

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 239
Committee Substitute Favorable 5/5/09
Committee Substitute #2 Favorable 5/11/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H239-PCS10996-SB-47

Short Title: Restore Water Quality in Jordan Reservoir. (Public)

Sponsors:

Referred to:

February 23, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR IMPROVEMENTS IN THE MANAGEMENT OF THE
3 JORDAN WATERSHED IN ORDER TO RESTORE WATER QUALITY IN THE
4 JORDAN RESERVOIR.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Definitions. – The following definitions apply to this act and its
7 implementation:

- 8 (1) The definitions set out in G.S. 143-212 and G.S. 143-213.
9 (2) The definitions set out in 15A NCAC 02B .0262 (Jordan Water Supply
10 Nutrient Strategy: Purpose and Scope) and 15A NCAC 02B .0263 (Jordan
11 Water Supply Nutrient Strategy: Definitions).
12 (3) "Existing Development Rule 15A NCAC 02B .0266" means 15A NCAC
13 02B .0266 (Jordan Water Supply Nutrient Strategy: Stormwater
14 Management for Existing Development), adopted by the Commission on
15 May 8, 2008, and approved by the Rules Review Commission on November
16 20, 2008.
17 (4) "Wastewater Discharge Rule 15A NCAC 02B .0270" means 15A NCAC
18 02B .0270 (Jordan Water Supply Nutrient Strategy: Wastewater Discharge
19 Requirements) adopted by the Commission on May 8, 2008, and approved
20 by the Rules Review Commission on October 16, 2008.

21 **SECTION 2.(a)** Wastewater Discharge Rule 15A NCAC 02B .0270. – Until the
22 effective date of the revised permanent rule that the Commission is required to adopt pursuant
23 to Section 2(c) of this act, the Commission and the Department shall implement the Wastewater
24 Discharge Rule 15A NCAC 02B .0270, as provided in Section 2(b) of this act.

25 **SECTION 2.(b)** Implementation. – Notwithstanding sub-subdivision (c) of
26 subdivision (6) of Wastewater Discharge Rule 15A NCAC 02B .0270, each existing discharger
27 with a permitted flow greater than or equal to 0.1 million gallons per day (MGD) shall limit its
28 total nitrogen discharge to its active individual discharge allocation as defined or modified
29 pursuant to Wastewater Discharge Rule 15A NCAC 02B .0270 no later than calendar year
30 2016.

31 **SECTION 2.(c)** Additional Rule-Making Authority. – The Commission shall adopt
32 a rule to replace Wastewater Discharge Rule 15A NCAC 02B .0270. Notwithstanding



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1 G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be
2 substantively identical to the provisions of Section 2(b) of this act. Rules adopted pursuant to
3 this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted
4 pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10
5 or more written objections had been received as provided by G.S. 150B-21.3(b2).

6 **SECTION 3.(a)** Existing Development Rule 15A NCAC 02B .0266 Disapproved.
7 – Pursuant to G.S. 150B-21.3(b1), Existing Development Rule 15A NCAC 02B .0266, as
8 adopted by the Environmental Management Commission on May 8, 2008, and approved by the
9 Rules Review Commission on November 20, 2008, is disapproved.

10 **SECTION 3.(b)** References in the North Carolina Administrative Code to the rule
11 cited in Section 3(a) of this act shall be deemed to refer to the equivalent provisions of this act.

12 **SECTION 3.(c)** Nutrient Monitoring. – The Department shall maintain an ongoing
13 program to monitor water quality in each arm of Jordan Reservoir. The Department shall also
14 accept water quality sampling data from a monitoring program implemented by a local
15 government or nonprofit organization if the data meets quality assurance standards established
16 by the Department. On March 1, 2014, the Department shall report the results of monitoring in
17 each arm of Jordan Reservoir to the Environmental Review Commission. The Department shall
18 submit an updated monitoring report under this section every three years thereafter until such
19 time as the lake is no longer impaired by nutrient pollution.

20 **SECTION 3.(d)** Control of Nutrient Loading From Existing Development. – The
21 Department shall require implementation of reasonable nutrient load reduction measures for
22 existing development in each subwatershed of the Jordan Reservoir, as provided in this act. The
23 Department shall determine whether nutrient load reduction measures for existing development
24 are necessary in each subwatershed of Jordan Reservoir and require implementation of
25 reasonable nutrient reduction measures in accordance with an adaptive management program as
26 follows:

27 (1) Stage 1 Adaptive Management Program to Control Nutrient Loading From
28 Existing Development. –

29 a. Municipalities and counties located in whole or in part in the Jordan
30 watershed shall implement a Stage 1 adaptive management program
31 to control nutrient loading from existing development in the Jordan
32 watershed. The Stage 1 adaptive management program shall meet the
33 requirements set out in 40 C.F.R. § 122.34 as applied by the
34 Department in the NPDES General Permit for municipal separate
35 storm sewer systems in effect on July 1, 2009. The Stage 1 adaptive
36 management program shall include all of the following measures:

- 37 1. A public education program to inform the public of the
38 impacts of nutrient loading and measures that can be
39 implemented to reduce nutrient loading from stormwater
40 runoff from existing development.
- 41 2. A mapping program that includes major components of the
42 municipal separate storm sewer system, including the location
43 of major outfalls, as defined in 40 Code of Federal
44 Regulations §122.26(b)(5) (July 1, 2008) and the names and
45 location of all waters of the United States that receive
46 discharges from those outfalls, land use types, and location of
47 sanitary sewers.
- 48 3. A program to identify and remove illegal discharges.
- 49 4. A program to identify opportunities for retrofits and other
50 projects to reduce nutrient loading from existing developed
51 lands.

1 subwatershed will not be necessary to achieve nutrient-related water
2 quality standards. In making this determination, the Department shall
3 consider the anticipated effect of measures implemented or scheduled
4 to be implemented to reduce nutrient loading from sources in the
5 subwatershed other than existing development. If any subsequent
6 monitoring report for an arm of Jordan Reservoir required under
7 Section 3(c) of this act shows that nutrient-related water quality
8 standards have not been achieved, the Department shall notify the
9 municipalities and counties located in whole or in part in the
10 subwatershed of that arm of Jordan Reservoir and the municipalities
11 and counties shall develop and implement a Stage 2 adaptive
12 management program as provided in this subdivision.

13 b. The Department shall establish a load reduction goal for existing
14 development for each municipality and county required to implement
15 a Stage 2 adaptive management program to control nutrient loading
16 from existing development. The load reduction goal shall be
17 designed to achieve, relative to the baseline period 1997 through
18 2001, an eight percent (8%) reduction in nitrogen loading and a five
19 percent (5%) reduction in phosphorus loading reaching Jordan
20 Reservoir from existing developed lands within the police power
21 jurisdiction of the local government. The baseline load shall be
22 calculated by applying the Tar-Pamlico Nutrient Export Calculation
23 Worksheet, Piedmont Version, dated October 2004, to acreages of
24 different types of existing development within the police power
25 jurisdiction of the local government during the baseline period. The
26 baseline load may also be calculated using an equivalent or more
27 accurate method acceptable to the Department and recommended by
28 the Scientific Advisory Board established pursuant to Section 4(a) of
29 this act. The baseline load for a municipality or county shall not
30 include nutrient loading from lands under State or federal control or
31 lands in agriculture or forestry. The load reduction goal shall be
32 adjusted to account for nutrient loading increases from lands
33 developed subsequent to the baseline period but prior to
34 implementation of new development stormwater programs.

35 c. Based on findings under sub-subdivision a. of this subdivision, the
36 Department shall notify the local governments in each subwatershed
37 that either:

- 38 1. Implementation of a Stage 2 adaptive management program
39 to control nutrient loading from existing development will be
40 necessary to achieve water quality standards in an arm of the
41 reservoir and direct the municipalities and counties in the
42 subwatershed to develop a load reduction program in
43 compliance with this section.
- 44 2. Implementation of a Stage 2 adaptive management program
45 to control nutrient loading from existing development is not
46 necessary at that time but will be reevaluated in three years
47 based on the most recent water quality monitoring
48 information.

49 d. A local government receiving notice of the requirement to develop
50 and implement a Stage 2 adaptive management program to control
51 nutrient loading from existing development under this section shall

- 1 not be required to submit a program if the local government
2 demonstrates that it has already achieved the reductions in nutrient
3 loadings required by sub-subdivision b. of this subdivision.
- 4 e. Within six months after receiving notice to develop and implement a
5 Stage 2 adaptive management program to control nutrient loading
6 from existing development, each local government shall submit to
7 the Commission a program that is designed to achieve the reductions
8 in nutrient loadings established by the Department pursuant to
9 sub-subdivision b. of this subdivision. A local government program
10 may include nutrient management strategies that are not included in
11 the model program developed pursuant to Section 3(e) of this act in
12 addition to or in place of any component of the model program. In
13 addition, a local government may satisfy the requirements of this
14 subdivision through reductions in nutrient loadings from other
15 sources in the same subwatershed to the extent those reductions go
16 beyond measures otherwise required by statute or rule. A local
17 government may also work with other local governments within the
18 same subwatershed to collectively meet the required reductions in
19 nutrient loadings from existing development within their combined
20 jurisdictions. Any credit for reductions achieved or obtained outside
21 of the police power jurisdiction of a local government shall be
22 adjusted based on transport factors established by the Department
23 document Nitrogen and Phosphorus Delivery from Small Watersheds
24 to Jordan Lake, dated June 30, 2002.
- 25 f. Within six months following submission of a local government's
26 Stage 2 adaptive management program to control nutrient loading
27 from existing development, the Department shall recommend that the
28 Commission approve or disapprove the program. The Commission
29 shall approve the program if it meets the requirements of this
30 subdivision, unless the Commission finds that the local government
31 can, through the implementation of reasonable and cost-effective
32 measures not included in the proposed program, meet the reductions
33 in nutrient loading established by the Department pursuant to
34 sub-subdivision b. of this subdivision by a date earlier than that
35 proposed by the local government. If the Commission finds that there
36 are additional or alternative reasonable and cost-effective measures,
37 the Commission may require the local government to modify its
38 proposed program to include such measures to achieve the required
39 reductions by the earlier date. If the Commission requires such
40 modifications, the local government shall submit a modified program
41 within two months. The Department shall recommend that the
42 Commission approve or disapprove the modified program within
43 three months after receiving the local government's modified
44 program. In determining whether additional or alternative load
45 reduction measures are reasonable and cost effective, the
46 Commission shall consider factors including, but not limited to, the
47 increase in the per capita cost of a local government's stormwater
48 management program that would be required to implement such
49 measures and the cost per pound of nitrogen and phosphorus
50 removed by such measures. The Commission shall not require

1 additional or alternative measures that would require a local
2 government to:

- 3 1. Install or require installation of a new stormwater collection
4 system in an area of existing development unless the area is
5 being redeveloped.
- 6 2. Acquire developed private property.
- 7 3. Reduce or require the reduction of impervious surfaces within
8 an area of existing development unless the area is being
9 redeveloped.

10 g. Within three months after the Commission's approval of a Stage 2
11 adaptive management program to control nutrient loading from
12 existing development, the local government shall complete adoption
13 and begin implementation of its program.

14 h. Each local government implementing a Stage 2 adaptive
15 management program to control nutrient loading from existing
16 development shall submit an annual report to the Department
17 summarizing its activities in implementing its program.

18 i. If at any time the Department finds, based on water quality
19 monitoring, that an arm of the Jordan Reservoir has achieved
20 compliance with water quality standards, the Department shall notify
21 the local governments in the subwatershed. Subject to the approval of
22 the Commission, a local government may modify its Stage 2 adaptive
23 management program to control nutrient loading from existing
24 development to maintain only those measures necessary to prevent
25 increases in nutrient loading from existing development.

26 **SECTION 3.(e)** Model Stage 2 Adaptive Management Program to Control
27 Nutrient Loading From Existing Development. – No later than July 1, 2013, the Department
28 shall submit a model Stage 2 adaptive management program to control nutrient loading from
29 existing development to the Commission for approval. The model program shall identify
30 specific load reduction practices and programs and reduction credits associated with each
31 practice or program and shall provide that a local government may obtain additional or
32 alternative load-reduction credits based on site-specific monitoring data. In developing the
33 model program, the Department shall consider the findings and recommendations of the
34 Scientific Advisory Board established pursuant to Section 4(a) of this act and comments
35 submitted by municipalities and counties identified in 15A NCAC 02B .0262(7) (Jordan Water
36 Supply Nutrient Strategy: Purpose and Scope). The Commission shall review the model
37 program and either approve the program or return it to the Department with requested changes.
38 The Department shall revise the model program to address changes requested by the
39 Commission. The Commission shall approve a final model program no later than December 31,
40 2013.

41 **SECTION 3.(f)** Additional Measures to Reduce Nitrogen Loading From Existing
42 Development in the Upper New Hope Creek Arm of the Jordan Reservoir. – If the March 1,
43 2023, monitoring report or any subsequent monitoring report for the Upper New Hope Creek
44 Arm of Jordan Reservoir shows that nutrient-related water quality standards are not being
45 achieved, a municipality or county located in whole or in part in the Upper New Hope Creek
46 Subwatershed shall modify its Stage 2 adaptive management program to control nutrient
47 loading from existing development to achieve additional reductions in nitrogen loading from
48 existing development. The modified Stage 2 adaptive management program shall be designed
49 to achieve a total reduction in nitrogen loading from existing development of thirty-five percent
50 (35%) relative to the baseline period 1997 through 2001. The Department shall notify local
51 governments of the requirement to submit a modified Stage 2 adaptive management program.

1 Submission, review and approval, and implementation of a modified Stage 2 adaptive
2 management program shall follow the process, timeline, and standards set out in
3 sub-subdivisions e. through g. of subdivision (2) of Section 3(d) of this act.

4 **SECTION 3.(g) Enforcement.** – The Department shall enforce the provisions of
5 this act as provided in G.S. 143-215.6A, 143-215.6B, and 143-215.6C.

6 **SECTION 3.(h) Collective Compliance.** – Local governments that are subject to
7 regulation under this act may establish collective programs to comply with the requirements of
8 this act.

9 **SECTION 3.(i) Report.** – The Department shall report annually to the Commission
10 regarding the implementation of adaptive management programs to control nutrient loading
11 from existing development in the Jordan watershed.

12 **SECTION 3.(j) Additional Rule-Making Authority.** – The Commission shall adopt
13 a rule to replace Sections 3(c) through 3(i) of this act. Notwithstanding G.S. 150B-19(4), the
14 rule adopted by the Commission pursuant to this section shall be substantively identical to the
15 provisions of Sections 3(c) through 3(f) of this act. Rules adopted pursuant to this section are
16 not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section
17 shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written
18 objections had been received as provided by G.S. 150B-21.3(b2).

19 **SECTION 3.(k) No Change to Existing Regulatory Authority.** – Nothing in this act
20 shall be construed to limit, expand, or modify the authority of the Commission to undertake
21 alternative regulatory actions otherwise authorized by State or federal law, including, but not
22 limited to, the reclassification of waters of the State pursuant to G.S. 143-214.1, the revision of
23 water quality standards pursuant to G.S. 143-214.3, and the granting of variances pursuant to
24 G.S. 143-215.3.

25 **SECTION 4.(a) Scientific Advisory Board for Nutrient-Impaired Waters**
26 **Established.** – No later than July 1, 2010, the Secretary shall establish a Nutrient Sensitive
27 Waters Scientific Advisory Board. The Scientific Advisory Board shall consist of no fewer than
28 five and no more than 10 members with the following expertise or experience:

- 29 (1) Representatives of one or more local governments in the Jordan Reservoir
30 watershed. Local government representatives shall have experience in
31 stormwater management, flood control, or management of a water or
32 wastewater utility.
- 33 (2) One member with at least 10 years of professional or academic experience
34 relevant to the management of nutrients in impaired water bodies and
35 possessing a graduate degree in a related scientific discipline, such as aquatic
36 science, biology, chemistry, geology, hydrology, environmental science,
37 engineering, economics, or limnology.
- 38 (3) One professional engineer with expertise in stormwater management,
39 hydrology, or flood control.
- 40 (4) One representative of the Department of Transportation with expertise in
41 stormwater management.
- 42 (5) One representative of a conservation organization with expertise in
43 stormwater management, urban landscape design, nutrient reduction, or
44 water quality.

45 **SECTION 4.(b) Duties.** – No later than July 1, 2012, the Scientific Advisory
46 Board shall do all of the following:

- 47 (1) Identify management strategies that can be used by local governments to
48 reduce nutrient loading from existing development.
- 49 (2) Evaluate the feasibility, costs, and benefits of implementing the identified
50 management strategies.

- 1 (3) Develop an accounting system for assignment of nutrient reduction credits
2 for the identified management strategies.
- 3 (4) Identify the need for any improvements or refinements to modeling and
4 other analytical tools used to evaluate water quality in nutrient-impaired
5 waters and nutrient management strategies.

6 **SECTION 4.(c)** Report; Miscellaneous Provisions. – The Scientific Advisory
7 Board shall also advise the Secretary on any other issue related to management and restoration
8 of nutrient-impaired water bodies. The Scientific Advisory Board shall submit an annual report
9 to the Secretary no later than July 1 of each year concerning its activities, findings, and
10 recommendations. Members of the Scientific Advisory Board shall be reimbursed for
11 reasonable travel expenses to attend meetings convened by the Department for the purposes set
12 out in this section.

13 **SECTION 5.** No Preemption. – A local government may adopt and implement a
14 stormwater management program that contains provisions that are more restrictive than the
15 standards set forth in Sections 2 and 3 of this act or in any rules concerning stormwater
16 management in the Jordan watershed adopted by the Commission. This section shall not be
17 construed to authorize a local government to impose stormwater management requirements on
18 lands in agriculture or forestry.

19 **SECTION 6.** Construction of Act. –

- 20 (1) Except as specifically provided in Sections 2(c) and 3(j) of this act, nothing
21 in this act shall be construed to limit, expand, or otherwise alter the authority
22 of the Commission or any unit of local government.
- 23 (2) This act shall not be construed to affect any delegation of any power or duty
24 by the Commission to the Department or subunit of the Department.

25 **SECTION 7.** Note to Revisor of Statutes. – Notwithstanding G.S. 164-10, the
26 Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes
27 shall set out the text of Section 2 of this act as a note to G.S. 143-215.1 and may make notes
28 concerning this act to other sections of the General Statutes as the Revisor of Statutes deems
29 appropriate. The Revisor of Statutes shall set out the text of Section 3 of this act as a note to
30 G.S. 143-214.7 and may make notes concerning this act to other sections of the General
31 Statutes as the Revisor of Statutes deems appropriate.

32 **SECTION 8.** Effective Date. – This act is effective when it becomes law.