;
- 3 (8) Provides that an approved system, as constructed or altered, will be
4 capable of compliance with the drinking water rules; and
- 5 (9) Is approved by the Department as adequate to meet the requirements of
6 this Article and any applicable rules adopted pursuant to this Article.

7 The Department may deny, suspend, or revoke the certification of a local program
8 upon a finding that a violation of the provisions in subsection (d) of this section has
9 occurred. A local government administering an approval program shall be given notice
10 that there has been a tentative decision to deny, suspend, or revoke certification and that
11 an administrative hearing will be held in accordance with Chapter 150B of the General
12 Statutes where the decision may be challenged. If a violation of the provisions in
13 subsection (d) of this section presents an imminent hazard, certification may be
14 suspended or revoked immediately. The Department shall give notice of the immediate
15 suspension or revocation and notice that an administrative hearing will be held in
16 accordance with Chapter 150B of the General Statutes where the decision may be
17 challenged.

18 Notwithstanding any other provisions of this subsection, if the Department
19 determines that a public water system is violating plan approval requirements of a local
20 program and that the local government has not acted to enforce those approval
21 requirements, the Department may, after written notice to the local government, take
22 enforcement action in accordance with the provisions of this Article."

23 **SECTION 3.** G.S. 143-215.1(b)(4) reads as rewritten:

24 "(4) The Commission shall have the power:

- 25 a. To grant a permit with such conditions attached as the
26 Commission believes necessary to achieve the purposes of this
27 Article.
- 28 b. To require that an applicant satisfy the Department that the
29 applicant, or any parent, subsidiary, or other affiliate of the
30 applicant or parent:
 - 31 1. Is financially qualified to carry out the activity for which
32 the permit is required under subsection (a) of this
33 section; and
 - 34 2. Has substantially complied with the effluent standards
35 and limitations and waste management treatment
36 practices applicable to any activity in which the
37 applicant has previously engaged, and has been in
38 substantial compliance with other federal and state laws,
39 regulations, and rules for the protection of the
40 environment.
 - 41 3. As used in this subdivision, the words "affiliate,"
42 "parent," and "subsidiary" have the same meaning as in
43 17 Code of Federal Regulations § 240.12b-2 (1 April
44 1990 Edition).

1 4. For a privately owned treatment works that serves 15 or
2 more service connections or that regularly serves 25 or
3 more individuals, financial qualification may be
4 demonstrated through the use of a letter of credit,
5 insurance, surety, trust agreement, financial test, bond, or
6 a guarantee by corporate parents or third parties who can
7 pass the financial test. No permit shall be issued under
8 this section for a privately owned treatment works that
9 serves 15 or more service connections or that regularly
10 serves 25 or more individuals, until financial
11 qualification is established and the issuance of the permit
12 shall be contingent on the continuance of the financial
13 qualification for the duration of the activity for which the
14 permit was issued.

15 c. To modify or revoke any permit upon not less than 60 days'
16 written notice to any person affected.

17 d. To designate certain classes of minor activities for which a
18 general permit may be issued, after considering:

19 1. The environmental impact of the activities;

20 2. How often the activities are carried out;

21 3. The need for individual permit oversight; and

22 4. The need for public review and comment on individual
23 permits.

24 e. To designate certain classes of minor activities for which:

25 1. Performance conditions may be established by rule; and

26 2. Individual or general permits are not required.

27 f. To require connection to a municipal, county, or regional
28 wastewater system if necessary to promote public health,
29 protect the environment, or ensure compliance with water
30 quality rules."

31 **SECTION 4.** G.S. 143-215.1(f) reads as rewritten:

32 "(f) Local Permit Programs for Sewer Extension. – Municipalities, counties, local
33 boards or commissions, water and sewer authorities, or groups of municipalities and
34 counties may establish and administer within their utility service areas their own general
35 permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8)
36 above, for construction, operation, alteration, extension, change of proposed or existing
37 sewer system, subject to the prior certification of the Commission. For purposes of this
38 subsection, the service area of a municipality shall include only that area within the
39 corporate limits of the municipality and that area outside a municipality in its
40 extraterritorial jurisdiction where sewer service is already being provided by the
41 municipality to the permit applicant or connection to the municipal sewer system is
42 immediately available to the applicant; the service areas of counties and the other
43 entities or groups shall include only those areas where sewer service is already being
44 provided to the applicant by the permitting authority or connection to the permitting

1 authority's system is immediately available. No later than the 180th day after the receipt
2 of a program and statement submitted by any local government, commission, authority,
3 or board the Commission shall certify any local program that:

- 4 (1) Provides by ordinance or local law for requirements compatible with
5 those imposed by this Part and the rules implementing this Part;
- 6 (2) Provides that the Department receives notice and a copy of each
7 application for a permit and that it receives copies of approved permits
8 and plans upon request by the Commission;
- 9 (3) Provides that plans and specifications for all construction, extensions,
10 alterations, and changes be prepared by or under the direct supervision
11 of an engineer licensed to practice in this State;
- 12 (4) Provides for the adequate enforcement of the program requirements by
13 appropriate administrative and judicial process;
- 14 (5) Provides for the adequate administrative organization, engineering
15 staff, financial and other resources necessary to effectively carry out its
16 plan review program;
- 17 (6) Provides that the system is capable of interconnection at an appropriate
18 time with an expanding municipal, county, or regional ~~system;~~system
19 and requires interconnection with a municipal, county, or regional
20 system when the Department determines interconnection is necessary
21 to promote the public health, protect the environment, or ensure
22 compliance with water quality rules;
- 23 (6a) Provides that an analysis, including a financial analysis, of the
24 reasonable alternatives to any proposed construction or alteration of a
25 public sewer system must be done and that the analysis must
26 demonstrate that the proposed construction or alteration is appropriate;
- 27 (7) Provides for the adequate arrangement for the continued operation,
28 service, and maintenance of the sewer system; and
- 29 (8) Is approved by the Commission as adequate to meet the requirements
30 of this Part and the rules implementing this Part.

31 The Commission may deny, suspend, or revoke certification of a local program upon
32 a finding that a violation of the provisions in subsection (f) of this section has occurred.
33 A denial, suspension, or revocation of a certification of a local program shall be made
34 only after notice and a public hearing. If the failure of a local program to carry out this
35 subsection creates an imminent hazard, the Commission may summarily revoke the
36 certification of the local program. Chapter 150B of the General Statutes does not apply
37 to proceedings under this subsection.

38 Notwithstanding any other provision of this subsection, if the Commission
39 determines that a sewer system, treatment works, or disposal system is operating in
40 violation of the provisions of this Article and that the appropriate local authorities have
41 not acted to enforce those provisions, the Commission may, after written notice to the
42 appropriate local government, take enforcement action in accordance with the
43 provisions of this Article."

1 **SECTION 5.** G.S. 143-215.1(b) is amended by adding two new subdivisions
2 to read:

3 "(6) No permit for a new or expanded municipal waste treatment system or
4 nonmunicipal treatment system (human waste only) shall be issued,
5 unless the applicant:

6 a. Has adopted a plan to implement a program to reduce demand
7 and manage existing capacity by reducing or eliminating
8 stormwater and groundwater infiltration and intrusion into
9 collection lines;

10 b. Has performed and submits an analysis, including a financial
11 analysis, of reasonable alternatives to the proposed new or
12 expanded waste treatment system, including the consideration
13 of discharging to created wetlands and the beneficial reuse of
14 treated wastewater for nondrinking water purposes; and

15 c. Can demonstrate that the proposed new or expanded waste
16 treatment facility will be planned, designed, and constructed to
17 facilitate or accommodate eventual interconnection with
18 adjoining systems or regional waste treatment systems.

19 (7) In deciding whether to grant a permit application under subdivision (6)
20 of this subsection, the Commission may consider whether the applicant
21 is making adequate progress in the implementation of
22 G.S. 143-215.1(b)(6)a. and may consider whether the applicant could
23 feasibly choose an alternative under G.S. 143-215.1(b)(6)b. that will
24 provide better protection for water quality."

25 **SECTION 6.** The Commission for Health Services shall adopt rules to
26 implement G.S. 130A-317, as amended by Sections 1 and 2 of this act, by October 1,
27 2005. The Environmental Management Commission shall adopt rules to implement
28 G.S. 143-215.1, as amended by Sections 3, 4, and 5 of this act, by October 1, 2005.
29 Notwithstanding G.S. 150B-21.1(a)(2), this act shall not be construed to authorize the
30 adoption of temporary rules.

31 **SECTION 7.** This act is effective when it becomes law.