

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1360*

Short Title: Amend Interbasin Transfer Law. (Public)

Sponsors: Senators Allran; Blake, Forrester, Goodall, Jacumin, and Shaw.

Referred to: Agriculture/Environment/Natural Resources.

March 26, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW GOVERNING THE REGULATION OF
3 INTERBASIN TRANSFERS AND TO DIRECT THE DEPARTMENT OF
4 JUSTICE AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL
5 RESOURCES TO STUDY WHETHER THERE IS A NEED FOR AN
6 INTERSTATE COMPACT TO MEDIATE ANY FUTURE INTERSTATE
7 WATER SUPPLY ISSUES.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Part 2A of Article 21 of Chapter 143 of the General Statutes is
10 amended by adding a new section to read:

11 "**§ 143-215.22F. Legislative intent.**

12 The General Assembly declares that water resources of the State and common law
13 riparian rights are subject to regulation by the State. The waters of the State are a natural
14 resource owned by the State in trust for the public and subject to the State's sovereign
15 power to plan, regulate, and control the withdrawal and use of these waters, under
16 applicable State law, in order to protect the public health, safety, and welfare. Further,
17 the general welfare and public interest require that water resources of the State be put to
18 reasonable beneficial use to the fullest extent to which they are capable, subject to
19 reasonable regulation, in order to conserve and protect these resources, prevent waste of
20 the resource, provide for protection of the ecosystem, ensure navigability where
21 appropriate, promote sustainable economic development, and to provide and maintain
22 conditions which are conducive to the development and reasonable use of the State's
23 water resources. In order to provide legal security for water rights within the constraints
24 provided in this Part, the Part establishes a certificate program that makes an interbasin
25 transfer a matter of legal record entitled to legal protection.

26 The surface waters of the State require integrated planning and management. North
27 Carolina's rivers and streams flow long distances and support natural aquatic
28 ecosystems, while providing many communities economic, social, and environmental
29 benefits. The State is responsible for maintaining these water resources for the

1 maximum physical and economic benefit of the people while sustaining a safe yield and
 2 a respect for natural systems, including all waters of the State. The State shall preserve
 3 minimum flows and levels in water sources as necessary to protect the designated uses
 4 of those water sources and support aquatic ecosystems by reserving such waters from
 5 allocation."

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

7 **"§ 143-215.22G. Definitions.**

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

10 (1) "Quasi-judicial hearing" means a hearing held in accordance with the
 11 standards and procedures for contested case hearings under Article 3A
 12 of Chapter 150B of the General Statutes.

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

- 20 a. 1-1 Broad River.
- 21 b. 2-1 Haw River.
- 22 c. 2-2 Deep River.
- 23 d. 2-3 Cape Fear River.
- 24 e. 2-4 South River.
- 25 f. 2-5 Northeast Cape Fear River.
- 26 g. 2-6 New River.
- 27 h. 3-1 Catawba River.
- 28 i. 3-2 South Fork Catawba River.
- 29 j. 4-1 Chowan River.
- 30 k. 4-2 Meherrin River.
- 31 l. 5-1 Nolichucky River.
- 32 m. 5-2 French Broad River.
- 33 n. 5-3 Pigeon River.
- 34 o. 6-1 Hiwassee River.
- 35 p. 7-1 Little Tennessee River.
- 36 q. 7-2 Tuskasegee (Tuckasegee) River.
- 37 r. 8-1 Savannah River.
- 38 s. 9-1 Lumber River.
- 39 t. 9-2 Big Shoe Heel Creek.
- 40 u. 9-3 Waccamaw River.
- 41 v. 9-4 Shallotte River.
- 42 w. 10-1 Neuse River.
- 43 x. 10-2 Contentnea Creek.
- 44 y. 10-3 Trent River.

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

14 (1b) "Safe yield" means the amount of water that can be continuously
15 withdrawn from a source water body without adverse effects to water
16 quality and aquatic habitat during 7Q10 conditions, as defined in
17 G.S. 130A-295.01.

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

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

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

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

29 **SECTION 3.** G.S. 143-215.22I reads as rewritten:

30 **"§ 143-215.22I. Regulation of surface water transfers.**

31 (a) Certificate: Required for Interbasin Transfer. – No person, without first
32 securing a certificate from the Commission, may:

33 (1) Initiate a transfer of 2,000,000 gallons of water or more per day from
34 one river basin to another.

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

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

43 (b) Certificate: Exception for Certain Facilities. – Notwithstanding the
44 provisions of subsection (a) of this section, a certificate shall not be required to transfer

1 water from one river basin to another up to the full capacity of a facility to transfer
2 water from one basin to another if the facility was existing or under construction on July
3 1, 1993.

4 (c) Petition. – An applicant for a certificate shall petition the Commission for the
5 certificate. The petition shall be in writing and shall include the following:

6 (1) A description of the facilities to be used to transfer the water, including
7 the location and capacity of water intakes, pumps, pipelines, and other
8 facilities.

9 (2) A description of the proposed uses of the water to be transferred.

10 (3) ~~The~~ An assurance of the efficient use of the water and the avoidance of
11 waste, the water conservation measures to be used by the applicant at
12 the time of application and any additional water conservation measures
13 that will be implemented by the applicant if the certificate is granted.
14 ~~to assure efficient use of the water and avoidance of waste.~~

15 (4) The applicant's water supply plan and 25-year population projections,
16 as appropriate. In calculating the population projections, the
17 Commission shall identify overlaps in the projected population growth
18 of water plans and ensure that the population figures for any
19 overlapping service areas are counted only once.

20 (5) An itemized report detailing the source, volume, and maximum
21 permitted capacity of all existing, permitted, reasonably foreseeable
22 and other proposed water withdrawals and interbasin transfers from the
23 source river basin as well as detailing every existing, planned, and
24 potential source of water within the receiving river basin, including,
25 without limitation, existing and potential new surface water
26 impoundments, groundwater wells, reinjection storage, and potential
27 expansions of any of the foregoing, as well as any other technically
28 feasible technology.

29 (6) A determination of whether the proposed interbasin transfer and
30 existing, permitted, reasonably foreseeable, and other proposed
31 withdrawals are within the safe yield of the source water body.

32 (7) A letter of support from each upstream and downstream public water
33 supplier, including each water supplier in downstream states that make
34 withdrawals from the source water body stating that the proposed
35 interbasin transfer will not negatively affect existing water users and is
36 consistent with local water supply plans.

37 (8) The most recent information available from the Division of Water
38 Quality of the Department concerning the water quality of the source
39 river basin and the receiving river basin including, without limitation,
40 any information on any segments of either basin that are deemed
41 impaired under section 303(d) of the Clean Water Act, that are the
42 subject to a total maximum daily load (TMDL) limitation, or would
43 have their assimilative capacity impaired by the proposed interbasin
44 transfer and other transfers listed in subsection (6) of this section or

1 their ability to support habitat listed in subsection (9) of this section,
2 and also including information from any other federal, state, regional,
3 local, or interstate body having jurisdiction over the water quality of
4 either basin.

5 (9) The most recent information available from the Wildlife Resources
6 Commission concerning aquatic habitat for rare, threatened, and
7 endangered species in the source river basin and the receiving river
8 basin.

9 (4)(10) Any other information deemed necessary by the Commission for
10 review of the proposed water transfer.

11 (c1) Notice of Petition for Certificate. – When the Commission receives notice
12 from a person that the person intends to submit a petition for a water transfer, the
13 Commission shall provide that notice to the parties listed in subsection (d) of this
14 section within 30 days of its receipt by the Commission. The notice shall be forwarded
15 to the parties by the Commission in the same manner as provided by subsection (d) of
16 this section. The purpose of the notice is to inform interested parties at the earliest
17 reasonable time of a potential transfer and to allow for full discussion, and, if necessary,
18 mediation regarding a proposed transfer before significant economic resources have
19 been committed to the proposed transfer.

20 (d) Public Hearing Requirement; Notice. – ~~Upon~~ Except as provided in
21 subsection (e1) of this section, upon receipt of the petition, the Commission shall hold a
22 public hearing on the proposed transfer after giving at least 30 days' written notice of
23 the hearing as follows:

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

25 (2) By publishing notice in a newspaper of general circulation in the ~~area~~
26 ~~of the river basin downstream from the point of withdrawal.~~following
27 areas:

28 a. Areas of the river basin that withdraw water from the source
29 water body both upstream and downstream from the point of
30 withdrawal.

31 b. Areas that are not currently withdrawing water from the source
32 water body but that identify the source water body as a water
33 source for future needs in a local water supply plan submitted to
34 the Department pursuant to G.S. 143-355(l).

35 (3) By giving notice by first-class mail to each of the following:

36 a. A person who has registered under this Part a water withdrawal
37 or transfer from the same river basin where the water for the
38 proposed transfer would be withdrawn.

39 b. A person who secured a certificate under this Part for a water
40 transfer from the same river basin where the water for the
41 proposed transfer would be withdrawn.

42 c. A person holding a National Pollutant Discharge Elimination
43 System (NPDES) wastewater discharge permit exceeding
44 100,000 gallons per day for a discharge located upstream and

1 downstream from the proposed withdrawal point of the
2 proposed transfer.

3 d. The board of county commissioners of each county that is
4 located entirely or partially within the river basin that is the
5 source of the proposed transfer.

6 e. The governing body of any public water supply system that
7 withdraws water upstream and downstream from the
8 withdrawal point of the proposed transfer.

9 (4) By providing notice to persons and state agencies in adjacent states
10 that withdraw water upstream and downstream from the withdrawal
11 point of the proposed transfer to the same extent and in the same
12 manner that the adjacent state provides notice to North Carolina
13 citizens and State agencies with regard to a proposed water transfer in
14 the adjacent state.

15 (e) Content of Notice. – The notice of the public hearing shall include a
16 nontechnical description of the applicant's request and a conspicuous statement in bold
17 type as to the effects of the water transfer on the source and receiving river basins. The
18 notice shall further indicate the procedure to be followed by anyone wishing to submit
19 comments on the proposed water transfer.

20 (e1) Quasi-Judicial Hearing. – An applicant or any person or entity described in
21 subdivision (d)(3) of this section may request that a quasi-judicial hearing be held
22 regarding the petition in lieu of the public hearing. The request for the quasi-judicial
23 hearing shall be submitted to the Commission no later than 20 days before the date the
24 public hearing is scheduled.

25 (e2) Petition: No Consideration if Exceeds Safe Yields. – The Commission shall
26 not consider a petition for a transfer from a river basin if the sum of the authorized
27 withdrawals and transfers from the source river basin exceeds the combined safe yields
28 of the source water bodies in the source river basin.

29 (f) Certificate: Criteria. – In determining whether a certificate may be issued for
30 the transfer, the Commission shall specifically consider each of the following items and
31 state in writing its findings of fact with regard to each item:

32 (1) The necessity, reasonableness, and beneficial effects of the amount of
33 surface water proposed to be transferred and its proposed uses.

34 (2) The present and reasonably foreseeable future detrimental effects on
35 the source river basin, including present and future effects on public,
36 industrial, and agricultural water supply needs, wastewater
37 assimilation, water quality, fish and wildlife habitat, hydroelectric
38 power generation, navigation, and recreation. Local water supply plans
39 that affect the source major river basin shall be used to evaluate the
40 projected future municipal water needs in the source major river
41 ~~basin~~ basin and to determine whether the proposed interbasin transfer
42 will have a detrimental impact on the future water supplies of local
43 governments that make withdrawals from the source water body.

- 1 (2a) The cumulative effect on the source major river basin of any water
2 transfer or consumptive water use that, at the time the Commission
3 considers the application for a certificate is occurring, is authorized
4 under this section, or is projected in any local water supply plan that
5 has been submitted to the Department in accordance with
6 G.S. 143-355(1).
- 7 (3) The detrimental effects on the receiving river basin, including effects
8 on water quality, wastewater assimilation, fish and wildlife habitat,
9 including wetlands, navigation, recreation, and flooding.
- 10 (4) Reasonable alternatives to the proposed transfer, including their
11 probable costs, and environmental impacts.
- 12 (4a) Mitigation measures are examined and committed to be implemented
13 in the certificate to ensure that the detrimental effects to the source
14 river basin under subsection (2) and to the receiving river basin under
15 (3) are avoided to the maximum extent feasible.
- 16 (5) If applicable to the proposed project, the applicant's present and
17 proposed use of impoundment storage capacity to store water during
18 high-flow periods for use during low-flow periods and the applicant's
19 right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.
- 20 (6) If the water to be withdrawn or transferred is stored in a multipurpose
21 reservoir constructed by the United States Army Corps of Engineers,
22 the purposes and water storage allocations established for the reservoir
23 at the time the reservoir was authorized by the Congress of the United
24 States.
- 25 (7) Any other facts and circumstances that are reasonably necessary to
26 carry out the purposes of this Part.
- 27 (f1) Certificate: Required Assessments. – The following assessments shall be
28 prepared as required by this subsection for any petition for a certificate under this
29 section:
- 30 (1) An environmental assessment as defined by G.S. 113A-9(1) shall be
31 prepared for any petition for a certificate under this section. The
32 determination of whether an environmental impact statement shall also
33 be required shall be made in accordance with the provisions of Article
34 1 of Chapter 113A of the General Statutes. The applicant who petitions
35 the Commission for a certificate under this section shall pay the cost of
36 special studies necessary to comply with Article 1 of Chapter 113A of
37 the General Statutes. The environmental assessment or environmental
38 impact statement shall include an evaluation of the applicant's ability
39 to meet the applicant's water supply needs from sources that do not
40 require an interbasin transfer and through the use of water
41 conservation measures. The environmental assessment or
42 environmental impact statement shall include an evaluation of
43 measures to mitigate any damage that may arise from the proposed
44 interbasin transfer. The environmental assessment or environmental

1 impact statement shall be completed and made available to the public
2 at least 30 days before the public hearing required by subsection (d) of
3 this section.

4 (2) An economic impact assessment shall be prepared for any petition for
5 a certificate under this section. The economic impact assessment shall
6 include a review of the benefits and negative impacts on the local and
7 regional economy of both the source river basin and the receiving river
8 basin.

9 (3) A social impact assessment shall be prepared for any petition for a
10 certificate under this section. The social impact assessment shall
11 include a review of the recreational and agricultural uses of both the
12 source river basin and the receiving river basin.

13 (4) A groundwater aquifer assessment shall be prepared for any petition
14 for a certificate under this section. The assessment shall determine
15 what impact that the transfer may have on groundwater resources and
16 how the transfer may modify the timing and rate of aquifer recharge in
17 the river basin.

18 (5) An impoundment assessment shall be prepared for any petition for a
19 certificate under this section. The assessment shall include an
20 evaluation of the impact the transfer may have on water supplies
21 provided by surface water resources that are collected or held in
22 reservoirs or other impoundments, whether the transfer may modify
23 the water table of those impoundments, and if so, the timing and rate
24 required to replenish the water supply in the impoundments and return
25 them to a safe water table level.

26 (g) Certificate: Weight of Evidence; Burden of Proof; Expiration. – The
27 applicant has the burden of proof to rebut the presumption in subsection (m) of this
28 section and to satisfy the provisions of this subsection. A certificate shall be granted for
29 a water transfer if the applicant establishes and the Commission concludes by a
30 preponderance of the evidence based upon the findings of fact made under subsection
31 (f) of this section that: (i) the benefits of the proposed transfer outweigh the detriments
32 of the proposed transfer, and (ii) the detriments have been or will be mitigated to a
33 reasonable degree. The conditions necessary to ensure that the detriments are and
34 continue to be mitigated to a reasonable degree shall be attached to the certificate in
35 accordance with ~~subsection (h)~~ subsections (h) and (h1) of this section.

36 A certificate granted under this section shall expire 10 years from the date of its
37 issuance and may be modified during that time as provided by this section. A certificate
38 may be renewed under this section, but the sum of the period of time for which the
39 original certificate was issued and the period of time for each renewal of the certificate
40 shall not exceed 40 years. The procedure for renewal shall be the same as for the
41 petition for the original certificate.

42 A certificate issued under this section is valid only for the applicant to whom the
43 certificate was granted and is not transferable.

1 (g1) Certificate: Mandatory Grounds for Denial. – Notwithstanding subsection (g)
2 of this section, the Commission shall not grant a certificate of transfer if:

- 3 (1) The proposed interbasin transfer will supply more than five percent
4 (5%) of the water used by the applicant;
5 (2) The sum of the proposed transfer and the authorized withdrawals and
6 transfers from the source river basin exceeds the combined safe yields
7 of the source water bodies in the source river basin;
8 (3) The sum of the proposed transfer and the authorized withdrawals and
9 transfers of the petitioner exceeds the projected water use included in
10 the petitioner's most recent water supply plan submitted to the
11 Department pursuant to G.S. 143-355(1); or
12 (4) The Commission determines that a better option is available for
13 addressing the water supply needs than the proposed water transfer or
14 that there are additional mitigation measures that could be undertaken
15 to ensure that the detrimental effects to the source river basin or the
16 receiving river basin are minimized.

17 (h) Certificate: Authority to Grant, Revise, Deny. – The Commission may
18 respond to a petition under this section with any of the options outlined by this section,
19 provided that any option adopted by the Commission protects the source river basin.
20 The Commission may grant the certificate in whole or in part, revise the certificate as
21 provided by this section and grant the revised version of the certificate, or deny the
22 certificate. The Commission, on its own motion or at the request of another party who
23 shall be affected by the transfer, may consider options not included in the petition and
24 accompanying documentation for the certificate and in lieu of the certificate as
25 originally proposed in the petition, may grant a revised version of the certificate that
26 incorporates any of those options. The Commission may also grant a certificate with any
27 conditions attached that the Commission believes are necessary to achieve the purposes
28 of this Part. The conditions may include mitigation measures proposed to minimize any
29 detrimental effects of the proposed transfer and measures to protect the availability of
30 water in the source river basin during a drought or other emergency. ~~The certificate~~
31 ~~shall include a drought management plan that specifies how the transfer shall be~~
32 ~~managed to protect the source river basin during drought conditions. The certificate~~
33 ~~shall indicate the maximum amount of water that may be transferred. No person shall~~
34 ~~transfer an amount of water that exceeds the amount in the certificate.~~

35 (h1) Certificate: Mandatory Conditions. – Any certificate issued under this
36 section shall include all of the following conditions and provisions:

- 37 (1) The certificate shall indicate the maximum amount of water that may
38 be transferred. The certificate shall also indicate the daily maximum
39 amount that may be transferred. No person shall transfer an amount of
40 water that exceeds either of those amounts in the certificate.
41 (2) While the certificate shall indicate the maximum transfer amounts as
42 provided by subdivision (1) of this subsection, the certificate shall be
43 issued to provide the amount of water anticipated to be needed for the
44 next two years and shall include a sliding scale that sets out the

1 increments that the water transfer may be increased, and further
2 provide that the increase shall be allowed only as needed.

3 (3) The certificate shall include a condition that the amount of an
4 interbasin transfer is subject to reduction during periods of drought and
5 that the time frame for implementing the reduction shall occur before
6 citizens along the basin are required to adopt mandatory conservation
7 restrictions. The certificate shall also include a drought management
8 plan for both the source river basin and the receiving river basin that
9 specifies how the transfer shall be managed to protect the source river
10 basin during drought conditions.

11 (4) If the withdrawal point for a water transfer is located on an
12 impoundment, the certificate shall not authorize a transfer of water that
13 would cause:

14 a. A reservoir level to drop below minimum water level; or

15 b. A reservoir to be unable to release the minimum in stream flow
16 required by the Federal Energy Regulatory Commission or
17 another agency's applicable jurisdictional requirements. The
18 Commission may consider relevant modeling data or other
19 applicable data from a reservoir owner in analyzing the
20 prohibitions set out in this subdivision.

21 (5) The granting of a certificate does not convey a property right to a
22 permittee regarding a water transfer amount. The Commission shall
23 expressly reserve the right to decrease a transfer amount based upon
24 prevailing conditions. Further, any right to a water transfer allowed by
25 a certificate granted under this section is subordinate to the water
26 supply needs of the communities in the source river basin.

27 (i) Increase in Interbasin Transfer Existing on July 1, 1993. – In cases where an
28 applicant requests approval to increase a transfer that existed on July 1, 1993, the
29 Commission shall have authority to approve or disapprove only the amount of the
30 increase. If the Commission approves the increase, however, the certificate shall be
31 issued for the amount of the existing transfer plus the requested increase. Certificates for
32 transfers approved by the Commission under G.S. 162A-7 shall remain in effect as
33 approved by the Commission and shall have the same effect as a certificate issued under
34 this Part.

35 (j) Temporary Transfer. – In the case of water supply problems caused by
36 drought, a pollution incident, temporary failure of a water plant, or any other temporary
37 condition in which the public health requires a transfer of water, the Secretary of
38 Environment and Natural Resources may grant approval for a temporary transfer. Prior
39 to approving a temporary transfer, the Secretary shall consult with those parties listed in
40 G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However,
41 the Secretary shall not be required to satisfy the public notice requirements of this
42 section or make written findings of fact and conclusions in approving a temporary
43 transfer under this subsection. In considering whether to approve a temporary transfer,
44 the Secretary shall consider only the actual need for water and shall not consider water

1 uses resulting from water sales entered into as a profitable enterprise by an entity. If the
2 Secretary approves a temporary transfer under this subsection, the Secretary shall
3 specify binding conditions to protect other water users. A temporary transfer shall not
4 exceed six months in duration, but the approval may be renewed for a period of six
5 months by the Secretary based on demonstrated need as set forth in this subsection. A
6 temporary transfer may be renewed no more than two times after the initial approval.

7 (k) Compliance With Federal Law. – The substantive restrictions and conditions
8 upon surface water transfers authorized in this section may be imposed pursuant to any
9 federal law that permits the State to certify, restrict, or condition any new or continuing
10 transfers or related activities licensed, relicensed, or otherwise authorized by the federal
11 government.

12 (k1) Monitor Quantity of Water Withdrawals. – Any person who receives a
13 certificate under this section shall file with the Commission on the first of each month, a
14 report stating the quantity and use of the water withdrawn and transferred during the
15 previous month. The report shall be made on a form approved by the Commission. The
16 quantity of water that is withdrawn and transferred may be determined in any of the
17 following manners:

- 18 (1) Flow meters accurate to within ten percent (10%) of calibration.
- 19 (2) The rated capacity of the pump in conjunction with the use of an hour
20 meter, electric meter, or log.
- 21 (3) The rated capacity of the cooling systems.
- 22 (4) A standard or method employed by the United States Geological
23 Survey in determining a quantity of surface water withdrawn; or
- 24 (5) Another method found to provide reliable water withdrawal data
25 approved by the Commission.

26 (l) Future Water Needs Plan: Requirement and Implementation. – When any
27 transfer for which a certificate was issued under this section equals eighty percent
28 (80%) of the maximum amount authorized in the certificate, the applicant shall submit
29 to the Department a detailed plan that specifies how the applicant intends to address
30 future foreseeable water needs. If the applicant is required to have a local water supply
31 plan, then this plan shall be an amendment to the local water supply plan required by
32 G.S.143-355(l). When the transfer equals ninety percent (90%) of the maximum amount
33 authorized in the certificate, the applicant shall begin implementation of the plan
34 submitted to the Department.

35 (m) Public Policy Statement. – It is the public policy of the State to maintain,
36 protect, and enhance water quality within North Carolina. To that end, there is a
37 presumption that a certificate for an interbasin transfer shall not be granted unless the
38 applicant can show that there are no water sources available within the applicant's
39 watershed, that the interbasin transfer is necessary to protect and promote public health,
40 and that there is no other reasonable alternative to the requested transfer. Further, it is
41 the public policy of the State that the cumulative impact of transfers from a source river
42 basin shall not result in a violation of the antidegradation policy set out in 40 Code of
43 Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation
44 policy adopted pursuant thereto. It is also the public policy of this State that any

1 interbasin transfer granted under this section shall be based on the actual use and water
2 supply need of an area and shall not include consideration of water sales that are used to
3 generate revenue.

4 (n) Certificate: Authority to Modify After Granted. – The Commission may
5 modify any certificate granted for an interbasin transfer if the Commission determines
6 that:

7 (1) The cumulative impact of existing, permitted, and proposed
8 withdrawals has exceeded or will exceed the safe yield of the source
9 water body;

10 (2) The cumulative impact of existing, permitted, and proposed
11 withdrawals has caused or contributed to or will cause or contribute to
12 the deterioration of water quality in either the source river basin or the
13 receiving river basin; or

14 (3) The projections of population growth, water supply, or water demand
15 upon which the certificate for the interbasin transfer was granted were
16 inaccurate."

17 **SECTION 4.** The Department of Justice and the Department of Environment
18 and Natural Resources shall jointly study the need to negotiate an interstate compact
19 with adjoining states that have a river basin that drains into or from North Carolina to
20 mediate and cooperatively resolve water supply disputes that may arise from interbasin
21 transfers and consumptive water uses in river basins that are shared by North Carolina
22 and those states. The Attorney General and the Secretary of Environment and Natural
23 Resources shall report the findings and recommendations of the study and any proposed
24 legislation required to implement the recommendations to the 2007 General Assembly,
25 2008 Regular Session.

26 **SECTION 5.** This act is effective when it becomes law and applies to any
27 petition for a certificate or for the modification of a certificate for an interbasin transfer
28 that is acted on by the Environmental Management Commission on or after that date,
29 provided that the procedural requirements contained in G.S. 143-215.22I(c), (d), (e),
30 and (e1), as enacted or modified in this act, apply to any petition for a certificate or for
31 the modification of a certificate for an interbasin transfer (including one that must be
32 resubmitted on remand after hearing) that is submitted to the Environmental
33 Management Commission on or after that date.