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SENATE BILL DRS45236-MH-66A

Short Title: IBT Reforms.

(Public)

Sponsors: Senators Daniel, Moffitt, and Hollo (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE LAWS GOVERNING TRANSFERS OF SURFACE WATER
3 BETWEEN RIVER BASINS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** Subdivisions (1a) and (1b) of G.S. 143-215.22G are recodified as
6 subdivisions (1b) and (1c), respectively, of that section.

7 **SECTION 1.(b)** G.S. 143-215.22G, as recodified by subsection (a) of this section,
8 reads as rewritten:

9 **"§ 143-215.22G. Definitions.**

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

12 (1) ~~"Mainstem" means that Mainstem.~~ – That portion of a river having the same
13 name as a river basin defined in subdivision ~~(1b)~~–(1c) of this section.
14 "Mainstem" does not include named or unnamed tributaries.

15 (1a) Major transfer. – A new transfer between river basins greater than 30,000,000
16 gallons per day, or a modification to an existing transfer that would increase
17 the existing transfer more than 30,000,000 gallons per day.

18 (1b) ~~"Public water system" means any Public water system.~~ – Any unit of local
19 government or large community water system subject to the requirements of
20 G.S. 143-355(1).

21 (1c) ~~"River basin" means any River basin.~~ – Any of the following river basins
22 designated on the map entitled "Major River Basins and Sub-basins in North
23 Carolina" and filed in the Office of the Secretary of State on 16 April 1991.
24 The term "river basin" includes any portion of the river basin that extends into
25 another state. Any area outside North Carolina that is not included in one of
26 the river basins listed in this subdivision comprises a separate river basin.

27 ...
28 (2) ~~"Surface water" means any Surface water.~~ – Any of the waters of the State
29 located on the land surface that are not derived by pumping from groundwater.

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

35 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."

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, calculated as a daily average of a calendar month and not to exceed 3,000,000 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.

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

(c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of intent to file a petition that includes a nontechnical description of the applicant's ~~request and request~~, an identification of the proposed water ~~source~~-source, and a preliminary description of alternatives to the transfer considered by the applicant that includes an estimate of the costs of those alternatives.

(c1) Hearing and Public Notice on Notice of Intent and Scope. – Within 90 days after the applicant files a notice of intent to file a petition, the applicant-Commission shall hold at least two public hearings at the applicant's expense at which the applicant shall provide information to interested parties and the public regarding the nature and size of the proposed transfer, and the Commission shall receive public comment on the scope of the environmental documents. The Commission shall also hold at least one public meeting of these public meetings in the source river basin upstream from the proposed point of withdrawal, withdrawal and at least one public meeting in the source river basin downstream from the proposed point of withdrawal, and at least one public meeting in the receiving river basin to provide information to interested parties and the public regarding the nature and extent of the proposed transfer and to receive comment on the scope of the environmental documents. withdrawal. In scheduling the meetings, the Commission shall consult with the board of commissioners of each county in the source river basin to identify a venue of sufficient size to accommodate anticipated attendance. Written notice of the public meetings shall be provided at least 30 days before the public meetings. At the time the applicant-Commission gives notice of the public meetings, the applicant-Commission shall request comment on the alternatives and issues that should be addressed in the environmental documents required by this section. The applicant-Commission shall accept written comment on the scope of the environmental documents for a minimum of 30 days following the last public meeting. The applicant may hold other public meetings in addition to those required by this subsection. Notice of the public meetings and opportunity to comment on the scope of the environmental documents shall be provided as follows:

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

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

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

- 1 b. Each city or county located in a state located in whole or in part of the
2 surface drainage basin area of the source river basin that also falls
3 within, in whole or in part, the area denoted by one of the following
4 eight-digit cataloging units as organized by the United States
5 Geological Survey:
6 03050105 (Broad River: NC and SC);
7 03050106 (Broad River: SC);
8 03050107 (Broad River: SC);
9 03050108 (Broad River: SC);
10 05050001 (New River: NC and VA);
11 05050002 (New River: VA and WV);
12 03050101 (Catawba River: NC and SC);
13 03050103 (Catawba River: NC and SC);
14 03050104 (Catawba River: SC);
15 03010203 (Chowan River: NC and VA);
16 03010204 (Chowan River: NC and VA);
17 06010105 (French Broad River: NC and TN);
18 06010106 (French Broad River: NC and TN);
19 06010107 (French Broad River: TN);
20 06010108 (French Broad River: NC and TN);
21 06020001 (Hiwassee River: AL, GA, TN);
22 06020002 (Hiwassee River: GA, NC, TN);
23 06010201 (Little Tennessee River: TN);
24 06010202 (Little Tennessee River: TN, GA, and NC);
25 06010204 (Little Tennessee River: NC and TN);
26 03060101 (Savannah River: NC and SC);
27 03060102 (Savannah River: GA, NC, and SC);
28 03060103 (Savannah River: GA and SC);
29 03060104 (Savannah River: GA);
30 03060105 (Savannah River: GA);
31 03040203 (Lumber River: NC and SC);
32 03040204 (Lumber River: NC and SC);
33 03040206 (Lumber River: NC and SC);
34 03040207 (Lumber River: NC and SC);
35 03010205 (Albemarle Sound: NC and VA);
36 06020003 (Ocoee River: GA, NC, and TN);
37 03010101 (Roanoke River: VA);
38 03010102 (Roanoke River: NC and VA);
39 03010103 (Roanoke River: NC and VA);
40 03010104 (Roanoke River: NC and VA);
41 03010105 (Roanoke River: VA);
42 03010106 (Roanoke River: NC and VA);
43 06010102 (Watauga River: TN and VA);
44 06010103 (Watauga River: NC and TN);
45 03040101 (Yadkin River: VA and NC);
46 03040104 (Yadkin River: NC and SC);
47 03040105 (Yadkin River: NC and SC);
48 03040201 (Yadkin River: NC and SC);
49 03040202 (Yadkin River: NC and SC).
50 c. Each county in this State located in whole or in part of the
51 source river basin downstream from the proposed point of withdrawal.

- 1 d. Any area in the State in a river basin for which the source river basin
2 has been identified as a future source of water in a local water supply
3 plan prepared pursuant to G.S. 143-355(l).
- 4 e. Each county in the State located in whole or in part of the receiving
5 river basin.
- 6 (3) By giving notice by first-class mail or electronic mail to each of the following:
- 7 a. The board of commissioners of each county in this State or the
8 governing body of any county or city that is politically independent of
9 a county in any state that is located entirely or partially within the
10 source river basin of the proposed transfer and that also falls within, in
11 whole or in part, the area denoted by one of the eight-digit cataloging
12 units listed in sub-subdivision b. of subdivision (2) of this subsection.
- 13 b. The board of commissioners of each county in this State or the
14 governing body of any county or city that is politically independent of
15 a county in any state that is located entirely or partially within the
16 receiving river basin of the proposed transfer and that also falls within,
17 in whole or in part, the area denoted by one of the eight-digit
18 cataloging units listed in sub-subdivision b. of subdivision (2) of this
19 subsection.
- 20 c. The governing body of any public water system that withdraws water
21 upstream or downstream from the withdrawal point of the proposed
22 transfer.
- 23 d. If any portion of the source or receiving river basins is located in
24 another state, all state water management or use agencies,
25 environmental protection agencies, and the office of the governor in
26 that state upstream or downstream from the withdrawal point of the
27 proposed transfer.
- 28 e. All persons who have registered a water withdrawal or transfer from
29 the proposed source river basin under this Part or under similar law in
30 an another state.
- 31 f. All persons who hold a certificate for a transfer of water from the
32 proposed source river basin under this Part or under similar law in an
33 another state.
- 34 g. All persons who hold a National Pollutant Discharge Elimination
35 System (NPDES) wastewater discharge permit for a discharge of
36 100,000 gallons per day or more upstream or downstream from the
37 proposed point of withdrawal.
- 38 h. To any other person who submits to the applicant a written request to
39 receive all notices relating to the petition.
- 40 (d) Environmental Documents. – Except as provided in this subsection, the definitions
41 set out in G.S. 113A-9 apply to this section. Notwithstanding the thresholds for significant
42 expenditure of public monies or use of public land set forth in G.S. 113A-9, the Department shall
43 conduct a study of the environmental impacts of any proposed transfer of water for which a
44 certificate is required under this section. The study shall meet all of the requirements set forth in
45 G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. Notwithstanding G.S. 113A-4(2), the
46 study shall include secondary and cumulative impacts. An environmental assessment shall be
47 prepared for any petition for a certificate under this section. The determination of whether an
48 environmental impact statement shall also be required shall be made in accordance with the
49 provisions of Article 1 of Chapter 113A of the General Statutes; except that an environmental
50 impact statement shall be prepared for every proposed transfer of water from one major river
51 basin to another for which a certificate is required under this section. The applicant who petitions

1 the Commission for a certificate under this section shall pay the cost of special studies necessary
2 to comply with Article 1 of Chapter 113A of the General Statutes. An environmental impact
3 statement prepared pursuant to this subsection shall include all of the following:

- 4 (1) A comprehensive analysis of the impacts that would occur in the source river
5 basin and the receiving river basin if the petition for a certificate is granted.
- 6 (2) An evaluation of alternatives to the proposed interbasin transfer, including
7 water supply sources that do not require an interbasin transfer and use of water
8 conservation measures.
- 9 (3) A description of measures to mitigate any adverse impacts that may arise from
10 the proposed interbasin transfer.
- 11 (4) With respect to petitions for certificates for a major transfer, a demonstration
12 that the petitioner, if the petitioner owns or operates a drinking water system,
13 has a water loss ratio of less than fifteen percent (15%). The Commission shall
14 specify by rule the form and manner for calculating and presenting the water
15 loss ratio.

16 (e) Public Hearing on the Draft Environmental Document. – The Commission shall hold
17 a public hearing on the draft environmental document for a proposed interbasin transfer after
18 giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as
19 provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate
20 where a copy of the environmental document can be reviewed and the procedure to be followed
21 by anyone wishing to submit written comments and questions on the environmental document.
22 The Commission shall prepare a record of all comments and written responses to questions posed
23 in writing. The record shall include complete copies of scientific or technical comments related
24 to the potential impact of the interbasin transfer. The Commission shall accept written comment
25 on the draft environmental document for a minimum of 30 days following the last public hearing.
26 The applicant who petitions the Commission for a certificate under this section shall pay the costs
27 associated with the notice and public hearing on the draft environmental document.

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

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

- 35 (1) A general description of the facilities to be used to transfer the water, including
36 current and projected areas to be served by the transfer, current and projected
37 capacities of intakes, and other relevant facilities.
- 38 (2) A description of all the proposed consumptive and nonconsumptive uses of
39 the water to be transferred.
- 40 (3) A description of the water quality of the source river and receiving river,
41 including information on aquatic habitat for rare, threatened, and endangered
42 species; in-stream flow data for segments of the source and receiving rivers
43 that may be affected by the transfer; and any waters that are impaired pursuant
44 to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).
- 45 (4) A description of the water conservation measures used by the applicant at the
46 time of the petition and any additional water conservation measures that the
47 ~~applicant~~ applicant: (i) could implement to eliminate or reduce the need for
48 the requested transfer and (ii) will implement if the certificate is granted.
- 49 (5) A description of all sources of water within the receiving river basin, including
50 surface water impoundments, groundwater wells, reinjection storage, and
51 purchase of water from another source within the river basin, that is a

1 practicable alternative to the proposed transfer that would meet the applicant's
2 water supply needs. The description of water sources shall include sources
3 available at the time of the petition for a certificate and any planned ~~or~~
4 ~~potential~~ additional water sources. An applicant shall also provide analyses
5 of: (i) water treatment infrastructure that could be constructed or otherwise
6 employed to render sources of water within the receiving river basin at the
7 time of the petition sufficient for the applicant's water supply needs, thereby
8 eliminating or reducing the need for the requested transfer and (ii) potential
9 water sources that could be developed that would eliminate or reduce the need
10 for the requested transfer, including the establishment or expansion of water
11 supply reservoirs or other water supply resources in the receiving river basin.

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

18 (7) A demonstration that the proposed transfer, if added to all other transfers and
19 withdrawals required to be registered under G.S. 143-215.22H or included in
20 any local water supply plan prepared by a public water system with service
21 area located within the source basin pursuant to G.S. 143-355(l) from the
22 source river basin at the time of the petition for a certificate, would not reduce
23 the amount of water available for use in the source river basin to a degree that
24 would impair existing uses, pursuant to the antidegradation policy set out in
25 40 Code of Federal Regulation § 131.12 (Antidegradation Policy) (1 July 2006
26 Edition) and the statewide antidegradation policy adopted pursuant thereto, or
27 existing and planned consumptive and nonconsumptive uses of the water in
28 the source river basin. If the proposed transfer would impact a reservoir within
29 the source river basin, the demonstration must include a finding that the
30 transfer would not result in a water level in the reservoir that is inadequate to
31 support existing uses of the reservoir, including recreational uses.

32 (8) The applicant's future water supply needs and the present and reasonably
33 foreseeable future water supply needs for public water systems with service
34 area located within the source river basin. The analysis of future water supply
35 needs shall include agricultural, recreational, and industrial uses, and electric
36 power generation. Local water supply plans prepared pursuant to
37 G.S. 143-355(l) for water systems with service area located within the source
38 river basin shall be used to evaluate the projected future water needs in the
39 source river basin that will be met by public water systems.

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

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

46 (h) Settlement Discussions. – Upon the request of the applicant, any interested party, or
47 the Department, or upon its own motion, the Commission may appoint a mediation officer. The
48 mediation officer may be a member of the Commission, an employee of the Department, or a
49 neutral third party but shall not be a hearing officer under subsections (e) or (j) of this section.
50 The mediation officer shall make a reasonable effort to initiate settlement discussions between
51 the applicant and all other interested parties. Evidence of statements made and conduct that

1 occurs in a settlement discussion conducted under this subsection, whether attributable to a party,
2 a mediation officer, or other person shall not be subject to discovery and shall be inadmissible in
3 any subsequent proceeding on the petition for a certificate. The Commission may adopt rules to
4 govern the conduct of the mediation process.

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

12 (j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the
13 draft determination as provided in subsection (i) of this section, the Commission shall hold public
14 hearings on the draft determination. At least one hearing shall be held in the affected area of the
15 source river basin, and at least one hearing shall be held in the affected area of the receiving river
16 basin. In determining whether more than one public hearing should be held within either the
17 source or receiving river basins, the Commission shall consider the differing or conflicting
18 interests that may exist within the river basins, including the interests of both upstream and
19 downstream parties potentially affected by the proposed transfer. The public hearings shall be
20 conducted by one or more hearing officers appointed by the Chair of the Commission. The
21 hearing officers may be members of the Commission or employees of the Department. The
22 Commission shall give at least 30 days' written notice of the public hearing as provided in
23 subsection (c) of this section. The Commission shall accept written comment on the draft
24 determination for a minimum of 30 days following the last public hearing. The Commission shall
25 prepare a record of all comments and written responses to questions posed in writing. The record
26 shall include complete copies of scientific or technical comments related to the potential impact
27 of the interbasin transfer. The applicant who petitions the Commission for a certificate under this
28 section shall pay the costs associated with the notice and public hearing on the draft
29 determination.

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

- 33 (1) The necessity and reasonableness of the amount of surface water proposed to
34 be transferred and its proposed uses.
- 35 (2) The present and reasonably foreseeable future detrimental effects on the
36 source river basin, including present and future effects on public, industrial,
37 economic, recreational, and agricultural water supply needs, wastewater
38 assimilation, water quality, fish and wildlife habitat, electric power
39 generation, navigation, and recreation. Local water supply plans for public
40 water systems with service area located within the source river basin prepared
41 pursuant to G.S. 143-355(l) shall be used to evaluate the projected future
42 water needs in the source river basin that will be met by public water systems.
43 Information on projected future water needs for public water systems with
44 service area located within the source river basin that is more recent than the
45 local water supply plans may be used if the Commission finds the information
46 to be reliable. The determination shall include a specific finding as to
47 measures that are necessary or advisable to mitigate or avoid detrimental
48 impacts on the source river basin.
- 49 (3) The cumulative effect on the source major river basin of any water transfer or
50 consumptive water use that, at the time the Commission considers the petition
51 for a certificate is occurring, is authorized under this section, or is projected

1 in any local water supply plan for public water systems with service area
2 located within the source river basin that has been submitted to the
3 Department in accordance with G.S. 143-355(1).

4 (4) The present and reasonably foreseeable future beneficial and detrimental
5 effects on the receiving and source river basin, basins, including present and
6 future effects on public, industrial, economic, recreational, and agricultural
7 water supply needs, wastewater assimilation, water quality, fish and wildlife
8 habitat, electric power generation, navigation, and recreation. Local water
9 supply plans prepared pursuant to G.S. 143-355(1) that affect the receiving
10 river basin shall be used to evaluate the projected future water needs in the
11 receiving river basin that will be met by public water systems. Information on
12 projected future water needs that is more recent than the local water supply
13 plans may be used if the Commission finds the information to be reliable. The
14 determination shall include a specific finding as to measures that are necessary
15 or advisable to mitigate or avoid detrimental impacts on the receiving river
16 basin-basin, and whether drought mitigation and resiliency infrastructure
17 improvements in the source basin are necessary to avoid detrimental impacts
18 to affected communities in the source basin during droughts and other
19 low-flow conditions. If the Commission finds that drought mitigation and
20 resiliency infrastructure improvements are necessary, the Commission is
21 authorized to make the funding of such improvements a condition of the
22 certificate issued under this section.

23 (5) The availability of reasonable alternatives to the proposed transfer, including
24 the potential capacity of alternative sources of water, the potential of each
25 alternative to reduce the amount of or avoid the proposed transfer, probable
26 costs, and environmental impacts. In considering alternatives, the
27 Commission is not limited to consideration of alternatives that have been
28 proposed, studied, or considered by the applicant. The determination shall
29 include ~~a~~ all of the following:

30 a. A specific finding as to why the applicant's need for water cannot be
31 satisfied by alternatives within the receiving basin, including unused
32 capacity under a transfer for which a certificate is in effect or that is
33 otherwise authorized by law at the time the applicant submits the
34 petition. ~~The determination shall consider the~~

35 b. The extent to which access to potential sources of surface water or
36 groundwater within the receiving river basin is no longer available due
37 to depletion, contamination, or the declaration of a capacity use area
38 under Part 2 of Article 21 of Chapter 143 of the General Statutes. ~~The~~
39 ~~determination shall consider the~~

40 c. The feasibility of the applicant's purchase of water from other water
41 suppliers within the receiving basin and of the transfer of water from
42 another sub-basin within the receiving major river basin. Except in
43 circumstances of technical or economic infeasibility or adverse
44 environmental impact, the Commission's determination as to
45 reasonable alternatives shall give preference to alternatives that would
46 involve a transfer from one sub-basin to another within the major
47 receiving river basin over alternatives that would involve a transfer
48 from one major river basin to another major river basin.

49 (5a) With respect to major transfers, the extent to which the applicant has
50 demonstrated the capacity to maintain the water loss ratio in its water system
51 at a level below fifteen percent (15%) for the duration of the certificate. The

1 Commission must also specifically find that the applicant has submitted
2 sufficient evidence that, at the time of the petition, the applicant's water loss
3 ratio, as determined under subdivision (d)(4) of this section, is less than fifteen
4 percent (15%).

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

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

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

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

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

20 (1) The petition.

21 (2) The environmental document prepared pursuant to subsection (d) of this
22 section.

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

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

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

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

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

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

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

46 (3a) Denying the certificate will result in the applicant incurring infrastructure
47 costs that would result in a significant increase in utility rates and cause a
48 financial hardship for the applicant. For purposes of this subdivision, an
49 increase in utility rates is significant if it results in the applicant's utility rates
50 falling within the highest twenty-five percent (25%) among all utilities in the
51 State.

1 (4) There are no reasonable alternatives to the proposed transfer.
2 (n) Final Determination: Certificate Conditions and Limitations. – The Commission may
3 grant the certificate in whole or in part, or deny the certificate. The Commission may impose any
4 conditions or limitations on a certificate that the Commission finds necessary to achieve the
5 purposes of this Part including a limit on the period for which the certificate is valid. The
6 conditions and limitations shall include any mitigation measures proposed by the applicant to
7 minimize any detrimental effects within the source and receiving river basins. In addition, the
8 certificate shall require all of the following conditions and limitations:

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

1 all the terms, conditions, and limitations made applicable to any lead or
2 primary applicant.

3 (8) With respect to a new or modified transfer that is a major transfer, provisions
4 requiring that (i) the term of the certificate is 20 years and may not be renewed
5 or extended and (ii) that the petitioner reserve no less than ten percent (10%)
6 of gross revenues from its water and wastewater operations for the duration of
7 the certificate to a fund that shall be used only for the planning, permitting,
8 and construction of water treatment facilities or other water or wastewater
9 infrastructure in the source basin that will reduce the total transfer below
10 15,000,000 gallons per day.

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

14 ...

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

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

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

38 (u) Repealed by Session Laws 2013-388, s. 2, effective August 23, 2013.

39 (v) Modification of Certificate. – A certificate may be modified as provided in this
40 subsection:

- 41 (1) The Commission or the Department may make any of the following
42 modifications to a certificate after providing electronic notice to persons who
43 have identified themselves in writing as interested parties:
- 44 a. Correction of typographical errors.
 - 45 b. Clarification of existing conditions or language.
 - 46 c. Updates, requested by the certificate holder, to a conservation plan,
47 drought management plan, or compliance and monitoring plan.
 - 48 d. Modifications requested by the certificate holder to reflect altered
49 requirements due to the amendment of this section.

- 1 (2) A person who holds a certificate for an interbasin transfer of water may
2 request that the Commission modify the certificate. The request shall be
3 considered and a determination made according to the following procedures:
- 4 a. The certificate must have been issued pursuant to G.S. 162A-7,
5 143-215.22I, or 143-215.22L and the certificate holder must be in
6 substantial compliance with the certificate.
- 7 b. The certificate holder shall file a notice of intent to file a request for
8 modification that includes a nontechnical description of the certificate
9 holder's request and identification of the proposed water source.
- 10 c. The certificate holder shall prepare an environmental document
11 pursuant to subsection (d) of this section, except that an environmental
12 impact statement shall not be required for the modification of a
13 certificate for a transfer that is not a major transfer unless it would
14 otherwise be required by Article 1 of Chapter 113A of the General
15 Statutes.
- 16 d. Upon determining that the documentation submitted by the certificate
17 holder is adequate to satisfy the requirements of this subsection, the
18 Department shall publish a notice of the request for modification in the
19 North Carolina Register and shall hold a public hearing at a location
20 convenient to both the source and receiving river basins. The
21 Department shall provide written notice of the request for the
22 modification and the public hearing in the Environmental Bulletin, a
23 newspaper of general circulation in the source river basin, a newspaper
24 of general circulation in the receiving river basin, and as provided in
25 subdivision (3) of subsection (c) of this section. The certificate holder
26 who petitions the Commission for a modification under this
27 subdivision shall pay the costs associated with the notice and public
28 hearing.
- 29 e. The Department shall accept comments on the requested modification
30 for a minimum of 30 days following the public hearing.
- 31 f. The Commission or the Department may require the certificate holder
32 to provide any additional information or documentation it deems
33 reasonably necessary in order to make a final determination.
- 34 g. The Commission shall make a final determination whether to grant the
35 requested modification based on the factors set out in subsection (k)
36 of this section, information provided by the certificate holder, and any
37 other information the Commission deems relevant. The Commission
38 shall state in writing its findings of fact and conclusions of law with
39 regard to each factor.
- 40 h. The Commission shall grant the requested modification if it finds that
41 the certificate holder has established by a preponderance of the
42 evidence that the requested modification satisfies the requirements of
43 subsection (m) of this section. The Commission may grant the
44 requested modification in whole or in part, or deny the request, and
45 may impose such limitations and conditions on the modified certificate
46 as it deems necessary and relevant to the modification.
- 47 i. The Commission shall not grant a request for modification if the
48 modification would result in the transfer of water to an additional
49 major river basin.
- 50 j. The Commission shall not grant a request for modification if the
51 modification would be inconsistent with the December 3, 2010

1 Settlement Agreement entered into between the State of North
2 Carolina, the State of South Carolina, Duke Energy Carolinas, and the
3 Catawba River Water Supply Project.

4"

5 **SECTION 3.** This act is effective when it becomes law and applies to any petitions
6 for a certificate to transfer surface water pending on that date or submitted after that date.