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SENATE BILL DRS35244-BR-5B

Short Title: Water and Wastewater Regulatory Relief Act. (Public)

Sponsors: Senators P. Newton, Sawrey, and Lazzara (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW ALTERNATIVE PEAK DAILY SEWAGE FLOW RATES FOR
3 DESIGN RATE MODELING AND TO REFORM AND SIMPLIFY APPROVAL
4 PROCEDURES FOR CERTAIN WATER TRANSFERS.

5 The General Assembly of North Carolina enacts:

6
7 **ALLOW ALTERNATIVE PEAK DAILY SEWAGE FLOW RATES**

8 **SECTION 1.** G.S. 143-215.1 is amended by adding the following new subsections
9 to read:

10 "(f3) The permittee may calculate its wastewater flows for new dwelling units, including
11 units that have yet to be connected and for which they have allocated capacity, at 75 gallons per
12 day per bedroom.

13 (f4) No permits for sewer line extensions shall be issued to wastewater treatment systems
14 owned or operated by municipalities, counties, sanitary districts, or public utilities unless they
15 meet the following requirements:

16 (1) Prior to actual flow exceeding eighty percent (80%) of the system's permitted
17 hydraulic capacity, based on the average flow during the last calendar year,
18 the permittee shall submit an engineering evaluation of their future wastewater
19 treatment, utilization, and disposal needs. This evaluation shall outline plans
20 for meeting future wastewater treatment, utilization, or disposal needs by
21 either expansion of the existing system, elimination or reduction of extraneous
22 flows, or water conservation and shall include the source of funding for the
23 improvements. If expansion is not proposed or is proposed for a later date, a
24 justification shall be made that wastewater treatment needs will be met based
25 on past growth records and future growth projections and, as appropriate, shall
26 include conservation plans or other measures to achieve waste flow
27 reductions.

28 (2) Prior to actual flow exceeding ninety percent (90%) of the system's permitted
29 hydraulic capacity, based on the average flow during the last calendar year,
30 the permittee shall obtain all permits needed for the expansion of the
31 wastewater treatment, utilization, or disposal system and, if construction is
32 needed, submit final plans and specifications for expansion, including a
33 construction schedule. If expansion is not proposed or is proposed for a later
34 date, a justification shall be made that wastewater treatment needs will be met
35 based on past growth records and future growth projections and, as



appropriate, shall include conservation plans or other specific measures to achieve waste flow reductions.

(f5) A permittee for a wastewater treatment system located in a county with a projected population growth rate above two percent (2%) annually and operating in compliance with all pollutant discharge standards and not exceeding its 12-month average flow limitation may allocate their system's permitted hydraulic capacity, based on the average flow during the last calendar year, as follows:

- (1) Up to one hundred ten percent (110%) allocation upon signing a contract for the expansion of the wastewater treatment, utilization, or disposal system within 36 months.
- (2) Up to one hundred fifteen percent (115%) if the expansion of the wastewater treatment, utilization, or disposal system to increase the system capacity is within 24 months of completion."

REFORM WATER TRANSFER CERTIFICATION PROCEDURES

SECTION 2.(a) G.S. 143-215.22G reads as rewritten:

"§ 143-215.22G. Definitions.

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

- (1) ~~"Mainstem" means that Mainstem.~~ – That portion of a river having the same name as a river basin defined in subdivision (1b) of this section. "Mainstem" does not include named or unnamed tributaries.
- (1a) ~~"Public water system" means any Public water system.~~ – Any unit of local government or large community water system subject to the requirements of G.S. 143-355(1).
- (1b) ~~"River basin" means any of the following river basins designated on the map entitled "Major River Basins and Sub-basins in North Carolina" and filed in the Office of the Secretary of State on 16 April 1991. The term "river basin" includes any portion of the river basin that extends into another state. Any area outside North Carolina that is not included in one of the river basins listed in this subdivision comprises a separate river basin.~~

a.	1-1	Broad River.
b.	2-1	Haw River.
c.	2-2	Deep River.
d.	2-3	Cape Fear River.
e.	2-4	South River.
f.	2-5	Northeast Cape Fear River.
g.	2-6	New River.
h.	3-1	Catawba River.
i.	3-2	South Fork Catawba River.
j.	4-1	Chowan River.
k.	4-2	Meherrin River.
l.	5-1	Nolichucky River.
m.	5-2	French Broad River.
n.	5-3	Pigeon River.
o.	6-1	Hiwassee River.
p.	7-1	Little Tennessee River.
q.	7-2	Tuskasegee (Tuckasegee) River.
r.	8-1	Savannah River.
s.	9-1	Lumber River.
t.	9-2	Big Shoe Heel Creek.

1	tt.	9-3	Waccamaw River.
2	vv.	9-4	Shalotte River.
3	ww.	10-1	Neuse River.
4	xx.	10-2	Contentnea Creek.
5	yy.	10-3	Trent River.
6	zz.	11-1	New River.
7	aa.	12-1	Albemarle Sound.
8	bb.	13-1	Ocoee River.
9	ee.	14-1	Roanoke River.
10	dd.	15-1	Tar River.
11	ee.	15-2	Fishing Creek.
12	ff.	15-3	Pamlico River and Sound.
13	gg.	16-1	Watauga River.
14	hh.	17-1	White Oak River.
15	ii.	18-1	Yadkin (Yadkin-Pee Dee) River.
16	jj.	18-2	South Yadkin River.
17	kk.	18-3	Uwharrie River.
18	ll.	18-4	Rocky River.

(1b) River basin. – The North Carolina portion of the drainages included within the United States Geological Survey accounting units listed in this subdivision. The term "river basin" includes any portion of the river basin that extends into another state. Any area outside North Carolina that is not included in one of the river basins listed in this subdivision comprises a separate river basin.

- a. 030101 Roanoke River, which includes the following subbasins: 03010102, 03010103, 03010104, 03010106, and 03010107.
- b. 030102 Pasquotank and rivers other than the Roanoke and Chowan draining into Albemarle Sound, which includes the following subbasin: 03010205.
- c. 030102 Chowan River, which includes the following subbasins: 03010201, 03010202, 03010203, and 03010204.
- d. 030201 Tar-Pamlico, which includes the following subbasins: 03020101, 03020102, 03020103, 03020104, and 03020105.
- e. 030202 Neuse, which includes the following subbasins: 03020201, 03020202, 03020203, and 03020204.
- f. 030203 White Oak, which includes the following subbasins: 03020301 and 03020302.
- g. 030300 Cape Fear River, which includes the following subbasins: 03030002, 03030003, 03030004, 03030005, 03030006, and 03030007.
- h. 030401 Yadkin-Pee Dee River, which includes the following subbasins: 03040101, 03040102, 03040103, 03040104, 03040105, 03040201, and 03040202.
- i. 030402 Lumber River, which includes the following subbasins: 03040203, 03040204, 03040206, and 03040208.
- j. 030501 Broad River, which includes the following subbasin: 03050105.
- k. 030501 Catawba River, which includes the following subbasins: 03050101, 03050102, and 03050103.
- l. 030601 Savannah River, which includes the following subbasins: 03060101 and 03060102.

- 1 m. 050500 New River, which includes the following subbasin:
- 2 05050001.
- 3 n. 060101 French Broad River, which includes the following
- 4 subbasins: 06010105, 06010106, and 06010108.
- 5 o. 060101 Watauga River, which includes the following subbasin:
- 6 06010103.
- 7 p. 060102 Little Tennessee River, which includes the following
- 8 subbasins: 06010202, 06010203, and 06010204.
- 9 q. 060200 Hiwassee River, which includes the following subbasins:
- 10 06020002 and 06020003.

11 (1c) Subbasin. – The eight-digit cataloging units of the United States Geologic

12 Survey as set forth in subdivision (1b) of this section.

13 (2) ~~"Surface water" means any Surface water. – Any~~ of the waters of the State

14 ~~located on the land surface that are not derived by pumping from groundwater.~~

15 (3) ~~"Transfer" means the Transfer. – The~~ withdrawal, diversion, or pumping of

16 ~~surface water from one river basin or subbasin and discharge of all or any part~~

17 ~~of the water in a river basin or subbasin different from the origin. However,~~

18 ~~notwithstanding the river basin definitions in G.S. 143-215.22G(1b),~~

19 ~~subdivision (1b) of this section or the subbasin definitions in subdivision (1c)~~

20 ~~of this section,~~ the following are not transfers under this Part:

- 21 a. The discharge of water upstream from the point where it is withdrawn.
- 22 b. The discharge of water downstream from the point where it is
- 23 withdrawn."

24 **SECTION 2.(b) G.S. 143-215.22H reads as rewritten:**

25 **"§ 143-215.22H. Registration of water withdrawals and transfers required.**

26 (a) Any person who withdraws 100,000 gallons per day or more of water from the surface

27 ~~or groundwaters~~ of the State or who transfers 100,000 gallons per day or more of water from one

28 ~~river basin or subbasin~~ to another shall register the withdrawal or transfer with the Commission.

29 A person registering a water withdrawal or transfer shall provide the Commission with the

30 following information:

- 31 (1) The maximum daily amount of the water withdrawal or transfer expressed in
- 32 thousands of gallons per day.
- 33 (1a) The monthly average withdrawal or transfer expressed in thousands of gallons
- 34 per day.
- 35 (2) The location of the points of withdrawal and discharge and the capacity of
- 36 each facility used to make the withdrawal or transfer.
- 37 (3) The monthly average discharge expressed in thousands of gallons per day.
- 38 (4) For transfers of 2,000,000 gallons of water or more per day, the registrant shall
- 39 submit a water balance for the water system with a 50-year planning horizon
- 40 beginning with the current year, the name of the water system owning the pipe
- 41 transferring water across the basin boundary, the daily raw water withdrawals
- 42 or purchase amounts in million-gallons of water per day (MGD), the average
- 43 daily or maximum daily wastewater discharge for each basin in MGD, the
- 44 total water returned to the source basin, and the estimated water being
- 45 transferred. The data used to determine the water balance shall align with the
- 46 Local Water Supply plan required in G.S. 143-355(l).

47 ...

48 (f) Any person who transfers 2,000,000 gallons of water or more per day shall submit an

49 annual report by February 28 of each year with the daily raw water withdrawals or purchase

50 amounts in MGD, the average daily or maximum daily wastewater discharge for each basin in

1 MGD, the total water returned to the source basin, and the estimated water being transferred for
2 the previous calendar year."

3 **SECTION 2.(c)** G.S. 143-215.22L reads as rewritten:

4 "**§ 143-215.22L. Regulation of surface water transfers.**

5 (a) ~~Certificate Required.~~ Required for Interbasin Transfer. – No person, without first
6 obtaining a certificate from the Commission, may:

7 (1) Initiate a transfer of 2,000,000–5,000,000 gallons of water or more per day,
8 calculated as a daily average of a calendar maximum month and not to exceed
9 3,000,000–7,500,000 gallons per day in any one day, from one river basin or
10 one subbasin to another.

11 (2) Increase the amount of an existing transfer of water from one river basin or
12 one subbasin to another by twenty-five percent (25%) or more above the
13 average daily amount transferred during the year ending ~~1 July~~ July 1, 1993 if
14 the total transfer including the increase is 2,000,000–7,500,000 gallons or more
15 per day.

16 (3) Increase an existing transfer of water from one river basin to another by
17 2,000,000 gallons of water per day, calculated as a daily average of a calendar
18 maximum month and not to exceed 3,000,000 gallons per day in any one day,
19 above the amount approved by the Commission in a certificate issued under
20 G.S. 162A-7 prior to ~~1 July~~ July 1, 1993.

21 (4) Increase an existing transfer of water from one subbasin to another subbasin
22 within the same river basin by 5,000,000 gallons of water or more per day,
23 calculated as a daily average of a calendar maximum month, with an increase
24 of no more than 7,500,000 gallons per day in any one day during any
25 consecutive 10-year period.

26 (b) Exception. – Notwithstanding the provisions of subsection (a) of this section, a
27 certificate shall not be required for the following:

28 (1) ~~to~~ To transfer water from one river basin to another up to the full capacity of
29 a facility to transfer water from one basin to another if the facility was in
30 existence or under construction on ~~1 July~~ July 1, 1993.

31 (2) To test interconnections between parties to an interlocal mutual support
32 agreement that could be used for purposes of transfer authorized under
33 subsection (q) or (q1) of this section, when the following conditions are met:

34 a. All parties to the interlocal, mutual support agreement request the
35 transfer.

36 b. The test complies with the provisions for time, duration, and other
37 aspects of the test as the Secretary may specify.

38 (c) ~~Notice of Intent to File a Petition.~~ Intent. – An applicant shall ~~prepare a notice of~~
39 ~~intent to file a petition that includes a nontechnical description of the applicant's request and an~~
40 ~~identification of the proposed water source. Within 90 days after the applicant files a notice of~~
41 ~~intent to file a petition, the applicant shall hold at least one public meeting in the source river~~
42 ~~basin upstream from the proposed point of withdrawal, at least one public meeting in the source~~
43 ~~river basin downstream from the proposed point of withdrawal, and at least one public meeting~~
44 ~~in the receiving river basin to provide information to interested parties and the public regarding~~
45 ~~the nature and extent of the proposed transfer and to receive comment on the scope of the~~
46 ~~environmental documents. Written notice of the public meetings shall be provided at least 30~~
47 ~~days before the public meetings. At the time the applicant gives notice of the public meetings,~~
48 ~~the applicant shall request comment on the alternatives and issues that should be addressed in the~~
49 ~~environmental documents required by this section. The applicant shall accept written comment~~
50 ~~on the scope of the environmental documents for a minimum of 30 days following the last public~~
51 ~~meeting. Notice of the public meetings and opportunity to comment on the scope of the~~

1 ~~environmental documents shall be provided as follows:~~submit to the Department a notice of
2 ~~intent to initiate an environmental study as required in subsection (d) of this section.~~

3 (c1) Requirements for Notice. – Unless otherwise specified, notice required by subsection
4 (d) of this section shall be provided as follows:

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

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

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

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

14 03050105 (Broad River: NC and SC);

15 03050106 (Broad River: SC);

16 03050107 (Broad River: SC);

17 03050108 (Broad River: SC);

18 05050001 (New River: NC and VA);

19 05050002 (New River: VA and WV);

20 03050101 (Catawba River: NC and SC);

21 03050103 (Catawba River: NC and SC);

22 03050104 (Catawba River: SC);

23 03010203 (Chowan River: NC and VA);

24 03010204 (Chowan River: NC and VA);

25 06010105 (French Broad River: NC and TN);

26 06010106 (French Broad River: NC and TN);

27 06010107 (French Broad River: TN);

28 06010108 (French Broad River: NC and TN);

29 06020001 (Hiwassee River: AL, GA, TN);

30 06020002 (Hiwassee River: GA, NC, TN);

31 06010201 (Little Tennessee River: TN);

32 06010202 (Little Tennessee River: TN, GA, and NC);

33 06010204 (Little Tennessee River: NC and TN);

34 03060101 (Savannah River: NC and SC);

35 03060102 (Savannah River: GA, NC, and SC);

36 03060103 (Savannah River: GA and SC);

37 03060104 (Savannah River: GA);

38 03060105 (Savannah River: GA);

39 03040203 (Lumber River: NC and SC);

40 03040204 (Lumber River: NC and SC);

41 03040206 (Lumber River: NC and SC);

42 03040207 (Lumber River: NC and SC);

43 03010205 (Albemarle Sound: NC and VA);

44 06020003 (Ocoee River: GA, NC, and TN);

45 03010101 (Roanoke River: VA);

46 03010102 (Roanoke River: NC and VA);

47 03010103 (Roanoke River: NC and VA);

48 03010104 (Roanoke River: NC and VA);

49 03010105 (Roanoke River: VA);

50 03010106 (Roanoke River: NC and VA);

51 06010102 (Watauga River: TN and VA);

- 1 06010103 (Watauga River: NC and TN);
- 2 03040101 (Yadkin River: VA and NC);
- 3 03040104 (Yadkin River: NC and SC);
- 4 03040105 (Yadkin River: NC and SC);
- 5 03040201 (Yadkin River: NC and SC);
- 6 03040202 (Yadkin River: NC and SC).
- 7 c. Each county in this State located in whole or in part of the area of the
- 8 source river basin downstream from the proposed point of withdrawal.
- 9 d. Any area in the State in a river basin for which the source river basin
- 10 has been identified as a future source of water in a local water supply
- 11 plan prepared pursuant to G.S. 143-355(l).
- 12 e. Each county in the State located in whole or in part of the receiving
- 13 river basin.
- 14 (3) By giving notice by first-class mail or electronic mail to each of the following:
- 15 a. The board of commissioners of each county in this State or the
- 16 governing body of any county or city that is politically independent of
- 17 a county in any state that is located entirely or partially within the
- 18 source river basin of the proposed transfer and that also falls within, in
- 19 whole or in part, the area denoted by one of the eight-digit cataloging
- 20 units listed in sub-subdivision b. of subdivision (2) of this subsection.
- 21 b. The board of commissioners of each county in this State or the
- 22 governing body of any county or city that is politically independent of
- 23 a county in any state that is located entirely or partially within the
- 24 receiving river basin of the proposed transfer and that also falls within,
- 25 in whole or in part, the area denoted by one of the eight-digit
- 26 cataloging units listed in sub-subdivision b. of subdivision (2) of this
- 27 subsection.
- 28 c. The governing body of any public water system that withdraws water
- 29 upstream or downstream from the withdrawal point of the proposed
- 30 transfer.
- 31 d. If any portion of the source or receiving river basins is located in
- 32 another state, all state water management or use agencies,
- 33 environmental protection agencies, and the office of the governor in
- 34 that state upstream or downstream from the withdrawal point of the
- 35 proposed transfer.
- 36 e. All persons who have registered a water withdrawal or transfer from
- 37 the proposed source river basin under this Part or under similar law in
- 38 an another state.
- 39 f. All persons who hold a certificate for a transfer of water from the
- 40 proposed source river basin under this Part or under similar law in an
- 41 another state.
- 42 g. All persons who hold a National Pollutant Discharge Elimination
- 43 System (NPDES) wastewater discharge permit for a discharge of
- 44 100,000 gallons per day or more upstream or downstream from the
- 45 proposed point of withdrawal.
- 46 h. To any other person who submits to the applicant a written request to
- 47 receive all notices relating to the petition.

48 ...

49 (e) Public Hearing on the Draft Environmental Document. – The Commission shall hold

50 a public hearing on the draft environmental document for a proposed interbasin transfer after

51 giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as

1 provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate (i)
2 where a copy of the environmental document can be ~~reviewed and reviewed~~, (ii) the procedure
3 to be followed by anyone wishing to submit written comments and questions on the
4 environmental ~~document~~, document, and (iii) that judicial review of the environmental document
5 will be limited to issues raised in submitted written comments or in oral comments provided at
6 public hearings required by this section. The Commission shall prepare a record of ~~all comments~~
7 ~~and comments~~, written responses to questions posed in ~~writing~~, writing, and transcripts of oral
8 comments provided at the public hearing required by this subsection. The record shall include
9 complete copies of scientific or technical comments related to the potential impact of the
10 interbasin transfer. The Commission shall accept written comment on the draft environmental
11 document for a minimum of 30 days following the last public hearing. The applicant who
12 petitions the Commission for a certificate under this section shall pay the costs associated with
13 the notice and public hearing on the draft environmental document.

14 (f) ~~Determination of Adequacy of Environmental Document.~~ – The Commission shall
15 not act on any petition for ~~an interbasin~~ a transfer until the Commission has determined that the
16 environmental document is complete and adequate. A decision on the completeness and
17 adequacy of the environmental document is subject to review in a contested case on the decision
18 of the Commission to issue or deny a certificate under this section.

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

- 21 (1) A general description of the facilities to be used to transfer the water, including
22 current and projected areas to be served by the transfer, current and projected
23 capacities of intakes, and other relevant facilities.
- 24 (2) A description of all the proposed consumptive and nonconsumptive uses of
25 the water to be transferred.
- 26 (3) A description of the water quality of the source river and receiving river,
27 including information on aquatic habitat for rare, threatened, and endangered
28 species; in-stream flow data for segments of the source and receiving rivers
29 that may be affected by the transfer; and any waters that are impaired pursuant
30 to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).
- 31 (4) A description of the water conservation measures used by the applicant at the
32 time of the petition and any additional water conservation measures that the
33 applicant will implement if the certificate is granted.
- 34 (5) A description of all sources of water within the receiving river ~~basin~~, basin or
35 subbasin, including surface water impoundments, groundwater wells,
36 reinjection storage, and purchase of water from another source within the river
37 ~~basin~~, basin or subbasin, that is a practicable alternative to the proposed
38 transfer that would meet the applicant's water supply needs. The description
39 of water sources shall include sources available at the time of the petition for
40 a certificate and any planned or potential water sources.
- 41 (6) A description of water transfers and withdrawals registered under
42 G.S. 143-215.22H or included in a local water supply plan prepared pursuant
43 to G.S. 143-355(1) from the source river ~~basin~~, basin or subbasin, including
44 transfers and withdrawals at the time of the petition for a certificate and any
45 planned or reasonably foreseeable transfers or withdrawals by a public water
46 system with service area located within the source river ~~basin~~ basin or
47 subbasin.
- 48 (7) A demonstration that the proposed transfer, if added to all other transfers and
49 withdrawals required to be registered under G.S. 143-215.22H or included in
50 any local water supply plan prepared by a public water system with service
51 area located within the source river basin or subbasin pursuant to

1 G.S. 143-355(l) from the source river basin or subbasin at the time of the
2 petition for a certificate, would not reduce the amount of water available for
3 use in the source river basin or subbasin to a degree that would impair existing
4 uses, pursuant to the antidegradation policy set out in 40 Code of Federal
5 Regulation § 131.12 (Antidegradation Policy) (1 July 2006 Edition) and the
6 statewide antidegradation policy adopted pursuant thereto, or existing and
7 planned consumptive and nonconsumptive uses of the water in the source river
8 ~~basin.~~ basin or subbasin. If the proposed transfer would impact a reservoir
9 within the source river ~~basin,~~ basin or subbasin, the demonstration must
10 include a finding that the transfer would not result in a water level in the
11 reservoir that is inadequate to support existing uses of the reservoir, including
12 recreational uses.

13 (8) The applicant's future water supply needs and the present and reasonably
14 foreseeable future water supply needs for public water systems with service
15 area located within the source river ~~basin.~~ basin or subbasin. The analysis of
16 future water supply needs shall include agricultural, recreational, and
17 industrial uses, and electric power generation. Local water supply plans
18 prepared pursuant to G.S. 143-355(l) for water systems with service area
19 located within the source river basin or subbasin shall be used to evaluate the
20 projected future water needs in the source river basin or subbasin that will be
21 met by public water systems.

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

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

28 ...

29 (i) Draft Determination. – Within 90 days after ~~the Commission determines that the~~
30 environmental document prepared in accordance with subsection (d) of this section is ~~adequate~~
31 complete or the applicant submits its petition for a certificate, whichever occurs later, the
32 Commission shall issue a draft determination on whether to grant the ~~certificate.~~ certificate, in
33 whole or in part, or to deny the certificate. The draft determination shall be based on the criteria
34 set out in this section and shall include the conditions and limitations, findings of fact, and
35 conclusions of law that would be required in a final determination. Notice of the draft
36 determination shall be given as provided in subsection ~~(e)-(c1)~~ of this section.

37 (j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the
38 draft determination as provided in subsection (i) of this section, the Commission shall hold ~~public~~
39 hearings at least one public hearing on the draft determination. ~~At least one hearing shall be held~~
40 ~~in the affected area of the source river basin, and at least one hearing shall be held in the affected~~
41 ~~area of the receiving river basin.~~ In determining whether more than one public hearing should be
42 ~~held within either the source or receiving river basins,~~ held, the Commission shall consider the
43 differing or conflicting interests that may exist within the river ~~basins,~~ basins or subbasins,
44 including the interests of both upstream and downstream parties potentially affected by the
45 proposed transfer. The public ~~hearings~~ hearing or hearings shall be conducted by one or more
46 hearing officers appointed by the Chair of the Commission. The hearing officers may be members
47 of the Commission or employees of the Department. The Commission shall give at least 30 days'
48 written notice of the public hearing as provided in subsection ~~(e)-(c1)~~ of this section. The
49 Commission shall accept written comment on the draft determination for a minimum of 30 days
50 following the last public hearing. The Commission shall prepare a record of all comments and
51 written responses to questions posed in writing. The record shall include complete copies of

1 scientific or technical comments related to the potential impact of the ~~interbasin~~-transfer. The
2 applicant who petitions the Commission for a certificate under this section shall pay the costs
3 associated with the notice and public hearing on the draft determination.

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

7 (1) The necessity and reasonableness of the amount of surface water proposed to
8 be transferred and its proposed uses.

9 (2) The present and reasonably foreseeable future detrimental effects on the
10 source river ~~basin~~, basin or subbasin, including present and future effects on
11 public, industrial, economic, recreational, and agricultural water supply needs,
12 wastewater assimilation, water quality, fish and wildlife habitat, electric
13 power generation, navigation, and recreation. Local water supply plans for
14 public water systems with service area located within the source river basin or
15 subbasin prepared pursuant to G.S. 143-355(l) shall be used to evaluate the
16 projected future water needs in the source river basin or subbasin that will be
17 met by public water systems. Information on projected future water needs for
18 public water systems with service area located within the source river basin or
19 subbasin that is more recent than the local water supply plans may be used if
20 the Commission finds the information to be reliable. The determination shall
21 include a specific finding as to measures that are necessary or advisable to
22 mitigate or avoid detrimental impacts on the source river ~~basin~~, basin or
23 subbasin.

24 (3) The cumulative effect on the source ~~major~~-river basin of any water transfer or
25 consumptive water use that, at the time the Commission considers the petition
26 for a certificate is occurring, is authorized under this section, or is projected
27 in any local water supply plan for public water systems with service area
28 located within the source river basin that has been submitted to the
29 Department in accordance with G.S. 143-355(l).

30 (4) The present and reasonably foreseeable future beneficial and detrimental
31 effects on the receiving river ~~basin~~, basin or subbasin, including present and
32 future effects on public, industrial, economic, recreational, and agricultural
33 water supply needs, wastewater assimilation, water quality, fish and wildlife
34 habitat, electric power generation, navigation, and recreation. Local water
35 supply plans prepared pursuant to G.S. 143-355(l) that affect the receiving
36 river basin or subbasin shall be used to evaluate the projected future water
37 needs in the receiving river basin or subbasin that will be met by public water
38 systems. Information on projected future water needs that is more recent than
39 the local water supply plans may be used if the Commission finds the
40 information to be reliable. The determination shall include a specific finding
41 as to measures that are necessary or advisable to mitigate or avoid detrimental
42 impacts on the receiving river ~~basin~~, basin or subbasin.

43 (5) The availability of reasonable alternatives to the proposed transfer, including
44 the potential capacity of alternative sources of water, the potential of each
45 alternative to reduce the amount of or avoid the proposed transfer, probable
46 costs, and environmental impacts. In considering alternatives, the
47 Commission is not limited to consideration of alternatives that have been
48 proposed, studied, or considered by the applicant. The determination shall
49 include a specific finding as to why the applicant's need for water cannot be
50 satisfied by alternatives within the receiving basin, including unused capacity
51 under a transfer for which a certificate is in effect or that is otherwise

1 authorized by law at the time the applicant submits the petition. The
2 determination shall consider the extent to which access to potential sources of
3 surface water or groundwater within the receiving river basin or subbasin is
4 no longer available due to depletion, contamination, or the declaration of a
5 capacity use area under Part 2 of Article 21 of Chapter 143 of the General
6 Statutes. The determination shall consider the feasibility of the applicant's
7 purchase of water from other water suppliers within the receiving basin or
8 subbasin and of the transfer of water from another ~~sub-basin-subbasin~~ within
9 the receiving ~~major~~-river basin. Except in circumstances of technical or
10 economic infeasibility or adverse environmental impact, the Commission's
11 determination as to reasonable alternatives shall give preference to
12 alternatives that would involve a transfer from one ~~sub-basin-subbasin~~ to
13 another within the ~~major~~-receiving river basin over alternatives that would
14 involve a transfer from one ~~major~~-river basin to another ~~major~~-river basin.

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

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

23 (8) Whether the service area of the applicant is located in both the source river
24 basin or subbasin and the receiving river ~~basin-basin~~ or subbasin.

25 (8a) Whether the applicant's petition for a certificate is materially and substantially
26 complete in accordance with the requirements of this section.

27 (8b) Whether the applicant materially and substantially complied with all
28 requirements for notice to be given by the applicant pursuant to this section.

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

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

34 (1) The petition.

35 (2) The environmental document prepared pursuant to subsection (d) of this
36 section.

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

39 (4) Information developed by or available to the Department on the water quality
40 of the source river basin or subbasin and the receiving river ~~basin-basin~~ or
41 subbasin, including waters that are identified as impaired pursuant to section
42 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)), that are subject
43 to a total maximum daily load (TMDL) limit under subsections (d) and (e)
44 of section 303 of the federal Clean Water Act, or that would have their
45 assimilative capacity impaired if the certificate is issued.

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

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

- 1 (1) The benefits of the proposed transfer outweigh the detriments of the proposed
2 transfer. In making this determination, the Commission shall be guided by the
3 approved environmental document and the policy set out in subsection (t) of
4 this section.
- 5 (2) The detriments have been or will be mitigated ~~to the maximum degree~~
6 ~~practicable in accordance with subsection (t) of this section.~~
- 7 (3) The amount of the transfer does not exceed the amount of the projected
8 shortfall under the applicant's water supply plan after first taking into account
9 all other sources of water that are available to the applicant.
- 10 (4) There are no reasonable alternatives to the proposed transfer.
- 11 (n) Final Determination: Certificate Conditions and Limitations. – The Commission may
12 grant the certificate in whole or in part, or deny the certificate. The Commission may impose any
13 conditions or limitations on a certificate that the Commission finds necessary to achieve the
14 purposes of this Part including a limit on the period for which the certificate is valid. The
15 conditions and limitations shall include any mitigation measures proposed by the applicant to
16 minimize any detrimental effects within the source and receiving river ~~basins.~~ basins or
17 subbasins. In addition, the certificate shall require all of the following conditions and limitations:
- 18 (1) A water conservation plan that specifies the water conservation measures that
19 will be implemented by the applicant in the receiving river basin to ensure the
20 efficient use of the transferred water. Except in circumstances of technical or
21 economic infeasibility or adverse environmental impact, the water
22 conservation plan shall provide for the mandatory implementation of water
23 conservation measures by the applicant that equal or exceed the most stringent
24 water conservation plan implemented by a public water system that withdraws
25 water from the source river ~~basin.~~ basin or subbasin.
- 26 (2) A drought management plan that specifies how the transfer shall be managed
27 to protect the source river basin or subbasin during drought conditions or other
28 emergencies that occur within the source river ~~basin.~~ basin or subbasin. Except
29 in circumstances of technical or economic infeasibility or adverse
30 environmental impact, this drought management plan shall include mandatory
31 reductions in the permitted amount of the transfer based on the severity and
32 duration of a drought occurring within the source river basin or subbasin and
33 shall provide for the mandatory implementation of a drought management
34 plan by the applicant that equals or exceeds the most stringent ~~water~~
35 ~~conservation~~ drought management plan implemented by a public water
36 system that withdraws water from the source river ~~basin.~~ basin or subbasin.
- 37 (3) The maximum amount of water that may be transferred, calculated as a daily
38 average of a calendar month, and methods or devices required to be installed
39 and operated that measure the amount of water that is transferred.
- 40 (4) A provision that the Commission may amend a certificate to reduce the
41 maximum amount of water authorized to be transferred whenever it appears
42 that an alternative source of water is available to the certificate holder from
43 within the receiving river ~~basin.~~ basin or subbasin, including, but not limited
44 to, the purchase of water from another water supplier within the receiving
45 basin or to the transfer of water from another ~~sub-basin.~~ subbasin within the
46 receiving ~~major~~ river basin.
- 47 (5) A provision that the Commission shall amend the certificate to reduce the
48 maximum amount of water authorized to be transferred if the Commission
49 finds that the applicant's current projected water needs are significantly less
50 than the applicant's projected water needs at the time the certificate was
51 granted.

- 1 (6) A requirement that the certificate holder report the quantity of water
- 2 transferred during each calendar quarter. The report required by this
- 3 subdivision shall be submitted to the Commission no later than 30 days after
- 4 the end of the quarter.
- 5 (7) Except as provided in this subdivision, a provision that the applicant will not
- 6 resell the water that would be transferred pursuant to the certificate to another
- 7 public water system. This limitation shall not apply in the case of a proposed
- 8 resale or transfer among public water systems within the receiving river basin
- 9 or subbasin as part of an interlocal agreement or other regional water supply
- 10 arrangement, provided that each participant in the interlocal agreement or
- 11 regional water supply arrangement is a co-applicant for the certificate and will
- 12 be subject to all the terms, conditions, and limitations made applicable to any
- 13 lead or primary applicant.
- 14 ...
- 15 (t) Statement of Policy. – It is the public policy of the State to maintain, protect, and
- 16 enhance water quality within North Carolina. It is the public policy of this State that the
- 17 reasonably foreseeable future water needs of a public water system with its service area located
- 18 primarily in the receiving river basin or subbasin are subordinate to the reasonably foreseeable
- 19 future water needs of a public water system with its service area located primarily in the source
- 20 river ~~basin.~~ basin or subbasin. Further, it is the public policy of the State that the cumulative
- 21 impact of transfers from a source river basin or subbasin shall not result in a violation of the
- 22 antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 2006 Edition)
- 23 and the statewide antidegradation policy adopted pursuant thereto.
- 24 (u) Repealed by Session Laws 2013-388, s. 2, effective August 23, 2013.
- 25 (v) Modification of Certificate. – A certificate may be modified as provided in this
- 26 subsection:
- 27 (1) The Commission or the Department may make any of the following
- 28 modifications to a certificate after providing electronic notice to persons who
- 29 have identified themselves in writing as interested parties:
- 30 a. Correction of typographical errors.
- 31 b. Clarification of existing conditions or language.
- 32 c. Updates, requested by the certificate holder, to a conservation plan,
- 33 drought management plan, or compliance and monitoring plan.
- 34 d. Modifications requested by the certificate holder to reflect altered
- 35 requirements due to the amendment of this section.
- 36 (2) A person who holds a certificate for ~~an interbasin~~ a transfer of water may
- 37 request that the Commission modify the certificate. The request shall be
- 38 considered and a determination made according to the following procedures:
- 39 a. The certificate must have been issued pursuant to G.S. 162A-7,
- 40 143-215.22I, or 143-215.22L and the certificate holder must be in
- 41 substantial compliance with the certificate.
- 42 ~~b. The certificate holder shall file a notice of intent to file a request for~~
- 43 ~~modification that includes a nontechnical description of the certificate~~
- 44 ~~holder's request and identification of the proposed water source.~~
- 45 c. The certificate holder shall prepare an environmental document
- 46 pursuant to subsection (d) of this section, except that an environmental
- 47 impact statement shall not be required for the modification of a
- 48 certificate unless it would otherwise be required by Article 1 of
- 49 Chapter 113A of the General Statutes.
- 50 d. Upon determining that the documentation submitted by the certificate
- 51 holder is adequate to satisfy the requirements of this subsection, the

1 Department shall publish a notice of the request for modification in the
2 North Carolina Register and shall hold a public hearing at a location
3 convenient to both the source and receiving river basins. The
4 Department shall provide written notice of the request for the
5 modification and the public hearing in the Environmental Bulletin, a
6 newspaper of general circulation in the source river basin, a newspaper
7 of general circulation in the receiving river basin, and as provided in
8 subdivision (3) of subsection ~~(e)-(c1)~~ of this section. The certificate
9 holder who petitions the Commission for a modification under this
10 subdivision shall pay the costs associated with the notice and public
11 hearing.

12 e. The Department shall accept comments on the requested modification
13 for a minimum of 30 days following the public hearing.

14 f. The Commission or the Department may require the certificate holder
15 to provide any additional information or documentation it deems
16 reasonably necessary in order to make a final determination.

17 g. The Commission shall make a final determination whether to grant the
18 requested modification based on the factors set out in subsection (k)
19 of this section, information provided by the certificate holder, and any
20 other information the Commission deems relevant. The Commission
21 shall state in writing its findings of fact and conclusions of law with
22 regard to each factor.

23 h. The Commission shall grant the requested modification if it finds that
24 the certificate holder has established by a preponderance of the
25 evidence that the requested modification satisfies the requirements of
26 subsection (m) of this section. The Commission may grant the
27 requested modification in whole or in part, or deny the request, and
28 may impose such limitations and conditions on the modified certificate
29 as it deems necessary and relevant to the modification.

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

33 j. The Commission shall not grant a request for modification if the
34 modification would be inconsistent with the December 3, 2010
35 Settlement Agreement entered into between the State of North
36 Carolina, the State of South Carolina, Duke Energy Carolinas, and the
37 Catawba River Water Supply Project.

38 (w) Alternate Requirements for Coastal Counties and Counties, Reservoirs Constructed
39 by the United States Army Corps of Engineers, Engineers, and Transfers. – A petition for a
40 certificate (i) to transfer surface water to supplement ground water supplies in the 15 counties
41 designated as the Central Capacity Use Area under 15A NCAC 2E.0501, (ii) to transfer surface
42 water withdrawn from the mainstem of a river to provide service to one of the coastal area
43 counties designated pursuant to G.S. 113A-103, ~~or (iii)-(iii) to transfer surface water among~~
44 subbasins within the same river basin, or (iv) to withdraw or transfer water stored in any
45 multipurpose reservoir constructed by the United States Army Corps of Engineers and partially
46 located in a state adjacent to North Carolina, provided the United States Army Corps of Engineers
47 approved the withdrawal or transfer on or before July 1, 2014, shall be considered and a
48 determination made according to the following procedures:

49 (1) ~~The applicant shall file a notice of intent that includes a nontechnical~~
50 ~~description of the applicant's request and identification of the proposed water~~
51 ~~source.~~

- 1 (2) The applicant shall prepare an environmental document pursuant to subsection
2 (d) of this section, except that an environmental impact statement shall not be
3 required unless it would otherwise be required by Article 1 of Chapter 113A
4 of the General Statutes.
- 5 (3) Upon determining that the documentation submitted by the applicant is
6 adequate to satisfy the requirements of this subsection, the Department shall
7 publish a notice of the petition in the North Carolina Register and shall hold a
8 public hearing at a location convenient to both the source and receiving river
9 basins. The Department shall provide written notice of the petition and the
10 public hearing in the Environmental Bulletin, a newspaper of general
11 circulation in the source river basin, a newspaper of general circulation in the
12 receiving river basin, and as provided in subdivision (3) of subsection ~~(e)~~(c1)
13 of this section. The applicant who petitions the Commission for a certificate
14 under this subdivision shall pay the costs associated with the notice and public
15 hearing.
- 16 (4) The Department shall accept comments on the petition for a minimum of 30
17 days following the public hearing.
- 18 (5) The Commission or the Department may require the applicant to provide any
19 additional information or documentation it deems reasonably necessary in
20 order to make a final determination.
- 21 (6) The Commission shall make a final determination whether to grant the
22 certificate based on the factors set out in subsection (k) of this section,
23 information provided by the applicant, and any other information the
24 Commission deems relevant. The Commission shall state in writing its
25 findings of fact and conclusions of law with regard to each factor.
- 26 (7) The Commission shall grant the certificate if it finds that the applicant has
27 established by a preponderance of the evidence that the petition satisfies the
28 requirements of subsection (m) of this section. The Commission may grant
29 the certificate in whole or in part, or deny the request, and may impose such
30 limitations and conditions on the certificate as it deems necessary and
31 relevant.

32 (x) Subbasin Transfer Reporting. – Any person who increases the amount of an existing
33 transfer of water from one subbasin to another subbasin within the same river basin, such that the
34 total transfer of water from river basin or subbasin to another is more than 5,000,000 gallons of
35 water or more per day, calculated as a daily average of a calendar month or more than 7,500,000
36 gallons per day in any one day, without obtaining a certificate, shall submit an annual subbasin
37 to subbasin impact report to the Department by August 1 in each fiscal year that the amount of
38 subbasin to subbasin transfer has increased."

39 **SECTION 2.(d)** This section is effective when it becomes law and applies to any
40 petition for a certificate for a transfer of surface water from one river basin or subbasin to another
41 river basin or subbasin first made on or after that date.

42 **EFFECTIVE DATE**

43 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
44 law.
45