

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2013-395
SENATE BILL 515**

**AN ACT TO DELAY ADDITIONAL IMPLEMENTATION OF THE JORDAN LAKE
RULES AND JORDAN LAKE SESSION LAWS AND PROVIDE FOR ALTERNATIVE
IMPLEMENTATION OF THE PROTECTION OF EXISTING BUFFERS RULE.**

Whereas, the United States Congress authorized the United States Army Corps of Engineers (USACE) to create what is now the B. Everett Jordan Lake in 1963; and

Whereas, the USACE submitted a Final Environmental Impact Statement (EIS) in November 1971 that stated, "Of primary concern is the eutrophic tendency of the lake. Eutrophication is a term used to describe the natural change in productivity of a lake during aging. It is usually a long-term phenomenon, which may be measured in geologic time Studies have shown that, assuming that all other elements necessary are available, the amounts of nitrogen and phosphorus presently found in the influent are adequate to produce algae blooms in the lake."; and

Whereas, the USACE stated in the EIS, "Several studies have indicated that the major water quality problem will be associated with anticipated nuisance algal growths resulting from excess nutrients from upstream sources."; and

Whereas, the United States Environmental Protection Agency (EPA) commented in the EIS, "Nutrient concentration in both the Haw River and New Hope River are high, and nuisance algal growth detrimental to water supply and recreation are a virtual certainty Impoundment should not take place until there is a strong technical basis for the prediction that nuisance algal growths will not occur."; and

Whereas, the USACE, in responding to the EPA's comments in the EIS, stated, "... it is doubtful whether a strong technical basis exists for the prediction that nuisance algal growths will not occur on most existing reservoirs"; and

Whereas, the United States Department of the Interior Bureau of Sport Fisheries and Wildlife commented in the EIS that, "High nutrient concentrations will intensify and extend water quality problems into the upper surface layers. Therefore, impoundment will create a pollution problem to the detriment of the ecosystem."; and

Whereas, the EIS contained a summary of complaints from pending litigation that included, "Even in the absence of nutrients from wastes, the shallowness ... would ensure abnormally heavy algae growths that could not be controlled Probably the most serious deficiency of defendants' environmental statement is its de-emphasis on the certainty that the water ... will be of exceptionally bad quality."; and

Whereas, despite the many inherent challenges of managing the water quality of Jordan Lake, the General Assembly remains committed to addressing issues that affect the water quality of the Lake; and

Whereas, it is the intent of the General Assembly to continue implementation of current measures to address water quality issues in Jordan Lake; and

Whereas, it is the intent of the General Assembly to temporarily delay additional implementation of measures to address water quality issues in Jordan Lake in order to allow for further evaluation of those measures and further exploration of other measures and technologies to improve the water quality of the Lake; Now, therefore,

The General Assembly of North Carolina enacts:

**PART I. DELAY ADDITIONAL IMPLEMENTATION OF THE JORDAN LAKE
RULES AND THE JORDAN LAKE SESSION LAWS**



SECTION 1.(a) For purposes of this act, the following definitions apply:

- (1) "Jordan Lake Rules" means all of the following rules:
 - a. 15A NCAC 02B .0262 (Jordan Water Supply Nutrient Strategy: Purpose and Scope)
 - b. 15A NCAC 02B .0263 (Jordan Water Supply Nutrient Strategy: Definitions)
 - c. 15A NCAC 02B .0264 (Jordan Water Supply Nutrient Strategy: Agriculture)
 - d. 15A NCAC 02B .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development)
 - e. 15A NCAC 02B .0266 (Jordan Water Supply Nutrient Strategy: Stormwater Management for Existing Development)
 - f. 15A NCAC 02B .0267 (Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers)
 - g. 15A NCAC 02B .0270 (Jordan Water Supply Nutrient Strategy: Wastewater Discharge Requirements)
 - h. 15A NCAC 02B .0271 (Jordan Water Supply Nutrient Strategy: Stormwater Requirements for State and Federal Entities)
 - i. 15A NCAC 02B .0272 (Jordan Water Supply Nutrient Strategy: Fertilizer Management)
 - j. 15A NCAC 02B .0311 (Cape Fear River Basin)
- (2) "Jordan Lake Session Laws" means all of the following Session Laws or portions of Session Laws:
 - a. S.L. 2009-216.
 - b. Part II of S.L. 2009-484.
 - c. Section 14 of S.L. 2011-394.
 - d. Section 12.1 of S.L. 2012-187.
 - e. Subsections 9(c) through 9(g) of S.L. 2012-200.
 - f. Subsections 11(a) through 11(e) of S.L. 2012-201.

SECTION 1.(b) The implementation dates of the Jordan Lake Rules and Jordan Lake Session Laws that begin July 1, 2013, or later shall be delayed for a period of three years.

PART II. IMPLEMENTATION OF RULE FOR PROTECTION OF EXISTING BUFFERS

SECTION 2.(a) The definitions set out in G.S. 143-212 and 15A NCAC 02B .0267 (Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers) apply to this section. For purposes of this section, "Protection of Existing Riparian Buffers Rule" means 15A NCAC 02B .0267 (Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers).

SECTION 2.(b) Protection of Existing Riparian Buffers Rule. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(d) of this act, the Commission and the Department shall implement the Protection of Existing Riparian Buffers Rule as provided in Section 2(c) of this act.

SECTION 2.(c) Implementation. – The Protection of Existing Riparian Buffers Rule shall be implemented as follows:

- (1) Notwithstanding the Table of Uses set out in subdivision (9) of the Protection of Existing Riparian Buffers Rule, utility, nonelectric, other than perpendicular crossings that have impacts only in Zone Two shall be categorized as exempt.
- (2) Notwithstanding the Table of Uses set out in subdivision (9) of the Protection of Existing Riparian Buffers Rule, the piping of a stream allowed under a permit issued by the United States Army Corps of Engineers shall be categorized as an allowable use.
- (3) Notwithstanding the definition of "Airport Facilities" set out in sub-subdivision (b) of subdivision (2) of the Protection of Existing Riparian Buffers Rule, "Airport Facilities" shall include any aeronautic industrial facilities that require direct access to the airfield.

SECTION 2.(d) Additional Rule-Making Authority. – The Environmental Management Commission shall adopt a rule to amend 15A NCAC 02B .0267 (Jordan Water

Supply Nutrient Strategy: Protection of Existing Riparian Buffers) consistent with Section 2(c) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(c) of this act. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 2.(e) Sunset. – Section 2(c) of this act expires on the date that rules adopted pursuant to Section 2(d) of this act become effective.

PART III. EFFECTIVE DATE

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

In the General Assembly read three times and ratified this the 26th day of July, 2013.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 10:47 a.m. this 23rd day of August, 2013