

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2008-186
HOUSE BILL 2785**

**AN ACT TO ALLOW THE STATE TO ACQUIRE LOCKS AND DAMS ONE, TWO,
AND THREE ON THE CAPE FEAR RIVER FROM THE UNITED STATES.**

Whereas, locks and dams #1, #2, and #3 on the Cape Fear River were constructed by the United States in the period from 1915 to 1935; and

Whereas, it is understood that the Congress some time ago authorized a mission for the Army Corps of Engineers related to the locks and dams in Bladen County that hinged on maintaining commerce through the locks on the Cape Fear River; and there has been no commercial traffic on the Cape Fear River in about twelve years, and there may be no federal role in the maintenance of the locks and dams #2 and #3; and

Whereas, the Army Corps of Engineers is engaged in planning and implementing extensive work in the Wilmington Harbor area. The work has and will involve dredging, blasting, facility relocation, and related activities. In order to be allowed to do the work, the Army Corps of Engineers is working through a commitment to the U.S. Fish and Wildlife Service that involves mitigation activities to compensate for the projected negative environmental impacts on wildlife habitat and other environmental features in the harbor area as a result of the Corps' work to improve the harbor for commerce; and

Whereas, as part of the mitigation negotiated, the U.S. Army Corps of Engineers has committed to construction of a fish passage option (not yet completely defined) for Lock and Dam #1 (just upriver from the Wilmington Harbor area in Bladen County) and the "study" of fish passage options and other issues related to Lock and Dam #2 and the Huske Lock and Dam #3 (both also in Bladen County); and

Whereas, leaving Lock and Dam #1 in place with a rock arch rapids structure would also protect the water supply intakes for the City of Wilmington and the Lower Cape Fear Water and Sewer Authority; and

Whereas, there is concern upriver in Bladen, Cumberland, and Harnett Counties (and to a lesser degree, Sampson, Lee, Chatham, and Moore Counties) that the Army Corps of Engineers is only committed to "study" the second and the third lock and dam complexes. An implication of the Army Corps of Engineers' "study" commitment is that there is currently no funding for any specific recommended activity for locks and dams #2 and #3 that might become identified by the negotiated study. A more basic concern is that there could possibly be no definitive plan or action recommended to leave the locks and dams #2 and #3 in place in the mentioned study; and

Whereas, the nature of the concerns in Bladen, Cumberland, Harnett, and other counties touches on at least three points: (i) a rock arch rapids "fish ladder" on only Lock and Dam #1 does not allow migrating fish to get past locks and dams #2 and #3; (ii) absence of locks and dams #2 and #3 jeopardizes existing and/or potential water supply intakes above those two locks and dams; and (iii) absence of locks and dams #2 and #3 would lower the river surface by upwards of 20 feet and potentially compromise water quality in the middle and lower subbasins of the Cape Fear River; and

Whereas, preliminary legislative steps are being initiated to create an opportunity for a smooth transition of ownership of the locks, dams, and adjoining property from the Army Corps of Engineers to the State of North Carolina, subject to

the resolution of these and some other questions regarding the condition of the lock and dam complexes. Such a step would allow for the maximum utilization of the transportation benefit represented by the locks and the recreational benefit created by a river managed by the dams; and

Whereas, there is a proposed water supply intake behind Lock and Dam #2 that would serve Smithfield Packing. There are existing water supply intakes behind Lock and Dam #3 serving DuPont Works and the City of Fayetteville, and it is critical that these and other future water supply intakes be protected for the significant human populations in the region; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The State of North Carolina may accept from the United States locks and dams #1, #2, and #3 on the Cape Fear River, along with all adjacent lands currently owned by the United States, after the three locks and dams have been properly refurbished and the rock arch rapids fish ladders have been successfully constructed.

SECTION 2. The Secretary of Transportation, in consultation with the Board of Commissioners of Bladen County, shall negotiate the transfer from the United States. When the Secretary of Transportation reaches an acceptable agreement with the United States, he shall recommend its approval to the Council of State. The agreement is then subject to approval by the Council of State. Upon approval, as part of a successful transfer arrangement with the United States, the Council of State shall allocate the property to the Department of Transportation, the Department of Environment and Natural Resources, or such other State department as it deems appropriate.

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

In the General Assembly read three times and ratified this the 16th day of July, 2008.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 5:07 p.m. this 7th day of August, 2008