

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

FILED SENATE
Feb 28, 2013
S.B. 151
PRINCIPAL CLERK

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SENATE DRS75075-SB-15 (02/04)

Short Title: Coastal Policy Reform Act of 2013. (Public)

Sponsors: Senator Rabon (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH AN EXPEDITED PROCESS FOR THE MODIFICATION OF
3 INTERBASIN TRANSFER CERTIFICATES AND FOR THE ISSUANCE OF
4 INTERBASIN TRANSFER CERTIFICATES IN THE CENTRAL COASTAL PLAIN
5 CAPACITY USE AREA AND THE COASTAL AREA COUNTIES AND TO CLARIFY
6 THE AUTHORITY OF COUNTIES AND MUNICIPALITIES TO HAVE STRUCTURES
7 REMOVED FROM THE STATE'S PUBLIC TRUST OCEAN BEACHES.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 143-215.22G reads as rewritten:

10 "§ 143-215.22G. Definitions.

11 In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following
12 definitions apply to this Part.

13 (1) "River basin" means any of the following river basins designated on the map
14 entitled "Major River Basins and Sub-basins in North Carolina" and filed in
15 the Office of the Secretary of State on 16 April 1991. The term "river basin"
16 includes any portion of the river basin that extends into another state. Any
17 area outside North Carolina that is not included in one of the river basins
18 listed in this subdivision comprises a separate river basin.

- 19 a. 1-1 Broad River.
20 b. 2-1 Haw River.
21 c. 2-2 Deep River.
22 d. 2-3 Cape Fear River.
23 e. 2-4 South River.
24 f. 2-5 Northeast Cape Fear River.
25 g. 2-6 New River.
26 h. 3-1 Catawba River.
27 i. 3-2 South Fork Catawba River.
28 j. 4-1 Chowan River.
29 k. 4-2 Meherrin River.
30 l. 5-1 Nolichucky River.
31 m. 5-2 French Broad River.
32 n. 5-3 Pigeon River.
33 o. 6-1 Hiwassee River.
34 p. 7-1 Little Tennessee River.
35 q. 7-2 Tuskasegee (Tuckasegee) River.
36 r. 8-1 Savannah River.



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|----|-----|------|--------------------------------|
| 1 | s. | 9-1 | Lumber River. |
| 2 | t. | 9-2 | Big Shoe Heel Creek. |
| 3 | u. | 9-3 | Waccamaw River. |
| 4 | v. | 9-4 | Shalotte River. |
| 5 | w. | 10-1 | Neuse River. |
| 6 | x. | 10-2 | Contentnea Creek. |
| 7 | y. | 10-3 | Trent River. |
| 8 | z. | 11-1 | New River. |
| 9 | aa. | 12-1 | Albemarle Sound. |
| 10 | bb. | 13-1 | Ocoee River. |
| 11 | cc. | 14-1 | Roanoke River. |
| 12 | dd. | 15-1 | Tar River. |
| 13 | ee. | 15-2 | Fishing Creek. |
| 14 | ff. | 15-3 | Pamlico River and Sound. |
| 15 | gg. | 16-1 | Watauga River. |
| 16 | hh. | 17-1 | White Oak River. |
| 17 | ii. | 18-1 | Yadkin (Yadkin-Pee Dee) River. |
| 18 | jj. | 18-2 | South Yadkin River. |
| 19 | kk. | 18-3 | Uwharrie River. |
| 20 | ll. | 18-4 | Rocky River. |

(2) "Surface water" means any of the waters of the State located on the land surface that are not derived by pumping from groundwater.

(3) "Transfer" means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin. However, notwithstanding the basin definitions in G.S. 143-215.22G(1), the following are not transfers under this Part:

a. The discharge of water upstream from the point where it is withdrawn.

b. The discharge of water downstream from the point where it is withdrawn.

(4) "Public water system" means any unit of local government or large community water system subject to the requirements of G.S. 143-355(l).

(5) "Mainstem" means that portion of a river having the same name as a River basin defined in subdivision (1) of this section. "Mainstem" does not include named or unnamed tributaries."

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

"§ 143-215.22L. Regulation of surface water transfers.

(a) Certificate Required. – No person, without first obtaining a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day—day, calculated as a daily average of a calendar month and not to exceed 5,000,000 gallons per day in any one day, from one river basin to another.

~~(2) Increase the amount of an existing transfer of water from one river basin to another by twenty five percent (25%) or more above the average daily amount transferred during the year ending 1 July 1993 if the total transfer including the increase is 2,000,000 gallons or more per day.~~

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to 1 July 1993.

1 (b) Exception. – Notwithstanding the provisions of subsection (a) of this section, a
2 certificate shall not be required to transfer water from one river basin to another up to the full
3 capacity of a facility to transfer water from one basin to another if the facility was in existence
4 or under construction on 1 July 1993.

5 (c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of intent to
6 file a petition that includes a nontechnical description of the applicant's request and an
7 identification of the proposed water source. Within 90 days after the applicant files a notice of
8 intent to file a petition, the applicant shall hold at least one public meeting in the source river
9 basin upstream from the proposed point of withdrawal, at least one public meeting in the source
10 river basin downstream from the proposed point of withdrawal, and at least one public meeting
11 in the receiving river basin to provide information to interested parties and the public regarding
12 the nature and extent of the proposed transfer and to receive comment on the scope of the
13 environmental documents. Written notice of the public meetings shall be provided at least 30
14 days before the public meetings. At the time the applicant gives notice of the public meetings,
15 the applicant shall request comment on the alternatives and issues that should be addressed in
16 the environmental documents required by this section. The applicant shall accept written
17 comment on the scope of the environmental documents for a minimum of 30 days following
18 the last public meeting. Notice of the public meetings and opportunity to comment on the scope
19 of the environmental documents shall be provided as follows:

20 (1) By publishing notice in the North Carolina Register.

21 (2) By publishing notice in a newspaper of general circulation in:

22 a. Each county in this State located in whole or in part of the area of the
23 source river basin upstream from the proposed point of withdrawal.

24 b. Each city or county located in a state located in whole or in part of
25 the surface drainage basin area of the source river basin that also falls
26 within, in whole or in part, the area denoted by one of the following
27 eight-digit cataloging units as organized by the United States
28 Geological Survey:

29 03050105 (Broad River: NC and SC);

30 03050106 (Broad River: SC);

31 03050107 (Broad River: SC);

32 03050108 (Broad River: SC);

33 05050001 (New River: NC and VA);

34 05050002 (New River: VA and WV);

35 03050101 (Catawba River: NC and SC);

36 03050103 (Catawba River: NC and SC);

37 03050104 (Catawba River: SC);

38 03010203 (Chowan River: NC and VA);

39 03010204 (Chowan River: NC and VA);

40 06010105 (French Broad River: NC and TN);

41 06010106 (French Broad River: NC and TN);

42 06010107 (French Broad River: TN);

43 06010108 (French Broad River: NC and TN);

44 06020001 (Hiwassee River: AL, GA, TN);

45 06020002 (Hiwassee River: GA, NC, TN);

46 06010201 (Little Tennessee River: TN);

47 06010202 (Little Tennessee River: TN, GA, and NC);

48 06010204 (Little Tennessee River: NC and TN);

49 03060101 (Savannah River: NC and SC);

50 03060102 (Savannah River: GA, NC, and SC);

51 03060103 (Savannah River: GA and SC);

- 1 03060104 (Savannah River: GA);
2 03060105 (Savannah River: GA);
3 03040203 (Lumber River: NC and SC);
4 03040204 (Lumber River: NC and SC);
5 03040206 (Lumber River: NC and SC);
6 03040207 (Lumber River: NC and SC);
7 03010205 (Albemarle Sound: NC and VA);
8 06020003 (Ocoee River: GA, NC, and TN);
9 03010101 (Roanoke River: VA);
10 03010102 (Roanoke River: NC and VA);
11 03010103 (Roanoke River: NC and VA);
12 03010104 (Roanoke River: NC and VA);
13 03010105 (Roanoke River: VA);
14 03010106 (Roanoke River: NC and VA);
15 06010102 (Watauga River: TN and VA);
16 06010103 (Watauga River: NC and TN);
17 03040101 (Yadkin River: VA and NC);
18 03040104 (Yadkin River: NC and SC);
19 03040105 (Yadkin River: NC and SC);
20 03040201 (Yadkin River: NC and SC);
21 03040202 (Yadkin River: NC and SC).
- 22 c. Each county in this State located in whole or in part of the area of the
23 source river basin downstream from the proposed point of
24 withdrawal.
- 25 d. Any area in the State in a river basin for which the source river basin
26 has been identified as a future source of water in a local water supply
27 plan prepared pursuant to G.S. 143-355(l).
- 28 e. Each county in the State located in whole or in part of the receiving
29 river basin.
- 30 (3) By giving notice by first-class mail or electronic mail to each of the
31 following:
- 32 a. The board of commissioners of each county in this State or the
33 governing body of any county or city that is politically independent
34 of a county in any state that is located entirely or partially within the
35 source river basin of the proposed transfer and that also falls within,
36 in whole or in part, the area denoted by one of the eight-digit
37 cataloging units listed in sub-subdivision b. of subdivision (2) of this
38 subsection.
- 39 b. The board of commissioners of each county in this State or the
40 governing body of any county or city that is politically independent
41 of a county in any state that is located entirely or partially within the
42 receiving river basin of the proposed transfer and that also falls
43 within, in whole or in part, the area denoted by one of the eight-digit
44 cataloging units listed in sub-subdivision b. of subdivision (2) of this
45 subsection.
- 46 c. The governing body of any public water ~~supply~~—system that
47 withdraws water upstream or downstream from the withdrawal point
48 of the proposed transfer.
- 49 d. If any portion of the source or receiving river basins is located in
50 another state, all state water management or use agencies,
51 environmental protection agencies, and the office of the governor in

1 that state upstream or downstream from the withdrawal point of the
2 proposed transfer.

3 e. All persons who have registered a water withdrawal or transfer from
4 the proposed source river basin under this Part or under similar law
5 in an another state.

6 f. All persons who hold a certificate for a transfer of water from the
7 proposed source river basin under this Part or under similar law in an
8 another state.

9 g. All persons who hold a National Pollutant Discharge Elimination
10 System (NPDES) wastewater discharge permit for a discharge of
11 100,000 gallons per day or more upstream or downstream from the
12 proposed point of withdrawal.

13 h. To any other person who submits to the applicant a written request to
14 receive all notices relating to the petition.

15 (d) Environmental Documents. – The definitions set out in G.S. 113A-9 apply to this
16 section. The Department shall conduct a study of the environmental impacts of any proposed
17 transfer of water for which a certificate is required under this section. The study shall meet all
18 of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. An
19 environmental assessment shall be prepared for any petition for a certificate under this section.
20 The determination of whether an environmental impact statement shall also be required shall be
21 made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes;
22 except that an environmental impact statement shall be prepared for every proposed transfer of
23 water from one major river basin to another for which a certificate is required under this
24 section. The applicant who petitions the Commission for a certificate under this section shall
25 pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the
26 General Statutes. An environmental impact statement prepared pursuant to this subsection shall
27 include all of the following:

28 (1) A comprehensive analysis of the impacts that would occur in the source river
29 basin and the receiving river basin if the petition for a certificate is granted.

30 (2) An evaluation of alternatives to the proposed interbasin transfer, including
31 water supply sources that do not require an interbasin transfer and use of
32 water conservation measures.

33 (3) A description of measures to mitigate any adverse impacts that may arise
34 from the proposed interbasin transfer.

35 (e) Public Hearing on the Draft Environmental Document. – The Commission shall
36 hold a public hearing on the draft environmental document for a proposed interbasin transfer
37 after giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as
38 provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate
39 where a copy of the environmental document can be reviewed and the procedure to be followed
40 by anyone wishing to submit written comments and questions on the environmental document.
41 The Commission shall prepare a record of all comments and written responses to questions
42 posed in writing. The record shall include complete copies of scientific or technical comments
43 related to the potential impact of the interbasin transfer. The Commission shall accept written
44 comment on the draft environmental document for a minimum of 30 days following the last
45 public hearing. The applicant who petitions the Commission for a certificate under this section
46 shall pay the costs associated with the notice and public hearing on the draft environmental
47 document.

48 (f) Determination of Adequacy of Environmental Document. – The Commission shall
49 not act on any petition for an interbasin transfer until the Commission has determined that the
50 environmental document is complete and adequate. A decision on the adequacy of the

1 environmental document is subject to review in a contested case on the decision of the
2 Commission to issue or deny a certificate under this section.

3 (g) Petition. – An applicant for a certificate shall petition the Commission for the
4 certificate. The petition shall be in writing and shall include all of the following:

5 (1) A general description of the facilities to be used to transfer the water,
6 including the location and capacity of water intakes, pumps, pipelines, and
7 other facilities including current and projected areas to be served by the
8 transfer, current and projected capacities of intakes, and other relevant
9 facilities.

10 (2) A description of all the proposed consumptive and nonconsumptive uses of
11 the water to be transferred.

12 (3) A description of the water quality of the source river and receiving river,
13 including information on aquatic habitat for rare, threatened, and endangered
14 species; in-stream flow data for segments of the source and receiving rivers
15 that may be affected by the transfer; and any waters that are impaired
16 pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. §
17 1313(d)).

18 (4) A description of the water conservation measures used by the applicant at
19 the time of the petition and any additional water conservation measures that
20 the applicant will implement if the certificate is granted.

21 (5) A description of all sources of water within the receiving river basin,
22 including surface water impoundments, groundwater wells, reinjection
23 storage, and purchase of water from another source within the river basin,
24 that is a practicable alternative to the proposed transfer that would meet the
25 applicant's water supply needs. The description of water sources shall
26 include sources available at the time of the petition for a certificate and any
27 planned or potential water sources.

28 (6) A description of water transfers and withdrawals registered under
29 G.S. 143-215.22H or included in a local water supply plan prepared pursuant
30 to G.S. 143-355(l) from the source river basin, including transfers and
31 withdrawals at the time of the petition for a certificate and any planned or
32 reasonably foreseeable transfers or withdrawals by a public water system
33 with service area located within the source river basin.

34 (7) A demonstration that the proposed transfer, if added to all other transfers and
35 withdrawals required to be registered under G.S. 143-215.22H or included in
36 any local water supply plan prepared by a public water system with service
37 area located within the source basin pursuant to G.S. 143-355(l) from the
38 source river basin at the time of the petition for a certificate, would not
39 reduce the amount of water available for use in the source river basin to a
40 degree that would impair existing uses, pursuant to the antidegradation
41 policy set out in 40 Code of Federal Regulation § 131.12 (Antidegradation
42 Policy) (1 July 2006 Edition) and the statewide antidegradation policy
43 adopted pursuant thereto, or existing and planned consumptive and
44 nonconsumptive uses of the water in the source river basin. If the proposed
45 transfer would impact a reservoir within the source river basin, the
46 demonstration must include a finding that the transfer would not result in a
47 water level in the reservoir that is inadequate to support existing uses of the
48 reservoir, including recreational uses.

49 (8) The applicant's future water supply needs and the present and reasonably
50 foreseeable future water supply needs for public water systems with service
51 area located within the source river basin. The analysis of future water

1 supply needs shall include agricultural, recreational, and industrial uses, and
2 electric power generation. Local water supply plans prepared pursuant to
3 G.S. 143-355(l) for water systems with service area located within the
4 source river basin shall be used to evaluate the projected future water needs
5 in the source river basin that will be met by public water systems.

6 (9) The applicant's water supply plan prepared pursuant to G.S. 143-355(l). If
7 the applicant's water supply plan is more than two years old at the time of
8 the petition, then the applicant shall include with the petition an updated
9 water supply plan.

10 (10) Any other information deemed necessary by the Commission for review of
11 the proposed water transfer.

12 (h) Settlement Discussions. – Upon the request of the applicant, any interested party, or
13 the Department, or upon its own motion, the Commission may appoint a mediation officer. The
14 mediation officer may be a member of the Commission, an employee of the Department, or a
15 neutral third party but shall not be a hearing officer under subsections (e) or (j) of this section.
16 The mediation officer shall make a reasonable effort to initiate settlement discussions between
17 the applicant and all other interested parties. Evidence of statements made and conduct that
18 occurs in a settlement discussion conducted under this subsection, whether attributable to a
19 party, a mediation officer, or other person shall not be subject to discovery and shall be
20 inadmissible in any subsequent proceeding on the petition for a certificate. The Commission
21 may adopt rules to govern the conduct of the mediation process.

22 (i) Draft Determination. – Within 90 days after the Commission determines that the
23 environmental document prepared in accordance with subsection (d) of this section is adequate
24 or the applicant submits its petition for a certificate, whichever occurs later, the Commission
25 shall issue a draft determination on whether to grant the certificate. The draft determination
26 shall be based on the criteria set out in this section and shall include the conditions and
27 limitations, findings of fact, and conclusions of law that would be required in a final
28 determination. Notice of the draft determination shall be given as provided in subsection (c) of
29 this section.

30 (j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the
31 draft determination as provided in subsection (i) of this section, the Commission shall hold
32 public hearings on the draft determination. At least one hearing shall be held in the affected
33 area of the source river basin, and at least one hearing shall be held in the affected area of the
34 receiving river basin. In determining whether more than one public hearing should be held
35 within either the source or receiving river basins, the Commission shall consider the differing
36 or conflicting interests that may exist within the river basins, including the interests of both
37 upstream and downstream parties potentially affected by the proposed transfer. The public
38 hearings shall be conducted by one or more hearing officers appointed by the Chair of the
39 Commission. The hearing officers may be members of the Commission or employees of the
40 Department. The Commission shall give at least 30 days' written notice of the public hearing as
41 provided in subsection (c) of this section. The Commission shall accept written comment on the
42 draft determination for a minimum of 30 days following the last public hearing. The
43 Commission shall prepare a record of all comments and written responses to questions posed in
44 writing. The record shall include complete copies of scientific or technical comments related to
45 the potential impact of the interbasin transfer. The applicant who petitions the Commission for
46 a certificate under this section shall pay the costs associated with the notice and public hearing
47 on the draft determination.

48 (k) Final Determination: Factors to be Considered. – In determining whether a
49 certificate may be issued for the transfer, the Commission shall specifically consider each of
50 the following items and state in writing its findings of fact and conclusions of law with regard
51 to each item:

- 1 (1) The necessity and reasonableness of the amount of surface water proposed to
2 be transferred and its proposed uses.
- 3 (2) The present and reasonably foreseeable future detrimental effects on the
4 source river basin, including present and future effects on public, industrial,
5 economic, recreational, and agricultural water supply needs, wastewater
6 assimilation, water quality, fish and wildlife habitat, electric power
7 generation, navigation, and recreation. Local water supply plans for public
8 water systems with service area located within the source river basin
9 prepared pursuant to G.S. 143-355(l) shall be used to evaluate the projected
10 future water needs in the source river basin that will be met by public water
11 systems. Information on projected future water needs for public water
12 systems with service area located within the source river basin that is more
13 recent than the local water supply plans may be used if the Commission
14 finds the information to be reliable. The determination shall include a
15 specific finding as to measures that are necessary or advisable to mitigate or
16 avoid detrimental impacts on the source river basin.
- 17 (3) The cumulative effect on the source major river basin of any water transfer
18 or consumptive water use that, at the time the Commission considers the
19 petition for a certificate is occurring, is authorized under this section, or is
20 projected in any local water supply plan for public water systems with
21 service area located within the source river basin that has been submitted to
22 the Department in accordance with G.S. 143-355(l).
- 23 (4) The present and reasonably foreseeable future beneficial and detrimental
24 effects on the receiving river basin, including present and future effects on
25 public, industrial, economic, recreational, and agricultural water supply
26 needs, wastewater assimilation, water quality, fish and wildlife habitat,
27 electric power generation, navigation, and recreation. Local water supply
28 plans prepared pursuant to G.S. 143-355(l) that affect the receiving river
29 basin shall be used to evaluate the projected future water needs in the
30 receiving river basin that will be met by public water systems. Information
31 on projected future water needs that is more recent than the local water
32 supply plans may be used if the Commission finds the information to be
33 reliable. The determination shall include a specific finding as to measures
34 that are necessary or advisable to mitigate or avoid detrimental impacts on
35 the receiving river basin.
- 36 (5) The availability of reasonable alternatives to the proposed transfer, including
37 the potential capacity of alternative sources of water, the potential of each
38 alternative to reduce the amount of or avoid the proposed transfer, probable
39 costs, and environmental impacts. In considering alternatives, the
40 Commission is not limited to consideration of alternatives that have been
41 proposed, studied, or considered by the applicant. The determination shall
42 include a specific finding as to why the applicant's need for water cannot be
43 satisfied by alternatives within the receiving basin, including unused
44 capacity under a transfer for which a certificate is in effect or that is
45 otherwise authorized by law at the time the applicant submits the petition.
46 The determination shall consider the extent to which access to potential
47 sources of surface water or groundwater within the receiving river basin is
48 no longer available due to depletion, contamination, or the declaration of a
49 capacity use area under Part 2 of Article 21 of Chapter 143 of the General
50 Statutes. The determination shall consider the feasibility of the applicant's
51 purchase of water from other water suppliers within the receiving basin and

1 of the transfer of water from another sub-basin within the receiving major
2 river basin. Except in circumstances of technical or economic infeasibility or
3 adverse environmental impact, the Commission's determination as to
4 reasonable alternatives shall give preference to alternatives that would
5 involve a transfer from one sub-basin to another within the major receiving
6 river basin over alternatives that would involve a transfer from one major
7 river basin to another major river basin.

8 (6) If applicable to the proposed project, the applicant's present and proposed
9 use of impoundment storage capacity to store water during high-flow periods
10 for use during low-flow periods and the applicant's right of withdrawal under
11 G.S. 143-215.44 through G.S. 143-215.50.

12 (7) If the water to be withdrawn or transferred is stored in a multipurpose
13 reservoir constructed by the United States Army Corps of Engineers, the
14 purposes and water storage allocations established for the reservoir at the
15 time the reservoir was authorized by the Congress of the United States.

16 (8) Whether the service area of the applicant is located in both the source river
17 basin and the receiving river basin.

18 (9) Any other facts and circumstances that are reasonably necessary to carry out
19 the purposes of this Part.

20 (l) Final Determination: Information to be Considered. – In determining whether a
21 certificate may be issued for the transfer, the Commission shall consider all of the following
22 sources of information:

23 (1) The petition.

24 (2) The environmental document prepared pursuant to subsection (d) of this
25 section.

26 (3) All oral and written comment and all accompanying materials or evidence
27 submitted pursuant to subsections (e) and (j) of this section.

28 (4) Information developed by or available to the Department on the water
29 quality of the source river basin and the receiving river basin, including
30 waters that are identified as impaired pursuant to section 303(d) of the
31 federal Clean Water Act (33 U.S.C. § 1313(d)), that are subject to a total
32 maximum daily load (TMDL) limit under subsections (d) and (e) of section
33 303 of the federal Clean Water Act, or that would have their assimilative
34 capacity impaired if the certificate is issued.

35 (5) Any other information that the Commission determines to be relevant and
36 useful.

37 (m) Final Determination: Burden and Standard of Proof; Specific Findings. – The
38 Commission shall grant a certificate for a water transfer if the Commission finds that the
39 applicant has established by a preponderance of the evidence all of the following:

40 (1) The benefits of the proposed transfer outweigh the detriments of the
41 proposed transfer. In making this determination, the Commission shall be
42 guided by the approved environmental document and the policy set out in
43 subsection (t) of this section.

44 (2) The detriments have been or will be mitigated to the maximum degree
45 practicable.

46 (3) The amount of the transfer does not exceed the amount of the projected
47 shortfall under the applicant's water supply plan after first taking into
48 account all other sources of water that are available to the applicant.

49 (4) There are no reasonable alternatives to the proposed transfer.

50 (n) Final Determination: Certificate Conditions and Limitations. – The Commission
51 may grant the certificate in whole or in part, or deny the certificate. The Commission may

1 impose any conditions or limitations on a certificate that the Commission finds necessary to
2 achieve the purposes of this Part including a limit on the period for which the certificate is
3 valid. The conditions and limitations shall include any mitigation measures proposed by the
4 applicant to minimize any detrimental effects within the source and receiving river basins. In
5 addition, the certificate shall require all of the following conditions and limitations:

- 6 (1) A water conservation plan that specifies the water conservation measures
7 that will be implemented by the applicant in the receiving river basin to
8 ensure the efficient use of the transferred water. Except in circumstances of
9 technical or economic infeasibility or adverse environmental impact, the
10 water conservation plan shall provide for the mandatory implementation of
11 water conservation measures by the applicant that equal or exceed the most
12 stringent water conservation plan implemented by a ~~community water~~
13 ~~system, as defined in G.S. 143-355(1),~~ public water system that withdraws
14 water from the source river basin.
- 15 (2) A drought management plan that specifies how the transfer shall be managed
16 to protect the source river basin during drought conditions or other
17 emergencies that occur within the source river basin. Except in
18 circumstances of technical or economic infeasibility or adverse
19 environmental impact, this drought management plan shall include
20 mandatory reductions in the permitted amount of the transfer based on the
21 severity and duration of a drought occurring within the source river basin
22 and shall provide for the mandatory implementation of a drought
23 management plan by the applicant that equals or exceeds the most stringent
24 water conservation plan implemented by a ~~community water system, as~~
25 ~~defined in G.S. 143-355(1),~~ public water system that withdraws water from
26 the source river basin.
- 27 (3) The maximum amount of water that may be ~~transferred on a daily~~
28 ~~basis, transferred,~~ calculated as a daily average of a calendar month, and
29 methods or devices required to be installed and operated that measure the
30 amount of water that is transferred.
- 31 (4) A provision that the Commission may amend a certificate to reduce the
32 maximum amount of water authorized to be transferred whenever it appears
33 that an alternative source of water is available to the certificate holder from
34 within the receiving river basin, including, but not limited to, the purchase of
35 water from another water supplier within the receiving basin or to the
36 transfer of water from another sub-basin within the receiving major river
37 basin.
- 38 (5) A provision that the Commission shall amend the certificate to reduce the
39 maximum amount of water authorized to be transferred if the Commission
40 finds that the applicant's current projected water needs are significantly less
41 than the applicant's projected water needs at the time the certificate was
42 granted.
- 43 (6) A requirement that the certificate holder report the quantity of water
44 transferred during each calendar quarter. The report required by this
45 subdivision shall be submitted to the Commission no later than 30 days after
46 the end of the quarter.
- 47 (7) Except as provided in this subdivision, a provision that the applicant will not
48 resell the water that would be transferred pursuant to the certificate to
49 another public water ~~supply~~-system. This limitation shall not apply in the
50 case of a proposed resale or transfer among public water ~~supply~~-systems
51 within the receiving river basin as part of an interlocal agreement or other

1 regional water supply arrangement, provided that each participant in the
2 interlocal agreement or regional water supply arrangement is a co-applicant
3 for the certificate and will be subject to all the terms, conditions, and
4 limitations made applicable to any lead or primary applicant.

5 (o) Administrative and Judicial Review. – Administrative and judicial review of a final
6 decision on a petition for a certificate under this section shall be governed by Chapter 150B of
7 the General Statutes.

8 (p) Certain Preexisting Transfers. – In cases where an applicant requests approval to
9 increase a transfer that existed on 1 July 1993, the Commission may approve or disapprove
10 only the amount of the increase. If the Commission approves the increase, the certificate shall
11 be issued for the amount of the preexisting transfer plus any increase approved by the
12 Commission. A certificate for a transfer approved by the Commission under G.S. 162A-7 shall
13 remain in effect as approved by the Commission and shall have the same effect as a certificate
14 issued under this Part. A certificate for the increase of a preexisting transfer shall contain all of
15 the conditions and limitations required by subsection (m) of this section.

16 (q) Emergency Transfers. – In the case of water supply problems caused by drought, a
17 pollution incident, temporary failure of a water plant, or any other temporary condition in
18 which the public health, safety, or welfare requires a transfer of water, the Secretary of
19 Environment and Natural Resources may grant approval for a temporary transfer. Prior to
20 approving a temporary transfer, the Secretary shall consult with those parties listed in
21 subdivision (3) of subsection (c) of this section that are likely to be affected by the proposed
22 transfer. However, the Secretary shall not be required to satisfy the public notice requirements
23 of this section or make written findings of fact and conclusions of law in approving a temporary
24 transfer under this subsection. If the Secretary approves a temporary transfer under this
25 subsection, the Secretary shall specify conditions to protect other water users. A temporary
26 transfer shall not exceed six months in duration, but the approval may be renewed for a period
27 of six months by the Secretary based on demonstrated need as set forth in this subsection.

28 (r) Relationship to Federal Law. – The substantive restrictions, conditions, and
29 limitations upon surface water transfers authorized in this section may be imposed pursuant to
30 any federal law that permits the State to certify, restrict, or condition any new or continuing
31 transfers or related activities licensed, relicensed, or otherwise authorized by the federal
32 government. This section shall govern the transfer of water from one river basin to another
33 unless preempted by federal law.

34 (s) Planning Requirements. – When any transfer for which a certificate was issued
35 under this section equals or exceeds eighty percent (80%) of the maximum amount authorized
36 in the certificate, the applicant shall submit to the Department a detailed plan that specifies how
37 the applicant intends to address future foreseeable water needs. If the applicant is required to
38 have a local water supply plan, then this plan shall be an amendment to the local water supply
39 plan required by G.S.143-355(l). When the transfer equals or exceeds ninety percent (90%) of
40 the maximum amount authorized in the certificate, the applicant shall begin implementation of
41 the plan submitted to the Department.

42 (t) Statement of Policy. – It is the public policy of the State to maintain, protect, and
43 enhance water quality within North Carolina. It is the public policy of this State that the
44 reasonably foreseeable future water needs of a public water system with its service area located
45 primarily in the receiving river basin are subordinate to the reasonably foreseeable future water
46 needs of a public water system with its service area located primarily in the source river basin.
47 Further, it is the public policy of the State that the cumulative impact of transfers from a source
48 river basin shall not result in a violation of the antidegradation policy set out in 40 Code of
49 Federal Regulations § 131.12 (1 July 2006 Edition) and the statewide antidegradation policy
50 adopted pursuant thereto.

- 1 ~~(u) Renewal of Certificate. — A petition to extend or renew a certificate shall be treated~~
2 ~~as a new petition.~~
- 3 (v) Modification of Certificate. — A certificate may be modified as provided in this
4 subsection.
- 5 (1) The Commission or the Department may make any of the following
6 modifications to a certificate after providing electronic notice to persons who
7 have identified themselves in writing as interested parties:
- 8 a. Correction of typographical errors.
9 b. Clarification of existing conditions or language.
10 c. Updates to a conservation plan, drought management plan, or
11 compliance and monitoring plan.
12 d. Modifications requested by the certificate holder to reflect altered
13 requirements due to the amendment of this section.
- 14 (2) The Commission may make modifications that it deems to be minor after
15 providing electronic notice to persons who have identified themselves in
16 writing as interested parties.
- 17 (3) A person who holds a certificate for an interbasin transfer of water may
18 request that the Commission modify the certificate. The request shall be
19 considered and a determination made according to the following procedures:
- 20 a. The certificate must have been issued pursuant to
21 G.S. 162A-7, 143-215.22I, or 143-215.22L and the certificate holder
22 must be in substantial compliance with the certificate.
23 b. The certificate holder shall file a notice of intent to file a request for
24 modification that includes a nontechnical description of the
25 certificate holder's request and identification of the proposed water
26 source.
27 c. The certificate holder shall prepare an environmental document
28 pursuant to subsection (d) of this section, except that an
29 environmental impact statement shall not be required for the
30 modification of a certificate unless it would otherwise be required by
31 Article 1 of Chapter 113A of the General Statutes.
32 d. Upon determining that the documentation submitted by the certificate
33 holder is adequate to satisfy the requirements of this subsection, the
34 Department shall publish a notice of the request for modification in
35 the North Carolina Register and shall hold a public hearing at a
36 location convenient to both the source and receiving river basins. The
37 Department shall provide written notice of the request for the
38 modification and the public hearing in the Environmental Bulletin, a
39 newspaper of general circulation in the source river basin, a
40 newspaper of general circulation in the receiving river basin, and as
41 provided in subdivision (3) of subsection (c) of this section. The
42 certificate holder who petitions the Commission for a modification
43 under this subdivision shall pay the costs associated with the notice
44 and public hearing.
45 e. The Department shall accept comments on the requested
46 modification for a minimum of 30 days following the public hearing.
47 f. The Commission or the Department may require the certificate
48 holder to provide any additional information or documentation it
49 deems reasonably necessary in order to make a final determination.
50 g. The Commission shall make a final determination whether to grant
51 the requested modification based on the factors set out in subsection

1 (k) of this section, information provided by the certificate holder, and
2 any other information the Commission deems relevant. The
3 Commission shall state in writing its findings of fact and conclusions
4 of law with regard to each factor.

5 h. The Commission shall grant the requested modification if it finds that
6 the certificate holder has established by a preponderance of the
7 evidence that the requested modification satisfies the requirements of
8 subsection (m) of this section. The Commission may grant the
9 requested modification in whole or in part, or deny the request, and
10 may impose such limitations and conditions on the modified
11 certificate as it deems necessary and relevant to the modification.

12 i. The Commission shall not grant a request for modification if the
13 modification would result in the transfer of water to an additional
14 major river basin.

15 (w) Requirements for Coastal Counties. – A petition for a certificate to transfer surface
16 water to supplement ground water supplies in the 15 counties designated as the Central
17 Capacity Use Area under 15A NCAC 2E .0501, or to transfer surface water withdrawn from
18 the mainstem of a river to provide service to one of the coastal area counties designated
19 pursuant to G.S. 113A-103, shall be considered and a determination made according to the
20 following procedures:

21 (1) The applicant shall file a notice of intent that includes a nontechnical
22 description of the applicant's request and identification of the proposed water
23 source.

24 (2) The applicant shall prepare an environmental document pursuant to
25 subsection (d) of this section, except that an environmental impact statement
26 shall not be required unless it would otherwise be required by Article 1 of
27 Chapter 113A of the General Statutes.

28 (3) Upon determining that the documentation submitted by the applicant is
29 adequate to satisfy the requirements of this subsection, the Department shall
30 publish a notice of the petition in the North Carolina Register and shall hold
31 a public hearing at a location convenient to both the source and receiving
32 river basins. The Department shall provide written notice of the petition and
33 the public hearing in the Environmental Bulletin, a newspaper of general
34 circulation in the source river basin, a newspaper of general circulation in
35 the receiving river basin, and as provided in subdivision (3) of subsection (c)
36 of this section. The applicant who petitions the Commission for a certificate
37 under this subdivision shall pay the costs associated with the notice and
38 public hearing.

39 (4) The Department shall accept comments on the petition for a minimum of 30
40 days following the public hearing.

41 (5) The Commission or the Department may require the applicant to provide any
42 additional information or documentation it deems reasonably necessary in
43 order to make a final determination.

44 (6) The Commission shall make a final determination whether to grant the
45 certificate based on the factors set out in subsection (k) of this section,
46 information provided by the applicant, and any other information the
47 Commission deems relevant. The Commission shall state in writing its
48 findings of fact and conclusions of law with regard to each factor.

49 (7) The Commission shall grant the certificate if it finds that the applicant has
50 established by a preponderance of the evidence that the petition satisfies the
51 requirements of subsection (m) of this section. The Commission may grant

1 the certificate in whole or in part, or deny the request, and may impose such
2 limitations and conditions on the certificate as it deems necessary and
3 relevant."

4 **SECTION 3.(a)** Section 1 of S.L. 2011-298 reads as rewritten:

5 "SECTION 1. Notwithstanding G.S. 143-215.22I and G.S. 143-215.22L, a certificate
6 issued pursuant to G.S. 143-215.22L is not required for a transfer of water from one river basin
7 to another river basin to supplement groundwater supplies in the 15 counties designated as the
8 Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501."

9 **SECTION 3.(b)** Section 4 of S.L. 2011-298 reads as rewritten:

10 "SECTION 4.(a) This act is effective when it becomes law and applies to any transfer of
11 water from one river basin to another river basin to supplement groundwater supplies in the 15
12 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501
13 initiated on or after August 31, 2007.

14 "SECTION 4.(b) Section 1 of this act shall expire if the cumulative volume of water
15 transfers from one river basin to another river basin to supplement groundwater supplies in the
16 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E
17 .0501 initiated on or after August 31, 2007, ~~by any person that does not hold a certificate for an~~
18 ~~interbasin transfer on or before the effective date of this act, exceeds 8,000,000 gallons per~~
19 ~~day exceeds 20,300,000 gallons per day.~~

20 "SECTION 4.(c) Any transfer of water from one river basin to another river basin to
21 supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain
22 Capacity Use Area under 15A NCAC 2E .0501 initiated while Section 1 of this act is effective
23 shall not require certification pursuant to G.S. 143-215.22L upon expiration of Section 1 of this
24 act."

25 **SECTION 3.(c)** Section 7 of S.L. 2007-518, as amended by Section 4 of S.L.
26 2010-155 and Section 2 of S.L. 2011-298, reads as rewritten:

27 ~~"SECTION 7.(a) Except as provided in subsections (b), (c) and (d) of this section, this~~
28 **SECTION 7.** This act becomes effective when it becomes law and applies to any petition for a
29 certificate for a transfer of surface water from one river basin to another river basin first made
30 on or after that date.

31 ~~"SECTION 7.(c) For purposes of this subsection, "isolated river basin" means each of the~~
32 ~~following river basins set out in G.S. 143-215.22G(1):~~

- 33 g. 2-6 New River.
34 v. 9-4 Charlotte River.
35 aa. 12-1 Albemarle Sound.
36 hh. 17-1 White Oak River.

37 ~~For a petition for a certificate for transfer of surface water from a river basin to an isolated~~
38 ~~river basin, this act becomes effective 1 July 2020. Prior to 1 July 2020, a petition for a~~
39 ~~certificate for transfer of surface water from a river basin to an isolated river basin shall be~~
40 ~~considered and acted upon by the Environmental Management Commission pursuant to the~~
41 ~~procedures and standards set out in G.S. 143-215.22I on 1 July 2007.~~

42 ~~"SECTION 7.(d) Notwithstanding subsection (c) of this section, an applicant for a~~
43 ~~certificate for transfer of surface water from a river basin to an isolated river basin may request~~
44 ~~that the applicant be subject to the certification process that would apply if the transfer was not~~
45 ~~into an isolated river basin."~~

46 **SECTION 4.** Article 6 of Chapter 153A of the General Statutes is amended by
47 adding a new section to read:

48 "**§ 153A-145.1. Structures on public trust ocean beaches.**

49 Whenever there exists reasonable cause to believe that a structure, fixture, or debris
50 therefrom located oceanward of the mean high water mark unlawfully violates the public trust
51 rights of the people of the State or legal rights of access to public trust areas, a civil action may

1 be instituted by a county within its jurisdiction for injunctive relief to restrain the violation and
2 restore the resources to an undisturbed condition. The action shall be brought in the superior
3 court of the county in which the violation occurred. The institution of an action for injunctive
4 relief under this section shall not relieve any party to a proceeding from any civil or criminal
5 penalty otherwise prescribed for the violation."

6 **SECTION 5.** Article 8 of Chapter 160A of the General Statutes is amended by
7 adding a new section to read:

8 **"§ 160A-203. Structures on public trust ocean beaches.**

9 Whenever there exists reasonable cause to believe that a structure, fixture, or debris
10 therefrom located oceanward of the mean high water mark unlawfully violates the public trust
11 rights of the people of the State or legal rights of access to public trust areas, a civil action may
12 be instituted by a city within its jurisdiction for injunctive relief to restrain the violation and
13 restore the resources to an undisturbed condition. The action shall be brought in the superior
14 court of the county in which the violation occurred. The institution of an action for injunctive
15 relief under this section shall not relieve any party to a proceeding from any civil or criminal
16 penalty otherwise prescribed for the violation."

17 **SECTION 6.** This act is effective when it becomes law.