

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 897
HOUSE BILL 2347

AN ACT TO AMEND THE ACT ESTABLISHING THE LAKE WYLIE MARINE COMMISSION, SO AS TO CONFORM TO A SIMILAR SOUTH CAROLINA LAW SO THAT THE ACTS MAY BE SUBMITTED TO THE CONGRESS OF THE UNITED STATES FOR APPROVAL.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 683, Session Laws of 1987, reads as rewritten:

"Section 1. For purposes of this act:

(1) 'Board' means the board of commissioners of ~~one of the three counties Mecklenburg and Gaston Counties, North Carolina and the county council of York County, South Carolina.~~

(2) 'Commission' means the Lake Wylie Marine Commission or its governing board as the case may be.

(3) 'Commissioner' means a member of the governing board of the Lake Wylie Marine Commission.

(4) 'Three counties' means Mecklenburg and Gaston Counties, North Carolina, and York County, South Carolina.

(5) 'Joint ~~resolution-ordinance~~' means ~~a resolution or an ordinance~~ substantially identical in content adopted separately by the ~~governing boards~~ board in each of the three counties.

(6) 'Lake Wylie' means the impounded body of water along the Catawba River in the three counties extending from the base of Mountain Island Dam downstream to the Catawba Dam.

(7) 'Shoreline area' means, except as ~~modified-restricted~~ by a joint ~~resolution, ordinance,~~ the area within the three counties lying within 1000 feet of the mean ~~high water~~ high-water line (570 feet) on Lake Wylie. In addition, the shoreline area includes all islands within Lake Wylie and all peninsulas extending into the waters of Lake Wylie.

(8) 'Wildlife Commission' means, ~~except as restricted by a joint resolution,~~ the North Carolina Wildlife Resources Commission and the South Carolina Department of Wildlife and Marine Resources ~~Department.~~"

Sec. 2. Section 2 of Chapter 683, Session Laws of 1987, reads as rewritten:

"Sec. 2. The three counties may by joint ~~resolution-ordinance~~ create the Lake Wylie Marine Commission. Upon its creation, the Commission has the powers, duties and responsibilities conferred upon it by joint ~~resolution,~~ ordinance subject to the

~~provisions—laws~~ of each applicable state. The provisions of any joint ~~resolution ordinance~~ may be modified, amended, or rescinded by a subsequent joint ~~resolution ordinance~~. A county may unilaterally withdraw from participation as ~~provided—required~~ by any joint ~~resolution ordinance~~ or the provisions of this act, once the commission has been created, ~~and any county may.~~ Any county may, by ordinance, unilaterally withdraw from the commission at the end of any budget period upon ninety days prior written notice. Upon the effectuation of the withdrawal, the Commission is dissolved, and all property of the Commission must be distributed to or divided among the three counties and any other public agency or agencies serving the Lake Wylie area in a manner considered equitable by the Commission by resolution adopted ~~by it~~ prior to dissolution."

Sec. 3. Section 3 of Chapter 683, Session Laws of 1987, reads as rewritten:

"Sec. 3. Upon its creation, the commission shall have a governing board of seven. Except as otherwise provided for the first four-year period, each commissioner shall serve either a three or a four-year term, with commissioners to serve overlapping terms so that two commissioner appointments are made each year. Upon creation of the Commission, the Board of Commissioners of Gaston County shall appoint three commissioners and the boards of the other two counties shall appoint two each. These initial appointees shall serve until September thirtieth following their appointment. Thereafter, appointments ~~shall—must~~ be made for terms beginning each October first by the respective boards of the three counties as follows:

(1) First Year: Three commissioners from Gaston, one appointed for a one-year term, one appointed for a three-year term and one appointed for a four-year term; two commissioners from Mecklenburg, one appointed for a one-year term and one appointed for a two-year term; two commissioners from York, one appointed for a two-year term and one appointed for a three-year term.

(2) Second Year: Two commissioners from Mecklenburg, one appointed for a three-year term and one appointed for a four-year term.

(3) Third year: Two commissioners from York, one appointed for a three-year term and one appointed for a four-year term.

(4) Fourth Year: Two commissioners from Gaston, one appointed for a three-year term and one appointed for a four-year term.

(5) Fifth and Succeeding Years: Appointments for one three-year and one four-year term in rotation by county in the order set out above.

On the death of a commissioner, resignation, incapacity, or inability to serve, as determined by the board appointing ~~such—the~~ commissioner, or removal of the commissioner for cause, as determined by the board appointing ~~such—the~~ commissioner, the board affected may appoint another commissioner to fill the unexpired term."

Sec. 4. Section 4 of Chapter 683, Session Laws of 1987, reads as rewritten:

"Sec. 4. The joint ~~resolution of the three counties ordinance~~ shall state the terms relating to compensation to commissioners, if any, compensation of consultants and staff members employed by the Commission, and reimbursement of expenses incurred by commissioners, consultants, and employees. The Commission ~~shall be—~~is governed

by ~~such~~ these budgetary and accounting procedures as may be specified by joint ~~resolution-ordinance~~."

Sec. 5. Section 5 of Chapter 683, Session Laws of 1987, reads as rewritten:

"Sec. 5. Upon creation of the Commission, its governing board shall meet at a time and place agreed upon by the boards of the three counties concerned. The commissioners shall elect a chairman and such officers as they may choose. All officers shall serve one-year terms. The governing board shall adopt such rules and regulations as it may ~~deem~~ consider necessary, not inconsistent with the provisions of this act or of any joint ~~resolution-ordinance~~ or the laws of the appropriate state, for the proper discharge of its duties and for the governance of the commission. In order to conduct business, a quorum must be present. The chairman may adopt those committees as may be authorized by such rules and regulations. The commission shall meet regularly at ~~such~~ those times and places as may be specified in its rules and regulations or in any joint ~~resolution-ordinance~~. However, meetings of the commission must be held in all three counties on a rotating basis so that an equal number of meetings is held in each county. Special meetings may be called as specified in the rules and regulations. As to meetings held within South Carolina, the provisions of ~~that state's Open Meetings Law, §30-4-60 through §30-4-110, Code of Laws of South Carolina 1976 Chapter 4 of Title 30, Code of Laws of South Carolina, 1976, (Freedom of Information Act)~~ shall apply. As to meetings held within North Carolina, the provisions of that State's Open Meetings Law, Article 33C of Chapter 143 of the North Carolina General Statutes ~~shall~~ apply."

Sec. 6. Section 6 of Chapter 683, Session Laws of 1987, reads as rewritten:

"Sec. 6. (a) Within the limits of funds available to it and subject to the provisions of this act and of any joint ~~resolution-ordinance~~ the Commission may:

- (1) Hire and fix the compensation of permanent and temporary employees and staff as it may ~~deem~~ consider necessary in carrying out its duties;
- (2) Contract with consultants for such services as it may require;
- (3) Contract with the States of North Carolina, South Carolina, or the federal government, or any ~~agency or agency,~~ department, or subdivision of them, for property or services as may be provided to or by these agencies and carry out the provisions of these contracts;
- (4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern, and carry out the provisions of contracts;
- (5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vessels, vehicles, firearms, uniforms, and other supplies and equipment necessary or desirable for carrying out the duties imposed in or under the authority of this ~~act~~ act;
- (6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs

and notices, and other items of real and personal property designed to enhance public safety in Lake Wylie and its shoreline area, or protection of property in the shoreline area subject however to the provisions of Title 50 of the ~~1976 Code~~ Code of Laws of South Carolina, 1976, or regulations promulgated under that title as to property within South Carolina, and Chapter 113 of the General Statutes of North Carolina and rules promulgated under that Chapter as to property within North Carolina.

(b) The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal government or its agencies or subdivisions, by the States of North Carolina or South Carolina or their agencies or subdivisions, or by private and civic sources.

(c) The governing ~~boards~~ bodies of the three counties may appropriate funds to the Commission out of surplus funds or funds derived from nontax sources. They may appropriate funds out of tax revenues and may also levy annually taxes for the payments of such appropriation as a special purpose, in addition to any allowed by the Constitution or in North Carolina as provided by G.S. 153A-149.

(d) The Commission ~~shall be~~ is subject to those audit requirements as may be specified in any joint ~~resolution~~ ordinance.

(e) In carrying out its duties and either in addition to or in lieu of exercising various provisions of the above authorization, the Commission may, with the agreement of the governing board of the county concerned, utilize personnel and property of or assign responsibilities to any officer or employee of any of the three counties. Such contribution in kind, if substantial, may with the agreement of the other two counties be ~~deemed~~ considered to substitute in whole or in part for the financial contribution required of ~~such that~~ county in support of the Commission.

(f) Unless otherwise specified by joint ~~resolution~~ ordinance, each of the three counties shall annually contribute an equal financial contribution to the Commission in an amount appropriate to support the activities of the Commission in carrying out its duties."

Sec. 7. Section 7 of Chapter 683, Session Laws of 1987, reads as rewritten:

"Sec. 7. (a) A copy of the joint ~~resolution~~ ordinance creating the Commission and of any joint ~~resolution~~ ordinance amending or repealing the joint ~~resolution~~ ordinance creating the Commission ~~shall~~ must be filed with the Executive Director of the North Carolina Wildlife Resources Commission and the Executive Director of the South Carolina Department of Wildlife and Marine Resources. When the Executive ~~Director~~ receives resolutions ~~Directors~~ receive ordinances that are in substance identical from all three counties concerned, ~~the executive Director~~ they, in accordance with procedures agreed upon, shall, within 10 days, ~~so certify~~ certify this fact and distribute a certified single ~~resolution~~ ordinance text to the following:

- (1) The Secretary of State of North Carolina and the Secretary of State of South Carolina;
- (2) The clerk to the governing board of each of the three counties;

- (3) The clerk of superior court of Mecklenburg and Gaston Counties and the clerk of court of York County. Upon request, the ~~Executive Director~~ Executive Directors also shall send a certified single copy of any and all applicable joint ~~resolutions~~ ordinances to the chairman of the Commission;
- (4) A newspaper of general circulation in the three counties.

(b) Unless a joint ~~resolution~~ ordinance specifies a later date, it shall take effect when the Executive ~~Director's~~ Directors' certified text has been submitted to the Secretaries of State for filing. Certifications of the Executive ~~Director~~ Directors under the seal of the Commission as to the text or amended text of any joint ~~resolution~~ ordinance and of the date or dates of submission to the Secretaries of State ~~shall be~~ is admissible in evidence in any court. Certifications by any clerk of superior court or county clerk of court of the text of any certified ~~resolution~~ ordinance filed with him by the Executive ~~Director~~ Directors is admissible in evidence and the Executive ~~Director's~~ Directors' submission of the ~~resolution~~ ordinance for filing to the clerk shall constitute **prima facie** evidence that ~~such resolution~~ the ordinance was on the date of submission also submitted for filing with the Secretary of State. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court concerning the submission of the certified text of any ~~resolution~~ ordinance by the Executive ~~Director~~ Directors to any person other than the Secretary of State."

Sec. 8. Section 8 of Chapter 683, Session Laws of 1987, reads as rewritten:

"Sec. 8. (a) Except as limited in subsection (b) of this section, by restrictions in any joint ~~resolution~~ ordinance and by other supervening provisions of law, the Commission may make regulations applicable to Lake Wylie and its shoreline area concerning all matters relating to or affecting the use of Lake Wylie. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of state agencies promulgated under the authority of general law. No regulations adopted under the provisions of this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing ~~being given~~ in a newspaper of general circulation in the three counties at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to state law and regulations concerning the operation of vessels on Lake Wylie, the Commission may, after public notice, request that the North Carolina Wildlife Resources Commission and the South Carolina Department of Wildlife and Marine Resources pass local regulations on this subject in accordance with the procedure established by appropriate state law.

(b) Violation of any regulation of the Commission commanding or prohibiting an act ~~shall be~~ is a misdemeanor punishable by a fine not to exceed two hundred dollars (~~\$200.00~~) or 30 days imprisonment.

(c) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Lake Wylie or its shoreline area. Adequate notice as to a regulation affecting only a particular location may be by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate

vicinity of the location in question. Where a regulation applies generally as to Lake Wylie or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area and it must be printed in a newspaper of general circulation in the three counties.

(d) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:

- (1) The Secretaries of State of North and South Carolina;
- (2) The clerk of superior court of Mecklenburg and Gaston ~~County~~ Counties and the clerk of court of York County;
- (3) The Executive Directors of the Wildlife Resources Commission of North Carolina and South Carolina Wildlife and Marine Resources Department.

(e) Any official designated in subsection (d) above may issue certified copies of regulations filed with him under the seal of his office. ~~Such~~ These certified copies may be received in evidence in any proceeding.

(f) Publication and filing of regulations promulgated under this section as required above is for informational purposes and ~~shall not be~~ is not a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of regulations, a copy of the text of all regulations is in fact available to any person who may be affected, and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Commission under the provisions of other sections of this act relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker or the making of other communication is essential to the validity of a regulation duly promulgated, it ~~shall be~~ is presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation."

Sec. 9. Section 9 of Chapter 683, Session Laws of 1987, reads as rewritten:

"Sec. 9. (a) Where a joint ~~resolution~~ ordinance so provides, all law enforcement officers, or those officers as may be designated in the joint ~~resolution~~ ordinance, with territorial jurisdiction as to any part of Lake Wylie or its shoreline area ~~shall~~, within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of Lake Wylie and its shoreline area.

(b) Where a joint ~~resolution~~ ordinance provides it, the Commission may hire special officers to patrol and enforce the laws on Lake Wylie and its shoreline area. These special officers have and may exercise all the powers of peace officers generally within the area in question and shall take the oaths and ~~be~~ are subject to all provisions of law relating to law enforcement officers.

(c) Every criminal violation must be tried in the county where it occurred. However, a certificate of training by the South Carolina Criminal Justice Academy, or a similar certificate issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission will suffice for certification in both states for the purposes of this act.

(d) Where a law enforcement officer with jurisdiction over any part of Lake Wylie or its shoreline area is performing duties relating to the enforcement of the laws on Lake Wylie or in its shoreline area, he has such extraterritorial jurisdiction as may be necessary to perform his duties. These duties include investigation of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This ~~included~~ includes traversing by reasonable routes from one portion of ~~such~~ this area to another although across territory not within the boundaries of Lake Wylie and its shoreline area; conducting prisoners in custody to ~~such~~ a court or detention facilities as may be authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that ~~such~~ this process may not be executed by virtue of this provision beyond the boundaries of the three counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

(e) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this ~~shall be deemed~~ is considered an extension of the duties of the office held and no officer shall take any additional oath or title of office."

Sec. 10. Section 10 of Chapter 683, Session Laws of 1987, reads as rewritten:

"Sec. 10. This act shall become effective ~~on the later of:~~

(1) ~~March 1, 1988;~~ and

(2) upon enactment by the State of South Carolina and upon approval by the Congress of the United States.

Either North Carolina or South Carolina may withdraw from this Compact by enacting a statute repealing the same, but no ~~such~~ withdrawal ~~shall become~~ is effective until the Governor of the withdrawing state ~~shall have~~ has sent formal notice in writing to the Governor of each other party state informing ~~said~~ the Governors of the action of the legislature in repealing the Compact and declaring an intention to withdraw. ~~Such~~ This withdrawal ~~shall be~~ is effective on a date set by the withdrawing state, but not less than 90 days after enactment of the withdrawal statute. In case of ~~such~~ the withdrawal, the property of the Commission ~~shall~~ must be divided in an equitable manner by the Commission as if dissolution had occurred under Section 2 of this act."

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1988.