

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 1057\*  
PROPOSED COMMITTEE SUBSTITUTE H1057-PCS40248-TA-40

Short Title: DENR Study IBT/EMC Eco Flow Study.

(Public)

Sponsors:

Referred to:

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE STATUTES AND RULES GOVERNING INTERBASIN TRANSFERS AND TO DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO STUDY THE STATE'S POLICY FOR ESTABLISHING THE QUANTITY OF SURFACE WATER TO BE PROTECTED FOR ECOLOGICAL INTEGRITY AND TO REPORT TO THE ENVIRONMENTAL REVIEW COMMISSION ON THE STATUS OF HYDROLOGIC MODELS PROPOSED FOR USE IN ESTABLISHING THE WATER QUANTITY TO BE RESERVED FOR ECOLOGICAL FLOW.

The General Assembly of North Carolina enacts:

**SECTION 1.** The Department of Environment and Natural Resources shall study the statutes and rules governing interbasin transfers and make recommendations as to whether the statutes and rules should be amended. The study shall specifically examine all of the following:

- (1) Whether and to what extent temporary and emergency interbasin transfers, including interbasin transfers to provide drought relief, should be subject to different regulatory requirements than long-term interbasin transfers.
- (2) Whether and to what extent interbasin transfers between river subbasins should be subject to different regulatory requirements than interbasin transfers between major river basins.
- (3) Whether there are types of interbasin transfers that should be exempt from the interbasin certification or other regulatory requirements.

**SECTION 2.** No later than October 1, 2014, the Department of Environment and Natural Resources shall report its findings and recommendations to the Environmental Review Commission.

**SECTION 3.** The Environmental Management Commission shall study the means by which the State establishes the quantity of surface water set aside for protection of ecological integrity to determine whether the quantity of water set aside exceeds the amount required for ecological integrity and interferes with other essential water uses as those terms are defined in Article 38 of Chapter 143 of the General Statutes. In its study, the Commission shall determine how to establish the minimum amount of water necessary to satisfy federal and State laws for the protection of the environment and natural resources. The Commission shall consider each of the provisions of S.L. 2010-143, the existing means for determining ecological flow, and recommendations of the Department of Environment and Natural Resources for establishing a policy to include a determination of ecological flow in the basinwide hydrologic



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1 models required pursuant to S.L. 2010-143. If the Commission concurs in the recommendation  
2 of the Ecological Flow Science Advisory Board that it is not feasible to create a separate model  
3 based on the conditions in each river basin, the Commission shall recommend amendments to  
4 S.L. 2010-143. The Commission shall analyze existing information, including the report issued  
5 by the Ecological Flow Science Advisory Board dated November 2013 and report its findings  
6 and recommendations to the Environmental Review Commission on or before January 1, 2016.

7 **SECTION 4.** The Environmental Management Commission may create a science  
8 advisory board to assist the Commission with its preparation of the report to the Environmental  
9 Review Commission required pursuant to Section 3 of this act. If a science advisory board is  
10 created, members shall be appointed by the Chair of the Commission as follows:

- 11 (1) One member who is a scientist whose background includes the study of or  
12 experience with the use of water necessary for firefighting, health, and  
13 safety.
- 14 (2) One member who is a scientist whose background includes the study of or  
15 experience with the use of water needed to sustain human and animal life.
- 16 (3) One member who is a scientist whose background includes the study of or  
17 experience with the water necessary to satisfy federal, State, and local laws  
18 for the protection of public health, safety, and welfare; the environment; and  
19 natural resources.
- 20 (4) One member who is a scientist whose background includes the study of or  
21 experience with the minimum amount of water necessary to support and  
22 sustain the economy of the State, region, or area.
- 23 (5) One member who is a scientist whose background includes the study of or  
24 experience with the economic issues important to consumers of potable  
25 water.

26 State employees may provide staff and technical assistance to the science advisory  
27 board. However, State employees, other than university system employees, shall be ineligible  
28 for appointment to the science advisory board.

29 **SECTION 5.** None of the activities undertaken pursuant to Section 3 and Section 4  
30 of this act shall prevent the Environmental Management Commission and the Department of  
31 Environment and Natural Resources from exercising the authorities granted in Article 21 and  
32 Article 38 of Chapter 143 and Part 1 and Part 4 of Article 7 of Chapter 143B of the General  
33 Statutes, except pursuant to Section 6 of this act. The Commission and the Department are  
34 authorized to continue to use hydrologic models in planning decisions and, as required in order  
35 to comply with required statutes or rules, to make decisions on permit applications or other  
36 matters concerning water allocations, except as limited by Section 6 of this act.

37 **SECTION 6.** The Environmental Management Commission shall defer action  
38 pursuant to G.S. 143-355(o)(6) on any basinwide hydrologic models submitted to the  
39 Commission for its consideration or approval pursuant to S.L. 2010-143 while the study  
40 required pursuant to Section 3 of this act is underway and until the General Assembly has  
41 adjourned the session following the submission of the Commission's report to the  
42 Environmental Review Commission.

43 **SECTION 7.** This act is effective when it becomes law.