

March 22, 2007

**S 1421. AMEND INTERBASIN TRANSFER LAWS.** Filed 3/21/07. *TO PROVIDE THAT AN APPLICANT FOR A CERTIFICATE FOR A TRANSFER OF WATER FROM ONE RIVER BASIN TO ANOTHER RIVER BASIN HAS THE BURDEN OF PROOF TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION SHOULD GRANT THE CERTIFICATE, TO PROVIDE THAT THE WATER RIGHTS OF THE RECEIVING RIVER BASIN ARE SUBORDINATE TO THOSE OF THE SOURCE RIVER BASIN, AND TO PROVIDE THAT A CERTIFICATE FOR A TRANSFER OF WATER FROM ONE RIVER BASIN TO ANOTHER RIVER BASIN INCLUDES CONDITIONS THAT PROTECT THE WATER SUPPLY OF THE SOURCE RIVER BASIN.*

Amends GS 143-215.22l(f) to state that projected future water needs in the receiving basin are subordinate to the projected future water needs of the source river basin in the Environmental Management Commission's (EMC's) consideration of whether to grant an interbasin transfer certificate (certificate) and to require the consideration of the detrimental and beneficial effects (was, detrimental effects) on the receiving river basin. Amends GS 143-215.22l(g) to change the standard for when the EMC must grant a certificate to a conclusion based on clear and convincing evidence (was, a preponderance of the evidence). Amends GS 143-215.22l(h) to (1) require that a certificate include a water conservation plan and (2) require the drought management plan to include mandatory reductions in the transfer based on drought conditions, and (3) require drought management measures in the receiving basin that equal or exceed those in the source basin. Amends GS 143-215.22l(m) to create a presumption that a certificate will not be granted unless the transfer is necessary to protect and promote public health and welfare.

**Intro. by Queen.**

GS 143

July 25, 2007

**S 1421. AMEND INTERBASIN TRANSFER LAWS.** Filed 3/21/07. Senate committee substitute adopted 7/24/07 makes the following changes to 1st edition. Deletes proposed amendments to GS 143-215.22l (regulation of surface water transfers) and instead repeals it.

*Study.* Requires the Environmental Review Commission (ERC) to study the allocation of surface water resources and their availability and maintenance in the state, including an evaluation of the benefits of establishing procedures for negotiating transfers of water from one river basin to another. Requires the ERC to submit a final report to the 2009 General Assembly and allows an interim report to the 2008 session.

*Certificate.* Enacts new GS 143-215.22L (regulation of surface water transfers) prohibiting the following actions without first obtaining a certificate: (1) initiate a transfer of two million gallons or more of water per day from one river basin to another; (2) increase the amount of an existing transfer from one river basin to another by 25% or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is two million gallons or more per day; and (3) increase an existing transfer of water from one river basin to another above the amount approved by the Environmental Management Commission (EMC) in a certificate issued before July 1, 1993. Makes an exception for transferring water from one river basin to another up to the full capacity of a facility to transfer water if the facility existed or was being constructed on July 1, 1993. Also requires the payment of a \$10,000 fee.

*Notice and public hearings.* Requires an applicant to petition the EMC for a certificate and requires the applicant to provide notice of the intent to file a petition, to hold public meetings in the source and receiving river basin, and to accept written comments. Provides for how notice of the public meetings and comments must be given. Requires the appointment of a mediation officer within 30 days after filing notice to file for a petition, to initiate settlement discussions.

*Environmental impacts.* Requires the Department of Environment and Natural Resources (DENR) to study the environmental impacts of any proposed water transfer that requires a certificate and requires environmental assessment to be prepared. Provides for when an environmental impact statement is required and for the content of any environmental impact statement. Requires the EMC to hold a public hearing on the draft environmental document for a proposed interbasin transfer after 30 days' written notice. Enumerates information that must be included in the petition. Prohibits the EMC from acting on a petition until the EMC determines that

the environmental document is complete and adequate, and requires the EMC to issue a draft determination on whether to grant the certificate within 90 days upon the later of determining that the environmental document is adequate or when the applicant submits its petition. Requires the EMC to hold a public hearing 60 days after issuing its draft determination.

*Final determination.* Specifies factors that must be considered by the EMC in determining whether to issue a certificate for transfer and requires the EMC to state written findings and conclusions on each item. Also enumerates the sources of information that may be considered in determining whether to issue a certificate and establishes the burden and standard of proof. Authorizes the EMC to grant the certificate in whole or in part or to deny the certificate, allows conditions or limitations to be imposed, and requires the certificate to include listed conditions and limitations, including a water conservation plan and drought management plan. Provides that administrative and judicial review of the EMC's final decision is governed by the Administrative Procedure Act.

*Misc.* Provides that for applications for an increase in a transfer that existed on July 1, 1993, the EMC may approve or disapprove only the amount of the increase. Provides for the approval of emergency transfers. Requires an applicant to submit a plan for addressing future water needs when the transfer for which a certificate was issued equals or exceeds 80% of the maximum amount authorized in the certificate and requires the implementation of the plan when the transfer equals or exceeds 90% of the maximum authorized amount. States that it is public policy that the needs in a receiving basin are subordinate to needs in a source river basin. Makes conforming changes to GS 113A-8.1 and GS 143-215.6A(a)(9). Changes the title.

Effective for any petition for a certificate for a water transfer from one river basin to another made on or after December 1, 2007.