

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 458
PROPOSED COMMITTEE SUBSTITUTE S458-PCS45425-BW-19

Short Title: Reinstatement of Mountain Island Lake Marine Commission.

(Public)

Sponsors:

Referred to:

April 5, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE REINSTATEMENT OF THE MOUNTAIN ISLAND LAKE
3 MARINE COMMISSION.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 6 of Chapter 77 of the General Statutes reads as rewritten:

6 "Article 6.

7 "Mountain Island Lake Marine Commission.

8 **"§ 77-70. Definitions.**

9 For purposes of this Article:

- 10 (1) ~~"Board" means the Board.~~ – The board of commissioners of one of the three
11 participating counties.
- 12 (2) ~~"Commission" means the Commission.~~ – The Mountain Island Lake Marine
13 Commission or its governing board, as the case may be.
- 14 (3) ~~"Commissioner" means a Commissioner.~~ – A member of the governing board
15 of the Mountain Island Lake Marine Commission.
- 16 (4) Eligible counties. – Gaston, Lincoln, and Mecklenburg Counties.
- 17 (4)(5) ~~"Joint resolution" means a Joint resolution.~~ – A resolution or ordinance
18 substantially identical in content adopted separately by the governing boards
19 in each of the three counties; the participating counties.
- 20 (5)(6) ~~"Mountain Island Lake" means the Mountain Island Lake.~~ – The impounded
21 body of water along the Catawba River in the three counties extending from
22 the Cowans Ford Dam downstream to the Mountain Island Dam.
- 23 (7) Participating county. – Any of the eligible counties that have adopted a
24 resolution to participate in the Commission and have not withdrawn.
- 25 (6)(8) ~~"Shoreline area" means, except Shoreline area.~~ – Except as modified by a joint
26 resolution, the area within the three counties lying within 1,000 feet of the full
27 pond elevation contour on Mountain Island Lake. In addition, the shoreline
28 area includes all islands within Mountain Island Lake and all peninsulas
29 extending into the waters of Mountain Island Lake.
- 30 (7) ~~"Three counties" means Gaston, Lincoln, and Mecklenburg Counties.~~
- 31 (8)(9) ~~"Wildlife Commission" means the Wildlife Commission.~~ – The North
32 Carolina Wildlife Resources Commission.

33 **"§ 77-71. Authority to create Commission; withdrawal from and dissolution of**
34 **Commission.**



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1 (a) The ~~three-participating~~ counties may by joint resolution create the Mountain Island
2 Lake Marine Commission. Upon its creation the Commission has the powers, duties, and
3 responsibilities conferred upon it by joint resolution, subject to the provisions of this Article.

4 (b) The provisions of any joint resolution may be modified, amended, or rescinded by a
5 subsequent joint ~~resolution~~resolution made with the unanimous consent of the participating
6 counties.

7 (c) A county may unilaterally withdraw from participation as provided by any joint
8 resolution or the provisions of this Article, once the Commission has been created, and any
9 county may unilaterally withdraw from the Commission at the end of any budget period upon 90
10 days prior written notice. ~~Upon~~If upon the effectuation of the ~~withdrawal~~withdrawal there are
11 either one or zero participating counties remaining, the Commission is dissolved, and all property
12 of the Commission must be distributed to or divided among the three counties and any other
13 public agency or agencies serving the Mountain Island Lake area in a manner considered
14 equitable by the Commission by resolution adopted by it prior to dissolution. If upon the
15 effectuation of the withdrawal there are at least two participating counties remaining, the
16 Commission shall continue with the remaining participating counties.

17 (d) If Lincoln County is not a participating county, any decision or advisory action by the
18 Commission shall not include the portion of the shoreline area that is in Lincoln County.

19 **"§ 77-72. Membership; terms.**

20 (a) Upon its creation, the Commission shall have a governing board of ~~seven~~. ~~Except as~~
21 ~~otherwise provided for the initial appointees, each commissioner shall serve a three year term.~~
22 ~~Upon creation of the Commission, the Boards of Commissioners of Gaston County and~~
23 ~~Mecklenburg County shall appoint three commissioners each, and the Board of Commissioners~~
24 ~~of Lincoln County shall appoint one commissioner. Of the initial appointees: seven members, to~~
25 ~~be appointed subject to the provisions of this section. If there are three participating counties, the~~
26 ~~Board of Commissioners of each participating county shall appoint two members. If there are~~
27 ~~two participating counties, the Board of Commissioners of each participating county shall~~
28 ~~appoint three members. In either case, the final member of the Commission shall be appointed~~
29 ~~by agreement of the Boards of Commissioners of the participating counties.~~

30 (1) ~~One commissioner appointed by Gaston County and one member appointed~~
31 ~~by Mecklenburg County shall serve one year terms;~~

32 (2) ~~One commissioner appointed by Gaston County and one member appointed~~
33 ~~by Mecklenburg County shall serve two year terms; and~~

34 (3) ~~One member appointed by Gaston County, one member appointed by~~
35 ~~Mecklenburg County, and the member appointed by Lincoln County shall~~
36 ~~serve three year terms.~~

37 (b) Any commissioner who has served two consecutive terms, including any initial term
38 of less than three years, may not be reappointed to a third consecutive term. Such a member may,
39 however, be appointed to serve again after the expiration of the term of the member's successor.

40 (c) On the death of a commissioner, resignation, incapacity, or inability to serve, as
41 determined by the board appointing that commissioner, or removal of the commissioner for
42 cause, as determined by the board appointing that commissioner, the board affected may appoint
43 another commissioner to fill the unexpired term.

44 **"§ 77-73. Compensation; budget.**

45 The joint resolution of the ~~three-participating~~ counties shall state the terms relating to
46 compensation to commissioners, if any, compensation of consultants and staff members
47 employed by the Commission, and reimbursement of expenses incurred by commissioners,
48 consultants, and employees. The Commission shall be governed by those budgetary and
49 accounting procedures specified by joint resolution.

50 **"§ 77-74. Organization and meetings.**

1 Upon creation of the Commission, its governing board shall meet at a time and place agreed
2 upon by the boards of the ~~three-participating~~ counties concerned. The commissioners shall elect
3 a chairman and officers as they choose. All officers shall serve one-year terms. The governing
4 board shall adopt rules and regulations as it deems necessary, not inconsistent with the provisions
5 of this Article or of any joint resolution, for the proper discharge of its duties and for the
6 governance of the Commission. In order to conduct business, a quorum must be present. The
7 chairman may adopt those committees as authorized by those rules and regulations. The
8 Commission shall meet regularly at times and places as specified in its rules and regulations or
9 in any joint resolution. However, meetings of the Commission must be held in all ~~three~~
10 participating counties on a rotating basis so that an equal number of meetings is held in each
11 county. Special meetings may be called as specified in the rules and regulations. The provisions
12 of the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes, shall apply.

13 **"§ 77-75. Powers of the Commission; administration and funding.**

14 (a) Within the limits of funds available to it and subject to the provisions of this Article
15 and of any joint resolution, the Commission may:

- 16 (1) Hire and fix the compensation of permanent and temporary employees and
17 staff as it may deem necessary in carrying out its duties;
- 18 (2) Contract with consultants for services it requires;
- 19 (3) Contract with the State of North Carolina or the federal government, or any
20 agency or department, or subdivision of them, for property or services as may
21 be provided to or by these agencies and carry out the provisions of these
22 contracts;
- 23 (4) Contract with persons, firms, and corporations generally as to all matters over
24 which it has a proper concern, and carry out the provisions of contracts;
- 25 (5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space
26 for its employees and staff, and lease, rent, purchase, or otherwise obtain
27 furniture, fixtures, vessels, vehicles, firearms, uniforms, and other supplies
28 and equipment necessary or desirable for carrying out the duties imposed in
29 or under the authority of this Article; and
- 30 (6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair,
31 and replace, either on its own or in cooperation with other public or private
32 agencies or individuals, any of the following: boat docks, navigation aids,
33 waterway markers, public information signs and notices, and other items of
34 real and personal property designed to enhance public safety in Mountain
35 Island Lake and its shoreline area, or protection of property in the shoreline
36 area subject however to Chapter 113 of the General Statutes and rules
37 promulgated under that Chapter.

38 (b) The Commission may accept, receive, and disburse in furtherance of its functions any
39 funds, grants, services, or property made available by the federal government or its agencies or
40 subdivisions, by the State of North Carolina or its agencies or subdivisions, or by private and
41 civic sources.

42 (c) The governing boards of the ~~three-participating~~ counties may appropriate funds to the
43 Commission out of surplus funds or funds derived from nontax sources. They may appropriate
44 funds out of tax revenues and may also levy annually property taxes for the payments of such
45 appropriation as a special purpose, in addition to any allowed by the Constitution, or as provided
46 by G.S. 153A-149.

47 (d) The Commission shall be subject to those audit requirements as may be specified in
48 any joint resolution.

49 (e) In carrying out its duties and either in addition to or in lieu of exercising various
50 provisions of the above authorization, the Commission may, with the agreement of the governing
51 board of the county concerned, utilize personnel and property of or assign responsibilities to any

1 officer or employee of any of the ~~three participating~~ counties. Such contribution in kind, if
2 substantial, may with the agreement of ~~the any other two participating~~ counties be deemed to
3 substitute in whole or in part for the financial contribution required of that county in support of
4 the Commission.

5 (f) Unless otherwise specified by joint resolution, each of the ~~three participating~~ counties
6 shall annually contribute an equal financial contribution to the Commission in an amount
7 appropriate to support the activities of the Commission in carrying out its duties.

8 **"§ 77-76. Filing and publication of joint ordinances.**

9 (a) A copy of the joint resolution creating the Commission and of any joint resolution
10 amending or repealing the joint resolution creating the Commission shall be filed with the
11 Executive Director of the Wildlife Commission. When the Executive Director receives
12 resolutions that are in substance identical from ~~all three the participating~~ counties concerned, the
13 Executive Director shall within 10 days so certify and distribute a certified single resolution text
14 to the following:

- 15 (1) The Secretary of State;
- 16 (2) The clerk to the governing board of each of the three counties;
- 17 (3) The clerks of Superior Court of Lincoln, Mecklenburg, and Gaston Counties.
18 Upon request, the Executive Director also shall send a certified single copy of
19 any and all applicable joint resolutions to the chairman of the Commission;
20 and
- 21 (4) A newspaper of general circulation in the three counties.

22 ...

23 **"§ 77-77. Regulatory Commission authority.**

24 (a) ~~Except as limited in subsection (b) of this section, by restrictions in any joint~~
25 ~~resolution, and by other supervening provisions of law, the~~ The Commission may make
26 regulations-recommendations to the duly elected representatives of the participating counties or
27 other relevant elected officials applicable to Mountain Island Lake and its shoreline area
28 concerning all matters relating to or affecting the use of Mountain Island Lake. These regulations
29 recommendations may not conflict with or supersede provisions of general or special acts or of
30 regulations of State agencies promulgated under the authority of general law. No regulations
31 adopted under this section may be adopted by the Commission except after public hearing, with
32 publication of notice of the hearing being given in a newspaper of general circulation in the three
33 counties at least 10 days before the hearing. In lieu of or in addition to passing regulations
34 supplementary to State law and regulations concerning the operation of vessels on Mountain
35 Island Lake, the Commission may, after public notice, request that the Wildlife Commission pass
36 local regulations on this subject in accordance with the procedure established by appropriate State
37 law.

38 (b) ~~Violation of any regulation of the Commission commanding or prohibiting an act~~
39 ~~shall be a Class 3 misdemeanor.~~

40 (c) ~~The regulations promulgated under this section take effect upon passage or upon~~
41 ~~dates as stipulated in the regulations, except that no regulation may be enforced unless adequate~~
42 ~~notice of the regulation has been posted in or on Mountain Island Lake or its shoreline area.~~
43 ~~Adequate notice as to a regulation affecting only a particular location may be by a sign, uniform~~
44 ~~waterway marker, posted notice, or other effective method of communicating the essential~~
45 ~~provisions of the regulation in the immediate vicinity of the location in question. Where a~~
46 ~~regulation applies generally as to Mountain Island Lake or its shoreline area, or both, there must~~
47 ~~be a posting of notices, signs, or markers communicating the essential provisions in at least three~~
48 ~~different places throughout the area, and it must be printed in a newspaper of general circulation~~
49 ~~in the three counties.~~

50 (d) ~~A copy of each regulation promulgated under this section must be filed by the~~
51 ~~Commission with the following persons:~~

- 1 (1) The Secretary of State;
- 2 (2) The clerks of Superior Court of Gaston, Lincoln, and Mecklenburg Counties;
- 3 and
- 4 (3) The Executive Director of the Wildlife Commission.

5 (e) Any official designated in subsection (d) above may issue certified copies of
6 regulations filed with him under the seal of his office. Those certified copies may be received in
7 evidence in any proceeding.

8 (f) Publication and filing of regulations promulgated under this section as required above
9 is for informational purposes and shall not be a prerequisite to their validity if they in fact have
10 been duly promulgated, the public has been notified as to the substance of regulations, a copy
11 of the text of all regulations is in fact available to any person who may be affected, and no party
12 to any proceeding has been prejudiced by any defect that may exist with respect to publication
13 and filing. Rules and regulations promulgated by the Commission under the provisions of other
14 sections of this Article relating to internal governance of the Commission need not be filed or
15 published. Where posting of any sign, notice, or marker or the making of other communication
16 is essential to the validity of a regulation duly promulgated, it shall be presumed in any
17 proceeding that prior notice was given and maintained and the burden lies upon the party
18 asserting to the contrary to prove lack of adequate notice of any regulation.

19 "**§ 77-78. Enforcement.**

20 ...

21 (c) Unless a joint resolution provides otherwise, all courts in the ~~three participating~~
22 counties within the limits of their subject matter jurisdiction shall have concurrent jurisdiction as
23 to all criminal offenses arising within the boundaries of Mountain Island Lake and its shoreline
24 area.

25 "

26 **SECTION 2.** This act applies only to Gaston, Lincoln, and Mecklenburg Counties.

27 **SECTION 3.** This act is effective when it becomes law.