

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 184
SENATE BILL 1041

AN ACT TO ESTABLISH THE MINIMUM STREAMFLOW IN THE LENGTH OF THE STREAM AFFECTED BY CERTAIN DAMS OPERATED BY SMALL HYDROELECTRIC POWER PRODUCERS AND TO PROVIDE THAT THE MINIMUM STREAMFLOWS THUS SPECIFIED ARE THE POLICY OF THE STATE FOR SUCH DAMS, WHETHER OR NOT A PARTICULAR DAM IS SUBJECT TO THE DAM SAFETY LAW OF 1967.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.31 reads as rewritten:

"§ 143-215.31. Supervision over maintenance and operation of dams.

(a) The Commission shall have jurisdiction and supervision over the maintenance and operation of dams to safeguard life and property and to satisfy minimum streamflow requirements. The Commission may adopt standards for the maintenance and operation of dams as may be necessary for the purposes of this Part. The Commission may vary the standards applicable to various dams, giving due consideration to the minimum flow requirements of the stream, the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of failure of a dam to perform its function.

(b) The Department, consistent with rules adopted by the Commission, may impose any condition or requirement in orders and written approvals issued under this Part that is necessary to ensure that stream classifications, water quality standards, and aquatic habitat requirements are met and maintained, including conditions and requirements relating to the release or discharge of designated flows from dams, the location and design of water intakes and outlets, the amount and timing of the withdrawal of water from a reservoir, and the construction of submerged weirs or other devices intended to maintain minimum streamflows.

~~(c)~~ The Commission shall adopt rules that specify the minimum streamflow in the length of the stream affected.

~~(c) In adopting rules that specify the minimum streamflow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream, the Commission shall establish a schedule for increasing or decreasing the minimum streamflow above or below the baseline minimum streamflow. The baseline minimum streamflow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-~~

~~3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream is the stream shall be:~~

- ~~(1) The minimum average flow for a period of seven consecutive days that would have an average occurrence of once in 10 years in the absence of the dam, or ten percent (10%) of the average annual flow of the stream in the absence of the dam, whichever is less, if prior to 1 January 1995 the small power producer was either licensed by the Federal Energy Regulatory Commission or held a certificate of public convenience and necessity issued by the North Carolina Utilities Commission.~~
- ~~(2) The minimum average flow for a period of seven consecutive days that would have an average occurrence of once in 10 years in the absence of the dam, or ten percent (10%) of the average annual flow of the stream in the absence of the dam, whichever is greater, if subdivision (1) of this subsection does not apply.~~
- ~~(3) To protect the habitat of the Cape Fear Shiner and other aquatic species, 28 cubic feet per second for any dam that diverts water from 2,500 feet or more of the natural streambed of any stream on which six or more dams operated by small power producers were located on 1 January 1995, notwithstanding subdivisions (1) and (2) of this subsection.~~

~~(d) Subsection (c) of this section establishes the policy of this State with respect to minimum streamflows in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream, whether the dam is subject to or exempt from this Part. In its comments and recommendations to the Federal Energy Regulatory Commission regarding the minimum streamflow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream, the Commission and the Department shall not advocate or recommend a minimum streamflow that exceeds the minimum streamflow that would be required under subsection (c) of this section."~~

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives