

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

1

SENATE BILL 1421

Short Title: Amend Interbasin Transfer Laws. (Public)

Sponsors: Senators Queen, Clodfelter; Allran, Dannelly, Goss, Jacumin, Rand, and Shaw.

Referred to: Agriculture/Environment/Natural Resources.

March 26, 2007

A BILL TO BE ENTITLED

1
2 AN ACT TO PROVIDE THAT AN APPLICANT FOR A CERTIFICATE FOR A
3 TRANSFER OF WATER FROM ONE RIVER BASIN TO ANOTHER RIVER
4 BASIN HAS THE BURDEN OF PROOF TO ESTABLISH BY CLEAR AND
5 CONVINCING EVIDENCE THAT THE ENVIRONMENTAL MANAGEMENT
6 COMMISSION SHOULD GRANT THE CERTIFICATE, TO PROVIDE THAT
7 THE WATER RIGHTS OF THE RECEIVING RIVER BASIN ARE
8 SUBORDINATE TO THOSE OF THE SOURCE RIVER BASIN, AND TO
9 PROVIDE THAT A CERTIFICATE FOR A TRANSFER OF WATER FROM
10 ONE RIVER BASIN TO ANOTHER RIVER BASIN INCLUDES CONDITIONS
11 THAT PROTECT THE WATER SUPPLY OF THE SOURCE RIVER BASIN.

12 The General Assembly of North Carolina enacts:

13 **SECTION 1.** G.S. 143-215.22I(f) reads as rewritten:

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

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

19 (2) The present and reasonably foreseeable future detrimental effects on
20 the source river basin, including present and future effects on public,
21 industrial, and agricultural water supply needs, wastewater
22 assimilation, water quality, fish and wildlife habitat, hydroelectric
23 power generation, navigation, and recreation. Local water supply plans
24 that affect the source ~~major~~-river basin shall be used to evaluate the
25 projected future ~~municipal~~-water needs in the source ~~major~~-river basin.
26 Projected future water needs in the receiving river basin are
27 subordinate to projected future water needs in the source river basin.

- 1 (2a) The cumulative effect on the source ~~major~~-river basin of any water
2 transfer or consumptive water use that, at the time the Commission
3 considers the application for a certificate is occurring, is authorized
4 under this section, or is projected in any local water supply plan that
5 has been submitted to the Department in accordance with
6 G.S. 143-355(1).
- 7 (3) The beneficial and detrimental effects on the receiving river basin,
8 including effects on water quality, wastewater assimilation, fish and
9 wildlife habitat, navigation, recreation, and flooding.
- 10 (4) Reasonable alternatives to the proposed transfer, including their
11 probable costs, and environmental impacts.
- 12 (5) If applicable to the proposed project, the applicant's present and
13 proposed use of impoundment storage capacity to store water during
14 high-flow periods for use during low-flow periods and the applicant's
15 right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.
- 16 (6) If the water to be withdrawn or transferred is stored in a multipurpose
17 reservoir constructed by the United States Army Corps of Engineers,
18 the purposes and water storage allocations established for the reservoir
19 at the time the reservoir was authorized by the Congress of the United
20 States.
- 21 (7) Any other facts and circumstances that are reasonably necessary to
22 carry out the purposes of this Part."

23 **SECTION 2.** G.S. 143-215.22I(g) reads as rewritten:

24 "(g) A certificate shall be granted for a water transfer if the applicant establishes
25 and the Commission concludes by a ~~preponderance of the clear and convincing~~
26 evidence based upon the findings of fact made under subsection (f) of this section that:
27 (i) the benefits of the proposed transfer outweigh the detriments of the proposed
28 transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree.
29 The conditions necessary to ensure that the detriments are and continue to be mitigated
30 to a reasonable degree shall be attached to the certificate in accordance with subsection
31 (h) of this section."

32 **SECTION 3.** G.S. 143-215.22I(h) reads as rewritten:

33 "(h) The Commission may grant the certificate in whole or in part, or deny the
34 certificate. The Commission may also grant a certificate with any conditions attached
35 that the Commission believes are necessary to achieve the purposes of this Part. The
36 conditions may include mitigation measures proposed to minimize any detrimental
37 effects of the proposed transfer and measures to protect the availability of water in the
38 source river basin during a drought or other emergency. The certificate shall include all
39 of the following:

- 40 (1) A water conservation plan that specifies the water conservation
41 measures that will be implemented in the receiving river basin to
42 ensure the efficient use of the transferred water. The water
43 conservation plan shall provide for the mandatory implementation of

1 water conservation measures in the receiving river basin that equal or
2 exceed those measures implemented in the source river basin.

3 (2) ~~The certificate shall include a~~ drought management plan that
4 specifies how the transfer shall be managed to protect the source river
5 basin during drought conditions. The drought management plan shall
6 include mandatory reductions in the transfer based on the severity of a
7 drought and shall provide for the mandatory implementation of
8 drought management measures in the receiving river basin that equal
9 or exceed those measures implemented in the source river basin.

10 (3) ~~The certificate shall indicate the~~The maximum amount of water that
11 may be transferred. No person shall transfer an amount of water that
12 exceeds the amount in the certificate."

13 **SECTION 4.** G.S. 143-215.22I(m) reads as rewritten:

14 "(m) It is the public policy of the State to maintain, protect, and enhance water
15 quality within North Carolina. To that end, there is a presumption that a certificate for a
16 transfer of surface water from one river basin to another river basin shall not be granted
17 unless the transfer is necessary to protect and promote public health and welfare.
18 Further, it is the public policy of the State that the cumulative impact of transfers from a
19 source river basin shall not result in a violation of the antidegradation policy set out in
20 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide
21 antidegradation policy adopted pursuant thereto."

22 **SECTION 5.** This act is effective when it becomes law and applies to any
23 application for a certificate for a transfer of surface water from one river basin to
24 another river basin that has not received final approval, including all administrative and
25 judicial review, as of the date this act becomes effective.