

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 609
Committee Substitute Favorable 5/31/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H609-PCS50396-SB-51

Short Title: Promote Water Supply Development/Efficiency.

(Public)

Sponsors:

Referred to:

April 5, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS AND
3 OTHER WATER SUPPLY RESOURCES, TO PROVIDE THAT FUNDS FROM THE
4 CLEAN WATER MANAGEMENT TRUST FUND MAY BE USED TO PRESERVE
5 LANDS FOR THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS, AND TO
6 IMPROVE THE EFFICIENCY OF USE OF NORTH CAROLINA'S WATER
7 RESOURCES.

8 Whereas, S.L. 2007-518 directed the Environmental Review Commission to study
9 the allocation of surface water resources and their availability and maintenance in the State; and

10 Whereas, pursuant to this directive, the Environmental Review Commission
11 commissioned a study and report on water allocation issues and policy options; and

12 Whereas, the resulting water allocation report included a recommendation that the
13 State create an expedited regulatory process for the construction of new water supply
14 reservoirs; and

15 Whereas, the resulting water allocation report found that certain areas of the State,
16 including the Piedmont, are expected to experience significant population growth over the next
17 30 years and do not have adequate water supplies to support the expected growth; Now,
18 therefore,

19 The General Assembly of North Carolina enacts:

20 **PART I. PROMOTE THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS**
21 **AND OTHER WATER SUPPLY RESOURCES**

22 **SECTION 1.1.** G.S. 143-355(b) is amended by adding two new subdivisions to
23 read:

24 "(b) Functions to Be Performed. – The Department shall:

25 ...

26 (16) Cooperate with units of local government in the identification of water
27 supply needs and appropriate water supply sources and water storage
28 projects to meet those needs. By agreement with a unit of local government,
29 the Department may do any of the following:

30 a. Assist in the assessment of alternatives for meeting water supply
31 needs; the conduct of engineering studies, hydraulic computations,



* H 6 0 9 - P C S 5 0 3 9 6 - S B - 5 1 *

1 and hydrographic surveys; and the development of a plan of study for
2 purposes of obtaining necessary permits.

3 b. For budget and planning purposes, develop estimates of the costs of
4 the proposed new water supply project.

5 c. Apply for State and federal permits for the development of regional
6 water supplies.

7 (17) Be the principal State agency to cooperate with other State agencies, the
8 United States Army Corps of Engineers, and all other federal agencies or
9 instrumentalities in the planning and development of water supply sources
10 and water storage projects for the State."

11 **SECTION 1.2.** Article 38 of Chapter 143 of the General Statutes is amended by
12 adding two new sections to read:

13 **"§ 143-355.7. Water supply development; State-local cooperation.**

14 (a) At the request of one or more units of local government, the Department may assist
15 the local government in identifying the preferred water supply alternative that alone or in
16 combination with other water sources will provide for the long-term water supply needs
17 documented in the local water supply plan and meet all of the following criteria:

18 (1) Are economically and practically feasible.

19 (2) Make maximum, practical beneficial use of reclaimed wastewater and
20 stormwater.

21 (3) Comply with water quality classifications and standards.

22 (4) Avoid or mitigate impacts to threatened or endangered species to the extent
23 such species are protected by State or federal law.

24 (5) Maintain downstream flows necessary to protect downstream users.

25 (6) Do not have significant adverse impacts on other water withdrawals or
26 wastewater discharges.

27 (7) Avoid or mitigate water quality impacts consistent with the requirements of
28 rules adopted by the Environmental Management Commission to implement
29 33 U.S.C. § 1341.

30 (b) During the alternatives analysis, the Department shall request relevant information
31 regarding the potential alternatives, including the establishment or expansion of the water
32 supply reservoir or other water supply resources, from other State agencies with jurisdiction
33 over any natural resources that will be impacted under the alternatives identified by the
34 Department. Unless the local government agrees to an extension of time, the Department shall
35 determine the preferred alternative within two years of the execution of a contract with the
36 requesting local government for the costs of the analysis. The determination of the preferred
37 alternative shall be binding on all State agencies unless the Department determines from its
38 further evaluation during its review of any State or federal permit applications for the project
39 that another preferred alternative should be selected in light of additional information brought
40 forward during the permit reviews.

41 (c) If the Department provides an analysis of practicable alternatives for meeting a
42 water supply need under this section, the analysis shall be accepted by the Department and the
43 Department of Administration for purposes of satisfying the requirements of the North Carolina
44 Environmental Policy Act and any State permit or authorization that requires identification and
45 assessment of alternatives, including, but not limited to, a request for an interbasin transfer
46 pursuant to G.S. 143-215.22L.

47 (d) The Department may provide technical assistance to a unit of local government in
48 obtaining federal permits for the preferred water supply alternative identified pursuant to
49 subsection (a) of this section. For purposes of providing technical assistance and conducting
50 studies in support of a proposed water supply project under this section, the Department may
51 enter into an agreement with one or more units of local government to conduct studies or

1 modeling. The agreement shall specify the allocation of costs for any studies or modeling
2 prepared by the Department in support of the project.

3 (e) When the Department has identified the most practicable alternative, a regional
4 water supply system may request that the Department become a co-applicant for all required
5 federal approvals for the alternative identified by the Department. The Department may
6 become a co-applicant when all of the following conditions are met:

7 (1) The regional water supply system has acquired or will acquire the property
8 necessary for construction of the water supply reservoir or other water
9 supply resource.

10 (2) The local water supply plan shows that the regional water supply system has
11 implemented appropriate conservation measures similar in effect to the
12 measures in comparably sized North Carolina regional water supply systems.

13 (3) The regional water supply system has developed and is implementing
14 measures to replace existing leaking infrastructure that is similar in effect to
15 the measures being implemented by comparably sized North Carolina
16 regional water systems.

17 (4) The regional water supply system has entered into a contractual agreement
18 to pay the expenses incurred by the Department as a co-applicant for the
19 project approval.

20 (f) Nothing in this section shall be construed to limit the authority of the Department to
21 require environmental permits or to apply and enforce environmental standards pursuant to
22 State law.

23 **"§ 143-355.8. Regional water supply planning organizations.**

24 (a) One or more water systems may establish a water supply planning organization to
25 plan for and coordinate water resource supply and demand on a regional basis. A water supply
26 planning organization may include representatives of local government water systems, water
27 authorities, nongovernmental water systems, and registered water withdrawers.

28 (b) A regional water supply planning organization may do any of the following:

29 (1) Identify sources of raw water supply for regional systems.

30 (2) Identify areas suitable for the development of new regional water sources.

31 (3) Identify opportunities for purchase and sale of water between water systems
32 to meet regional water supply needs.

33 (4) Prepare joint water supply plans.

34 (5) Enter into agreements with the Department for technical assistance in
35 identifying practical alternatives to meet regional water supply needs
36 pursuant to G.S. 143-355.7 or to provide studies in support of a proposed
37 regional water supply project.

38 (6) Support cooperative arrangements between water systems for purchase and
39 sale of water by providing technical assistance and voluntary mediation of
40 disputes concerning water supply.

41 (c) Nothing in this section shall be construed to alter the requirements for obtaining a
42 certificate for an interbasin transfer."

43 **PART II. PROVIDE THAT FUNDS FROM THE CLEAN WATER MANAGEMENT**
44 **TRUST FUND MAY BE USED TO PRESERVE LANDS FOR THE DEVELOPMENT**
45 **OF WATER SUPPLY RESERVOIRS**

46 **SECTION 2.1.** G.S. 113A-251 reads as rewritten:

47 **"§ 113A-251. Purpose.**

48 The General Assembly recognizes that a critical need exists in this State to clean up
49 pollution in the State's surface waters and to ~~protect~~ protect, preserve, and conserve those
50 waters that are not yet polluted. The task of cleaning up polluted waters and protecting and
51 enhancing the State's water resources is multifaceted and requires different approaches,

1 including innovative pilot projects, that take into account the problems, the type of pollution,
2 the geographical area, and the recognition that the hydrological and ecological values of each
3 resource sought to be upgraded, conserved, and protected are unique.

4 It is the intent of the General Assembly that moneys from the Fund created under this
5 Article shall be used to help finance projects that specifically address water pollution problems
6 and focus on upgrading surface waters, eliminating pollution, and ~~protecting-protecting,~~
7 preserving, and conserving unpolluted surface waters, including enhancement or development
8 of urban drinking water supplies. It is the further intent of the General Assembly that moneys
9 from the Fund also be used to build a network of riparian buffers and greenways for
10 environmental, educational, and recreational benefits. It is lastly the intent of the General
11 Assembly that moneys from the Fund also be used to preserve lands that could be used for
12 water supply reservoirs. While the purpose of this Article is to focus on the cleanup and
13 prevention of pollution of the State's surface ~~waters-waters,~~ and the establishment of a network
14 of riparian buffers and greenways, and the preservation of property for establishing clean water
15 supplies, the General Assembly believes that the results of these efforts will also be beneficial
16 to wildlife and marine fisheries habitats."

17 **SECTION 2.2.** G.S. 113A-253 reads as rewritten:

18 "**§ 113A-253. Clean Water Management Trust Fund.**

19 (a) Fund Established. – The Clean Water Management Trust Fund is established as a
20 special revenue fund. The Fund receives revenue from the following sources and may receive
21 revenue from other sources:

22 (1) Annual appropriations under ~~G.S. 143-15.3B~~-G.S. 113A-253.1.

23 (2) Scenic River special registration plates under G.S. 20-81.12.

24 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund
25 separate and apart from all other moneys, funds, and accounts. Investment earnings credited to
26 the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the
27 end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year.
28 Payments from the Fund shall be made on the warrant of the Chair of the Board of Trustees.

29 (c) Fund Purposes. – Moneys from the Fund are appropriated annually to finance
30 projects to clean up or prevent surface water pollution and for land preservation in accordance
31 with this Article. Revenue in the Fund may be used for any of the following purposes:

32 (1) To acquire land for riparian buffers for the purposes of providing
33 environmental protection for surface waters and urban drinking water
34 supplies and establishing a network of riparian greenways for environmental,
35 educational, and recreational uses and to retire debt incurred for this purpose
36 under Article 9 of Chapter 142 of the General Statutes.

37 (2) To acquire conservation easements or other interests in real property for the
38 purpose of protecting and conserving surface waters and enhancing urban
39 drinking water supplies-supplies, including the development of water supply
40 reservoirs, and to retire debt incurred for this purpose under Article 9 of
41 Chapter 142 of the General Statutes.

42 (3) To coordinate with other public programs involved with lands adjoining
43 water bodies to gain the most public benefit while protecting and improving
44 water quality and to retire debt incurred for this purpose under Article 9 of
45 Chapter 142 of the General Statutes.

46 (4) To restore previously degraded lands to reestablish their ability to protect
47 water quality and to retire debt incurred for this purpose under Article 9 of
48 Chapter 142 of the General Statutes.

49 (5) To repair failing wastewater collection systems and wastewater treatment
50 works if the repair is a reasonable remedy for resolving an existing waste

1 treatment problem and the repair is not for the purpose of expanding the
2 system to accommodate future anticipated growth of a community.

3 (6) To repair and eliminate failing septic tank systems, to eliminate illegal
4 drainage connections, and to expand a wastewater collection system or
5 wastewater treatment works if the expansion eliminates failing septic tank
6 systems or illegal drainage connections.

7 (7) To finance stormwater quality projects.

8 (8) To facilitate planning that targets reductions in surface water pollution.

9 (8a) To finance innovative efforts, including pilot projects, to improve
10 stormwater management, to reduce pollutants entering the State's waterways,
11 to improve water quality, and to research alternative solutions to the State's
12 water quality problems.

13 (9) To fund operating expenses of the Board of Trustees and its staff.

14 (d) Limit on Operating and Administrative Expenses. – No more than two percent (2%)
15 of the annual balance of the Fund on 1 July or a total sum of one million two hundred fifty
16 thousand dollars (\$1,250,000), whichever is greater, may be used each fiscal year for
17 administrative and operating expenses of the Board of Trustees and its staff."

18 **SECTION 2.3.** G.S. 113A-253.1 reads as rewritten:

19 **"§ 113A-253.1. The Clean Water Management Trust Fund; appropriation.**

20 (a) The General Assembly finds that, due to the critical need in this State to clean up
21 pollution in the State's surface ~~waters and waters~~, to protect and conserve those waters that are
22 not yet polluted, and to preserve lands that may be used for water supply reservoirs, it is
23 imperative that the State provide a minimum of one hundred million dollars (\$100,000,000)
24 each calendar year to the Clean Water Management Trust Fund; therefore, there is annually
25 appropriated from the General Fund to the Clean Water Management Trust Fund the sum of
26 one hundred million dollars (\$100,000,000).

27 (b) The funds in the Clean Water Management Trust Fund shall be used only in
28 accordance with this Article."

29 **SECTION 2.4.** G.S. 113A-256 reads as rewritten:

30 **"§ 113A-256. Clean Water Management Trust Fund Board of Trustees: powers and
31 duties.**

32 (a) Allocate Grant Funds. – The Trustees shall allocate moneys from the Fund as
33 grants. A grant may be awarded only for a project or activity that satisfies the criteria and
34 furthers the purposes of this Article.

35 (b) Develop Grant Criteria. – The Trustees shall develop criteria for awarding grants
36 under this Article. The criteria developed shall include consideration of the following:

37 (1) The significant enhancement and conservation of water quality in the State.

38 (2) The objectives of the basinwide management plans for the State's river
39 basins and watersheds.

40 (3) The promotion of regional integrated ecological networks insofar as they
41 affect water quality.

42 (4) The specific areas targeted as being environmentally sensitive.

43 (5) The geographic distribution of funds as appropriate.

44 (6) The preservation of water resources with significant recreational or
45 economic value and uses.

46 (7) The development of a network of riparian buffer-greenways bordering and
47 connecting the State's waterways that will serve environmental, educational,
48 and recreational uses.

49 (8) Water supply availability and the public's need for resources adequate to
50 meet demand for essential water uses. Criteria developed pursuant to this

1 subdivision may include consideration of the likelihood of a proposed water
2 supply project ultimately being permitted and built.

3 (c) Develop Additional Guidelines. – The Trustees may develop guidelines in addition
4 to the grant criteria consistent with and as necessary to implement this Article.

5 (d) Acquisition of Land. – The Trustees may acquire land by purchase, negotiation, gift,
6 or devise. Any acquisition of land by the Trustees must be reviewed and approved by the
7 Council of State and the deed for the land subject to approval of the Attorney General before
8 the acquisition can become effective. In determining whether to acquire land as permitted by
9 this Article, the Trustees shall consider whether the acquisition furthers the purposes of this
10 Article and may also consider recommendations from the Council. Nothing in this section shall
11 allow the Trustees to acquire land under the right of eminent domain.

12 (e) Exchange of Land. – The Trustees may exchange any land they acquire in carrying
13 out the powers conferred on the Trustees by this Article.

14 (f) Land Management. – The Trustees may designate managers or managing agencies
15 of the lands acquired under this Article.

16 (g) Tax Credit Certification. – The Trustees shall develop guidelines to determine
17 whether land donated for a tax credit under G.S. 105-130.34 or G.S. 105-151.12 are suitable for
18 one of the purposes under this Article and may be certified for a tax credit.

19 (h) Rule-making Authority. – The Trustees may adopt rules to implement this Article.
20 Chapter 150B of the General Statutes applies to the adoption of rules by the Trustees.

21 (i) Repealed by Session Laws 1999-237, s. 15.11, effective July 1, 1999.

22 (j) Debt. – Of the funds credited annually to the Fund, the Trustees may authorize
23 expenditure of a portion to reimburse the General Fund for debt service on special indebtedness
24 to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes
25 provided in G.S. 113A-253(c)(1) through (4). In order to authorize expenditure of funds for
26 debt service reimbursement, the Trustees must identify to the State Treasurer and the
27 Department of Administration the specific capital projects for which they would like special
28 indebtedness to be issued or incurred and the annual amount they intend to make available, and
29 request the State Treasurer to issue or incur the indebtedness. After special indebtedness has
30 been issued or incurred for a capital project requested by the Trustees, the Trustees must direct
31 the State Treasurer to credit to the General Fund each year the actual aggregate principal and
32 interest payments to be made in that year on the special indebtedness, as identified by the State
33 Treasurer."

34 **PART III. IMPROVE THE EFFICIENCY OF USE OF NORTH CAROLINA'S WATER** 35 **RESOURCES**

36 **SECTION 3.1.** G.S. 143-355(l) reads as rewritten:

37 "(l) Local Water Supply Plans. – Each unit of local government that provides public
38 water service or that plans to provide public water service and each large community water
39 system shall, either individually or together with other units of local government and large
40 community water systems, prepare a local water supply plan and submit it to the Department
41 for approval. The Department shall provide technical assistance with the preparation of plans to
42 units of local government and large community water systems upon request and to the extent
43 that the Department has resources available to provide assistance. At a minimum, each unit of
44 local government and large community water system shall include in local water supply plans
45 all information that is readily available to it. Plans shall include present and projected
46 population, industrial development, and water use within the service area; present and future
47 water supplies; an estimate of the technical assistance that may be needed at the local level to
48 address projected water needs; current and future water conservation and water reuse ~~programs;~~
49 programs, including a plan for the reduction of long-term per capita demand for potable water;
50 a description of how the local government or large community water system will respond to
51 drought and other water shortage emergencies and continue to meet essential public water

1 supply needs during the emergency; and any other related information as the Department may
2 require in the preparation of a State water supply plan. A unit of local government or large
3 community water system shall submit a revised plan that specifies how the water system
4 intends to address foreseeable future water needs when eighty percent (80%) of the water
5 system's available water supply based on calendar year average daily demand has been
6 allocated to current or prospective water users or the seasonal demand exceeds ninety percent
7 (90%). Local plans shall be revised to reflect changes in relevant data and projections at least
8 once each five years unless the Department requests more frequent revisions. The revised plan
9 shall include the current and anticipated reliance by the local government unit or large
10 community water system on surface water transfers as defined by G.S. 143-215.22G. Local
11 plans and revised plans shall be submitted to the Department once they have been approved by
12 each unit of local government and large community water system that participated in the
13 preparation of the plan."

14 **SECTION 3.2.** G.S. 143-355.4(b) reads as rewritten:

15 "(b) To be eligible for State water infrastructure funds from the Drinking Water State
16 Revolving Fund or the Drinking Water Reserve or any other grant or loan of funds allocated by
17 the General Assembly whether the allocation of funds is to a State agency or to a nonprofit
18 organization for the purpose of extending waterlines or expanding water treatment capacity, a
19 local government or large community water system must demonstrate that the system:

20 ...

- 21 (7) Has implemented a consumer education program that emphasizes the
22 importance of water ~~conservation~~ conservation and that includes information
23 on measures that residential customers may implement to reduce water
24 consumption."

25 **SECTION 3.3.** G.S. 159-52(a) reads as rewritten:

26 "(a) In determining whether a proposed bond issue shall be approved, the Commission
27 may consider:

28 ...

- 29 (13) If the proposed bond issue is for a water system as described in
30 G.S. 159-48(b)(21), whether a unit has prepared a local water supply plan in
31 compliance with G.S. 143-355."

32 **SECTION 3.4.** The Department of Environment and Natural Resources shall
33 provide statewide outreach and technical assistance as needed regarding water efficiency,
34 which shall include the development of best management practices for community water
35 efficiency and conservation. These best management practices shall address at least all of the
36 following practices:

- 37 (1) Integrating water efficiency and conservation into water supply plans.
38 (2) Conducting regular water audits to identify revenue and nonrevenue water
39 and water losses.
40 (3) Adopting water loss abatement programs.
41 (4) Metering and submetering of existing multiunit residential, commercial, and
42 industrial complexes.
43 (5) Retrofitting fixtures, equipment, and irrigation systems to make them more
44 water efficient.
45 (6) Landscaping in a manner that conserves water use and is regionally
46 appropriate.
47 (7) Employing water reuse practices that include harvesting rainwater and using
48 grey water.
49 (8) Pricing water to achieve comprehensive conservation and adopting full-cost
50 accounting in line with the recommendation approved by the State Water
51 Infrastructure Commission in November 2010.

1 **SECTION 3.5.** Nothing in Sections 3.1 through 3.4 of this act shall be construed to
2 authorize the adoption of rules to implement those sections. Nothing in Sections 3.1 through
3 3.4 of this act shall be construed or implemented in a way so as to negatively impact economic
4 development.

5 **SECTION 4.** Sections 3.1 through 3.5 of this act become effective October 1,
6 2011. All other sections of this act are effective when this act becomes law.