

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2011-374
HOUSE BILL 609**

AN ACT TO PROMOTE THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS AND OTHER WATER SUPPLY RESOURCES, TO PROVIDE THAT FUNDS FROM THE CLEAN WATER MANAGEMENT TRUST FUND MAY BE USED TO PRESERVE LANDS FOR THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS, AND TO IMPROVE THE EFFICIENCY OF USE OF NORTH CAROLINA'S WATER RESOURCES.

Whereas, S.L. 2007-518 directed the Environmental Review Commission to study the allocation of surface water resources and their availability and maintenance in the State; and

Whereas, pursuant to this directive, the Environmental Review Commission commissioned a study and report on water allocation issues and policy options; and

Whereas, the resulting water allocation report included a recommendation that the State create an expedited regulatory process for the construction of new water supply reservoirs; and

Whereas, the resulting water allocation report found that certain areas of the State, including the Piedmont, are expected to experience significant population growth over the next 30 years and do not have adequate water supplies to support the expected growth; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. PROMOTE THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS AND OTHER WATER SUPPLY RESOURCES

SECTION 1.1. G.S. 143-355(b) is amended by adding two new subdivisions to read:

"(b) Functions to Be Performed. – The Department shall:

- ...
- (16) Cooperate with units of local government in the identification of water supply needs and appropriate water supply sources and water storage projects to meet those needs. By agreement with a unit of local government, the Department may do any of the following:
 - a. Assist in the assessment of alternatives for meeting water supply needs; the conduct of engineering studies, hydraulic computations, and hydrographic surveys; and the development of a plan of study for purposes of obtaining necessary permits.
 - b. For budget and planning purposes, develop estimates of the costs of the proposed new water supply project.
 - c. Apply for State and federal permits for the development of regional water supplies.
 - (17) Be the principal State agency to cooperate with other State agencies, the United States Army Corps of Engineers, and all other federal agencies or instrumentalities in the planning and development of water supply sources and water storage projects for the State."

SECTION 1.2. Article 38 of Chapter 143 of the General Statutes is amended by adding two new sections to read:

§ 143-355.7. Water supply development; State-local cooperation.

(a) At the request of one or more units of local government, the Department may assist the local government in identifying the preferred water supply alternative that alone or in



combination with other water sources will provide for the long-term water supply needs documented in the local water supply plan and meet all of the following criteria:

- (1) Are economically and practically feasible.
- (2) Make maximum, practical beneficial use of reclaimed wastewater and stormwater.
- (3) Comply with water quality classifications and standards.
- (4) Avoid or mitigate impacts to threatened or endangered species to the extent such species are protected by State or federal law.
- (5) Maintain downstream flows necessary to protect downstream users.
- (6) Do not have significant adverse impacts on other water withdrawals or wastewater discharges.
- (7) Avoid or mitigate water quality impacts consistent with the requirements of rules adopted by the Environmental Management Commission to implement 33 U.S.C. § 1341.

(b) During the alternatives analysis, the Department shall request relevant information regarding the potential alternatives, including the establishment or expansion of the water supply reservoir or other water supply resources, from other State agencies with jurisdiction over any natural resources that will be impacted under the alternatives identified by the Department. Unless the local government agrees to an extension of time, the Department shall determine the preferred alternative within two years of the execution of a contract with the requesting local government for the costs of the analysis. The determination of the preferred alternative shall be binding on all State agencies unless the Department determines from its further evaluation during its review of any State or federal permit applications for the project that another preferred alternative should be selected in light of additional information brought forward during the permit reviews.

(c) If the Department provides an analysis of practicable alternatives for meeting a water supply need under this section, the analysis shall be accepted by the Department and the Department of Administration for purposes of satisfying the requirements of the North Carolina Environmental Policy Act and any State permit or authorization that requires identification and assessment of alternatives, including, but not limited to, a request for an interbasin transfer pursuant to G.S. 143-215.22L.

(d) The Department may provide technical assistance to a unit of local government in obtaining federal permits for the preferred water supply alternative identified pursuant to subsection (a) of this section. For purposes of providing technical assistance and conducting studies in support of a proposed water supply project under this section, the Department may enter into an agreement with one or more units of local government to conduct studies or modeling. The agreement shall specify the allocation of costs for any studies or modeling prepared by the Department in support of the project.

(e) When the Department has identified the most practicable alternative, a regional water supply system may request that the Department become a co-applicant for all required federal approvals for the alternative identified by the Department. The Department may become a co-applicant when all of the following conditions are met:

- (1) The regional water supply system has acquired or will acquire the property necessary for construction of the water supply reservoir or other water supply resource.
- (2) The local water supply plan shows that the regional water supply system has implemented appropriate conservation measures similar in effect to the measures in comparably sized North Carolina regional water supply systems.
- (3) The regional water supply system has developed and is implementing measures to replace existing leaking infrastructure that is similar in effect to the measures being implemented by comparably sized North Carolina regional water systems.
- (4) The regional water supply system has entered into a contractual agreement to pay the expenses incurred by the Department as a co-applicant for the project approval.

(f) Nothing in this section shall be construed to limit the authority of the Department to require environmental permits or to apply and enforce environmental standards pursuant to State law.

"§ 143-355.8. Regional water supply planning organizations.

(a) One or more water systems may establish a water supply planning organization to plan for and coordinate water resource supply and demand on a regional basis. A water supply planning organization may include representatives of local government water systems, water authorities, nongovernmental water systems, and registered water withdrawers.

(b) A regional water supply planning organization may do any of the following:

- (1) Identify sources of raw water supply for regional systems.
- (2) Identify areas suitable for the development of new regional water sources.
- (3) Identify opportunities for purchase and sale of water between water systems to meet regional water supply needs.
- (4) Prepare joint water supply plans.
- (5) Enter into agreements with the Department for technical assistance in identifying practical alternatives to meet regional water supply needs pursuant to G.S. 143-355.7 or to provide studies in support of a proposed regional water supply project.
- (6) Support cooperative arrangements between water systems for purchase and sale of water by providing technical assistance and voluntary mediation of disputes concerning water supply.

(c) Nothing in this section shall be construed to alter the requirements for obtaining a certificate for an interbasin transfer."

PART II. PROVIDE THAT FUNDS FROM THE CLEAN WATER MANAGEMENT TRUST FUND MAY BE USED TO PRESERVE LANDS FOR THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS

SECTION 2.1. G.S. 113A-251 reads as rewritten:

"§ 113A-251. Purpose.

The General Assembly recognizes that a critical need exists in this State to clean up pollution in the State's surface waters and to ~~protect~~protect, preserve, and conserve those waters that are not yet polluted. The task of cleaning up polluted waters and protecting and enhancing the State's water resources is multifaceted and requires different approaches, including innovative pilot projects, that take into account the problems, the type of pollution, the geographical area, and the recognition that the hydrological and ecological values of each resource sought to be upgraded, conserved, and protected are unique.

It is the intent of the General Assembly that moneys from the Fund created under this Article shall be used to help finance projects that specifically address water pollution problems and focus on upgrading surface waters, eliminating pollution, and ~~protecting~~protecting, preserving, and conserving unpolluted surface waters, including enhancement or development of urban drinking water supplies. It is the further intent of the General Assembly that moneys from the Fund also be used to build a network of riparian buffers and greenways for environmental, educational, and recreational benefits. It is lastly the intent of the General Assembly that moneys from the Fund also be used to preserve lands that could be used for water supply reservoirs. While the purpose of this Article is to focus on the cleanup and prevention of pollution of the State's surface ~~waters~~waters, and the establishment of a network of riparian buffers and greenways, and the preservation of property for establishing clean water supplies, the General Assembly believes that the results of these efforts will also be beneficial to wildlife and marine fisheries habitats."

SECTION 2.2. G.S. 113A-253 reads as rewritten:

"§ 113A-253. Clean Water Management Trust Fund.

(a) **Fund Established.** – The Clean Water Management Trust Fund is established as a special revenue fund. The Fund receives revenue from the following sources and may receive revenue from other sources:

- (1) Annual appropriations under G.S. 143-15.3B.
- (2) Scenic River special registration plates under G.S. 20-81.12.

(b) **Fund Earnings, Assets, and Balances.** – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chair of the Board of Trustees.

(c) **Fund Purposes.** – Moneys from the Fund are appropriated annually to finance projects to clean up or prevent surface water pollution and for land preservation in accordance with this Article. Revenue in the Fund may be used for any of the following purposes:

- (1) To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.
- (2) To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and enhancing urban drinking water supplies, including the development of water supply reservoirs, and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.
- (3) To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.
- (4) To restore previously degraded lands to reestablish their ability to protect water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.
- (5) To repair failing wastewater collection systems and wastewater treatment works if the repair is a reasonable remedy for resolving an existing waste treatment problem and the repair is not for the purpose of expanding the system to accommodate future anticipated growth of a community.
- (6) To repair and eliminate failing septic tank systems, to eliminate illegal drainage connections, and to expand a wastewater collection system or wastewater treatment works if the expansion eliminates failing septic tank systems or illegal drainage connections.
- (7) To finance stormwater quality projects.
- (8) To facilitate planning that targets reductions in surface water pollution.
- (8a) To finance innovative efforts, including pilot projects, to improve stormwater management, to reduce pollutants entering the State's waterways, to improve water quality, and to research alternative solutions to the State's water quality problems.
- (9) To fund operating expenses of the Board of Trustees and its staff.

(d) Limit on Operating and Administrative Expenses. – No more than two percent (2%) of the annual balance of the Fund on 1 July or a total sum of one million two hundred fifty thousand dollars (\$1,250,000), whichever is greater, may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff."

SECTION 2.3. G.S. 113A-253.1 reads as rewritten:

"§ 113A-253.1. The Clean Water Management Trust Fund; appropriation.

(a) The General Assembly finds that, due to the critical need in this State to clean up pollution in the State's surface ~~waters and waters~~, to protect and conserve those waters that are not yet polluted, and to preserve lands that may be used for water supply reservoirs, it is imperative that the State provide a minimum of one hundred million dollars (\$100,000,000) each calendar year to the Clean Water Management Trust Fund; therefore, there is annually appropriated from the General Fund to the Clean Water Management Trust Fund the sum of one hundred million dollars (\$100,000,000).

(b) The funds in the Clean Water Management Trust Fund shall be used only in accordance with this Article."

SECTION 2.4. G.S. 113A-256 reads as rewritten:

"§ 113A-256. Clean Water Management Trust Fund Board of Trustees: powers and duties.

(a) Allocate Grant Funds. – The Trustees shall allocate moneys from the Fund as grants. A grant may be awarded only for a project or activity that satisfies the criteria and furthers the purposes of this Article.

(b) Develop Grant Criteria. – The Trustees shall develop criteria for awarding grants under this Article. The criteria developed shall include consideration of the following:

- (1) The significant enhancement and conservation of water quality in the State.
- (2) The objectives of the basinwide management plans for the State's river basins and watersheds.

- (3) The promotion of regional integrated ecological networks insofar as they affect water quality.
- (4) The specific areas targeted as being environmentally sensitive.
- (5) The geographic distribution of funds as appropriate.
- (6) The preservation of water resources with significant recreational or economic value and uses.
- (7) The development of a network of riparian buffer-greenways bordering and connecting the State's waterways that will serve environmental, educational, and recreational uses.
- (8) Water supply availability and the public's need for resources adequate to meet demand for essential water uses. Criteria developed pursuant to this subdivision may include consideration of the likelihood of a proposed water supply project ultimately being permitted and built.

(c) Develop Additional Guidelines. – The Trustees may develop guidelines in addition to the grant criteria consistent with and as necessary to implement this Article.

(d) Acquisition of Land. – The Trustees may acquire land by purchase, negotiation, gift, or devise. Any acquisition of land by the Trustees must be reviewed and approved by the Council of State and the deed for the land subject to approval of the Attorney General before the acquisition can become effective. In determining whether to acquire land as permitted by this Article, the Trustees shall consider whether the acquisition furthers the purposes of this Article and may also consider recommendations from the Council. Nothing in this section shall allow the Trustees to acquire land under the right of eminent domain.

(e) Exchange of Land. – The Trustees may exchange any land they acquire in carrying out the powers conferred on the Trustees by this Article.

(f) Land Management. – The Trustees may designate managers or managing agencies of the lands acquired under this Article.

(g) Tax Credit Certification. – The Trustees shall develop guidelines to determine whether land donated for a tax credit under G.S. 105-130.34 or G.S. 105-151.12 are suitable for one of the purposes under this Article and may be certified for a tax credit.

(h) Rule-making Authority. – The Trustees may adopt rules to implement this Article. Chapter 150B of the General Statutes applies to the adoption of rules by the Trustees.

(i) Repealed by Session Laws 1999-237, s. 15.11, effective July 1, 1999.

(j) Debt. – Of the funds credited annually to the Fund, the Trustees may authorize expenditure of a portion to reimburse the General Fund for debt service on special indebtedness to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in G.S. 113A-253(c)(1) through (4). In order to authorize expenditure of funds for debt service reimbursement, the Trustees must identify to the State Treasurer and the Department of Administration the specific capital projects for which they would like special indebtedness to be issued or incurred and the annual amount they intend to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or incurred for a capital project requested by the Trustees, the Trustees must direct the State Treasurer to credit to the General Fund each year the actual aggregate principal and interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer."

PART III. IMPROVE THE EFFICIENCY OF USE OF NORTH CAROLINA'S WATER RESOURCES

SECTION 3.1. G.S. 143-355(l) reads as rewritten:

"(l) Local Water Supply Plans. – Each unit of local government that provides public water service or that plans to provide public water service and each large community water system shall, either individually or together with other units of local government and large community water systems, prepare a local water supply plan and submit it to the Department for approval. The Department shall provide technical assistance with the preparation of plans to units of local government and large community water systems upon request and to the extent that the Department has resources available to provide assistance. At a minimum, each unit of local government and large community water system shall include in local water supply plans all information that is readily available to it. Plans shall include present and projected population, industrial development, and water use within the service area; present and future water supplies; an estimate of the technical assistance that may be needed at the local level to address projected water needs; current and future water conservation and water reuse programs;

programs, including a plan for the reduction of long-term per capita demand for potable water; a description of how the local government or large community water system will respond to drought and other water shortage emergencies and continue to meet essential public water supply needs during the emergency; and any other related information as the Department may require in the preparation of a State water supply plan. A unit of local government or large community water system shall submit a revised plan that specifies how the water system intends to address foreseeable future water needs when eighty percent (80%) of the water system's available water supply based on calendar year average daily demand has been allocated to current or prospective water users or the seasonal demand exceeds ninety percent (90%). Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit or large community water system on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by each unit of local government and large community water system that participated in the preparation of the plan."

SECTION 3.2. G.S. 143-355.4(b) reads as rewritten:

"(b) To be eligible for State water infrastructure funds from the Drinking Water State Revolving Fund or the Drinking Water Reserve or any other grant or loan of funds allocated by the General Assembly whether the allocation of funds is to a State agency or to a nonprofit organization for the purpose of extending waterlines or expanding water treatment capacity, a local government or large community water system must demonstrate that the system:

- ...
- (7) Has implemented a consumer education program that emphasizes the importance of water ~~conservation~~conservation and that includes information on measures that residential customers may implement to reduce water consumption."

SECTION 3.3. G.S. 159-52(a) reads as rewritten:

"(a) In determining whether a proposed bond issue shall be approved, the Commission may consider:

- ...
- (13) If the proposed bond issue is for a water system as described in G.S. 159-48(b)(21), whether a unit has prepared a local water supply plan in compliance with G.S. 143-355."

SECTION 3.4. The Department of Environment and Natural Resources shall provide statewide outreach and technical assistance as needed regarding water efficiency, which shall include the development of best management practices for community water efficiency and conservation. These best management practices shall address at least all of the following practices:

- (1) Integrating water efficiency and conservation into water supply plans.
- (2) Conducting regular water audits to identify revenue and nonrevenue water and water losses.
- (3) Adopting water loss abatement programs.
- (4) Metering and submetering of existing multiunit residential, commercial, and industrial complexes.
- (5) Retrofitting fixtures, equipment, and irrigation systems to make them more water efficient.
- (6) Landscaping in a manner that conserves water use and is regionally appropriate.
- (7) Employing water reuse practices that include harvesting rainwater and using grey water.
- (8) Pricing water to achieve comprehensive conservation and adopting full-cost accounting in line with the recommendation approved by the State Water Infrastructure Commission in November 2010.

SECTION 3.5. Nothing in Sections 3.1 through 3.4 of this act shall be construed to authorize the adoption of rules to implement those sections. Nothing in Sections 3.1 through 3.4 of this act shall be construed or implemented in a way so as to negatively impact economic development.

SECTION 4. Sections 3.1 through 3.5 of this act become effective October 1, 2011. All other sections of this act are effective when this act becomes law.
In the General Assembly read three times and ratified this the 17th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 1:00 p.m. this 27th day of June, 2011