

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 492
PROPOSED COMMITTEE SUBSTITUTE S492-PCS95103-SB-47

Short Title: Protect Landowners' Water Rights.

(Public)

Sponsors:

Referred to:

April 4, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE THE PROTECTION OF LANDOWNERS' WATER RIGHTS AND
3 TO EXEMPT AGRICULTURAL PONDS FROM THE DAM SAFETY ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 38 of Chapter 143 of the General Statutes is amended by
6 adding a new section to read:

7 "**§ 143-350.1. Declaration of policy.**

8 The following principles constitute the water resources policy of the State. In rendering
9 administrative and judicial determinations regarding water use, the State and any political
10 subdivision of the State shall be governed by these principles.

- 11 (1) Water resources protected. – Access to and the ability to use water resources
12 is critical in preserving North Carolina's rich heritage as a societal,
13 economic, environmental, educational, and cultural leader. Protection of
14 these resources is a priority of the State.
- 15 (2) Protection of water will include voluntary initiatives. – The State will utilize
16 a combination of regulatory and voluntary programs to ensure the protection
17 of water resources and the preservation of landowners' water rights.
18 Recognizing certain authority of the State to regulate water use in Articles
19 21 and 38 of Chapter 143 of the General Statutes, the intent of the State is to
20 limit the exercise of such authority in favor of working with landowners and
21 water users to encourage voluntary solutions to reduce water use.
- 22 (3) Encourage conservation and efficiency. – The State will examine, promote,
23 and implement programs that provide incentives for water users to conserve
24 water and increase water use efficiency.
- 25 (4) Encourage increased storage capacity. – The State will examine and seek to
26 eliminate regulatory impediments to increased development of water
27 resources and storage structures, including wells, ponds, reservoirs, and
28 other impoundments.
- 29 (5) Encourage reuse. – The State will encourage the adoption of programs that
30 facilitate the increased use of reclaimed water and recycled water and will
31 subject any statutes or rules that could possibly interfere with the increased
32 use of reclaimed water and recycled water to a heightened standard of
33 necessity and urgency.



* S 4 9 2 - P C S 9 5 1 0 3 - S B - 4 7 *

1 (6) Recognize roles of landowners. – The State will promote practices, projects,
2 and programs that encourage landowners to conserve and protect water
3 resources.

4 (7) Preservation of landowners' water rights. – In carrying out its duty to protect
5 water resources, the State shall first identify incentives, voluntary programs,
6 and other nonregulatory initiatives prior to exercising its regulatory authority
7 under Articles 21 and 38 of Chapter 143 of the General Statutes."

8 **SECTION 2.** G.S. 143-215.22 reads as rewritten:

9 "**§ 143-215.22. Law of riparian rights not changed.**

10 (a) Nothing contained in this Part shall change or modify existing common or statutory
11 law with respect to the relative rights of riparian owners concerning the use of surface water in
12 this State.

13 (b) Landowners' Water Rights Protected. – Except for the authority granted to the
14 Governor, the Department, or the Commission under Articles 21 and 38 of Chapter 143 of the
15 General Statutes, the Commission under Part 4 of Article 7 of Chapter 143B of the General
16 Statutes, and the Commission for Public Health under Article 10 of Chapter 130A of the
17 General Statutes, neither the State nor any political subdivision of the State shall adopt rules or
18 ordinances to limit a landowner from withdrawing and using water as otherwise allowed under
19 the common or statutory law of the State from any of the following:

20 (1) An impoundment constructed by or owned by the landowner.

21 (2) Wells constructed on the landowner's property.

22 (3) Other source of water on the landowner's property, including, but not limited
23 to, captured stormwater, springs, and artesian wells.

24 (c) Nothing in this section shall be construed to limit the enforcement of State or local
25 laws designed to limit the use or installation of wells for withdrawals in areas with groundwater
26 contamination or to limit the enforcement of State water quality standards."

27 **SECTION 3.** G.S. 143-355.3 is amended by adding a new subsection to read:

28 "(f) Nothing in this section shall limit a landowner from withdrawing water for use in
29 agricultural activities, when such water is withdrawn from any of the following:

30 (1) An impoundment constructed by or owned by the landowner.

31 (2) Wells constructed on the landowner's property.

32 (3) Other natural source of water on the landowner's property, including, but not
33 limited to, captured stormwater, springs, and artesian wells.

34 As used in this section, "agricultural activities" shall be defined as any activities described
35 by G.S. 106-581.1."

36 **SECTION 4.** G.S. 143-215.25A(a) reads as rewritten:

37 "(a) Except as otherwise provided in this Part, this Part does not apply to any dam:

38 (1) Constructed by the United States Army Corps of Engineers, the Tennessee
39 Valley Authority, or another agency of the United States government, when
40 the agency designed or approved plans for the dam and supervised its
41 construction.

42 (2) Constructed with financial assistance from the United States Soil
43 Conservation Service, when that agency designed or approved plans for the
44 dam and supervised its construction.

45 (3) Licensed by the Federal Energy Regulatory Commission, or for which a
46 license application is pending with the Federal Energy Regulatory
47 Commission.

48 (4) For use in connection with electric generating facilities regulated by the
49 Nuclear Regulatory Commission.

- 1 (5) Under a single private ownership that provides protection only to land or
2 other property under the same ownership and that does not pose a threat to
3 human life or property below the dam.
- 4 (6) That is less than ~~15~~25 feet in height or that has an impoundment capacity of
5 less than ~~40~~50 acre-feet, unless the Department determines that failure of
6 the dam could result in loss of human life or significant damage to property
7 below the dam.
- 8 (7) Constructed for the purpose of providing water for agricultural use, when a
9 person who is licensed as a professional engineer under Chapter 89C of the
10 General Statutes designed or approved plans for the dam and supervised its
11 construction."

12 **SECTION 5.** This act is effective when it becomes law. The exemption modified
13 in subdivision (6) of G.S. 143-215.25A(a) and the exemption established in subdivision (7) of
14 G.S. 143-215.25A(a), as amended by Section 4 of this act, shall apply retroactively to any dam
15 that is subject to any enforcement action that has not been resolved as of June 1, 2011.