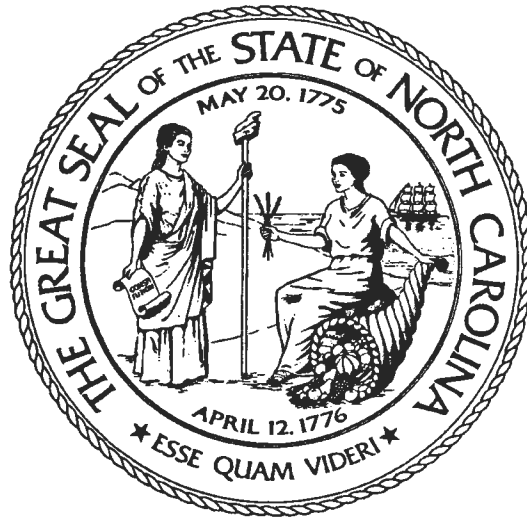


**LEGISLATIVE  
RESEARCH COMMISSION**

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**SURFACE WATER**



**REPORT TO THE  
1989 GENERAL ASSEMBLY  
OF NORTH CAROLINA  
1990 SESSION**

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STATE OF NORTH CAROLINA  
LEGISLATIVE RESEARCH COMMISSION  
STATE LEGISLATIVE BUILDING  
RALEIGH 27611



May 21, 1990

TO THE MEMBERS OF THE 1989 GENERAL ASSEMBLY (SECOND SESSION, 1990):

The Legislative Research Commission herewith submits to you for your consideration its interim report on surface water. The report was prepared by the Legislative Research Commission's Committee on Surface Water pursuant to Section 2.1(16) of Chapter 802 of the 1989 Session Laws.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. Mavretic".

---

Josephus L. Mavretic  
Speaker

A handwritten signature in cursive script, appearing to read "Henson P. Barnes".

---

Henson P. Barnes  
President Pro Tempore

Cochairmen  
Legislative Research Commission

1989-1990

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

Speaker of the House of  
Representatives  
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Rep. J. Fred Bowman

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Senator Donald R. Kincaid

Senator Robert L. Martin

Senator Lura S. Tally

Senator Russell G. Walker

## PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1989 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of surface water was authorized by Section 2.1(16) of Chapter 802 of the 1989 Session Laws (1989 Session). That act states that the Commission may consider the following bills in determining the nature, scope and aspects of the study: HJR 33, HJR 37, HB 1224, HJR 1399, HB 1945, HB 1955, and SB 1182. The relevant portions of Chapter 802 and the House and Senate bills listed above are included in Appendix A. The Legislative Research Commission grouped this study in its water area under the direction of Senator Lura Tally. The Committee was chaired by Senator Franklin L. Block and Representative Harry E. Payne, Jr. The full membership of the Committee is listed in Appendix B of this report. A committee

notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

## PROCEEDINGS

The Legislative Research Commission's Study Committee on Surface Water met six times. The topics considered at those meetings were interbasin transfers of water, the need, development, and funding for water resource projects, the Albemarle-Pamlico Estuary Study, and the degradation of the water quality in the Tar and Pamlico Rivers. While addressing concerns about problems in each of these areas, the committee focused special attention on issues concerning interbasin transfers of water.

The Committee devoted its first meeting to the topic of interbasin transfers. Individual members of the community at large and representatives of government, economic development groups, and environmental groups provided information to committee members about the technical aspects of interbasin transfers of water and expressed their concerns about the potential impact such transfers may have on State economics and the environment. Recognizing the complexity of the issues raised and the need for additional consideration of these issues, the Committee agreed that a part of each future meeting be allocated to the topic of interbasin transfers. However, to fulfill its charge of studying other matters affecting surface water, consideration of the progress of the Albemarle-Pamlico Estuary Study, degradation of the water quality in the Tar and Pamlico Rivers, and funding needs for water resources projects, were given priority as agenda items for the next three meetings. At its fifth meeting the Committee voted to recommend legislation that would impose a moratorium on the transfer of waters from one named river to another. The proposed legislation exempts diversions of waters that are lawfully occurring on the effective date of the act and provides that two types of diversions may begin during the moratorium. Future diversions to be allowed are described by the proposed legislation. At its sixth meeting the Committee adopted the interim report to the Legislative Research Commission. A



brief summary of the information compiled by the Committee on each area studied follows.

### Interbasin Transfers

John Morris, Director, Water Resources Division, Department of Environment, Health, and Natural Resources provided background and technical information regarding interbasin transfers to the Committee. An interbasin transfer is the diversion of waters from one river basin to another. At times the term is also used to refer to the transfer of waters from one sub-basin to another. The term "waters" as defined by G.S. 143-212(6) means "any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway, or other body or accumulation of water, whether surface or underground, public or private, or natural or artificial that is contained in, flows through, or borders upon any portion of this State, including any portion of the Atlantic Ocean over which the State has jurisdiction."

The law regarding interbasin transfers consists of both statutory law and the common law doctrine of riparian rights. The riparian rights doctrine provides that landowners along a body of water are entitled to the reasonable use of water undiminished in quality or quantity. Diversion of waters is not considered a use under that common law doctrine. Riparian rights existing under common law are enforceable in a civil action. G.S. 153A-286 provides that State statutory provisions concerning water rights do not change or modify those riparian rights.

Current statutory law provides that the diversion of waters from one stream or river to another by a water or sewer authority or by a county or city acting jointly with another local government is regulated by the Environmental Management Commission. (G.S. 153A-285.) However, diversions brought about by a single local government are not regulated. The seven criteria used by the Environmental

Management Commission in determining whether to issue a certificate allowing the diversion are set out in G.S. 162A-7. The Department of Environment, Health, and Natural Resources also requires that an environmental assessment or environmental impact statement, as appropriate, be prepared pursuant to the North Carolina Environmental Policy Act. (G.S. 113A-1 through 113A-10). The environmental assessment or environmental impact statement on a proposed transfer is submitted to the Department of Administration. The State clearinghouse under the Department of Administration circulates the document to State agencies. The clearinghouse also obtains local government review by circulation to the appropriate Regional Councils of Government. The comments received are considered by the Department of Environment, Health, and Natural Resources which revises the draft document, if needed, and makes a statement of the findings, which may include a finding of no significant impact or may include project modifications or mitigation measures to compensate for unavoidable environmental impacts. The Department of Administration reviews the documentation and informs the Department of Environment, Health, and Natural Resources when the requirements of the Environmental Policy Act have been satisfied. The Environmental Management Commission does not take action on a proposed diversion or transfer until the review required under the Environmental Policy Act has been completed. The hearing requirements and procedures to be followed upon receipt of an application to divert water are in G.S. 162A-7.

Diversions from major river basins that flow into other states are prohibited by G.S. 153A-287. Therefore, diversions from all river basins except the Cape Fear, Neuse, Tar-Pamlico, lower Roanoke, and the small coastal basins are prohibited under existing law.

Chuck Wakild, Deputy Director, Environmental Management Division, Department of Environment, Health, and Natural Resources summarized for the

Committee the role of the Environmental Management Commission regarding the regulation of interbasin transfers. Charles Baker, Chairman, Environmental Management Commission, also addressed the Committee, discussing further the decision making process used by the Environmental Management Commission in determining whether to issue a certificate to permit the diversion of waters. Mr. Baker informed the Committee of various interbasin transfers presently occurring in North Carolina, illustrating to the members the different types of transfers that are involved. Mr. Baker informed the Committee that in his personal opinion if the withdrawal of water in a given situation will result in large economic and social gains, the diversion of waters should be allowed. He stated further that although the current system regulating interbasin transfers is not perfect, it does have merit and he urged the Committee to take that into consideration in its deliberations on this topic.

Secretary William W. Cobey, Jr. summarized the policy of the Department of Environment, Health, and Natural Resources regarding interbasin transfers for the Committee. Briefly he stated that the Department does not oppose all interbasin transfers. It is the Department's position that G.S. 162A-7 establishes a basically sound policy regarding interbasin transfers. The Department does not rate interbasin transfers as a top priority problem in terms of environmental damage or harm to water users at the present time and does not support a moratorium on interbasin transfers.

Presentations before the Committee by numerous speakers pointed out inconsistencies and ambiguities in the current statutory law governing interbasin transfers. Suggestions for revisions made to Committee members for consideration and issues raised by those suggested changes follow.

G.S. 153A-285 requires State approval for water transfers carried out by two or more units of local government acting jointly. but not for those carried out by a single city or county. Water transfers by single municipalities or counties may have as

much effect on the State's water resources and economic growth as those conducted by joint agencies. The issue raised is whether State law and policy should address both types of water transfers.

G.S. 153A-287 prohibits diversions from major river basins which flow into other states downstream from the point of the proposed diversion. Diversions from river basins entirely within North Carolina downstream from the diversion point are not prohibited. The issue raised is whether this unequal treatment of river basins in North Carolina is desirable and should continue.

G.S. 153A-285 restricts the transfer of waters from one stream or river to another, which includes transfers from one tributary to another within the same major river basin. However, G.S. 153A-287 refers to diversions of water from the major river basins. The issue raised is whether State policies should limit or regulate diversions from any stream or just from major river basins.

G.S. 153A-286 provides that current statutory provisions do not change or modify riparian rights. However, it is not clear whether the time limit to challenge a decision of the Environmental Management Commission to issue a certificate is 60 days as provided by the Administrative Procedures Act or no statute of limitations under common law. The issue raised is whether statutory law should be amended to clarify what the time limit is, if any, in which a challenge to a certificate issued by the Environmental Management Commission must be filed to protect future claims for violations of riparian rights.

Although not currently addressed by North Carolina law, a possible policy issue that may require statutory modification was also brought to the Committee's attention. The potential harm of interbasin transfers and diversions is the reduction in the amount of water available for downstream water users and the environmental effect on aquatic habitat in the stream. Large consumptive uses of water have the same effect

as interbasin transfers in reducing downstream water availability. The issue raised is whether actions or uses that reduce downstream water availability should be limited and regulated under a comprehensive statute, rather than dealing with interbasin transfers as a separate issue.

Additional testimony presented to the Committee showed that opinion varies greatly regarding the regulation of interbasin transfers and the priority that should be given to those issues. Representatives of environmental groups, representatives of economic development organizations, local government employees, and private citizens questioned the impact that diversions of water may have environmentally and economically on specific areas. Many stated that the need to develop a comprehensive water management plan and a firm policy regarding interbasin transfers is urgent and expressed frustration that the Department of Environment, Health, and Natural Resources does not rank this as one of its top priorities. Some of those addressing the Committee opposed future interbasin transfers, but would grandfather in those transfers that are ongoing. Others stated that interbasin transfers should be allowed only when no other viable alternative exists and after meeting stringent criteria. Several people indicated satisfaction with the present system, or proposed that only minor changes be made in the current regulatory process.

Additional comments presented to the Committee focused on who should make the final decision to allow an interbasin transfer, who should be involved in the decision-making process, and the extent of that participation. Several of those addressing the Committee discussed the role of local governments in determining whether to allow an interbasin transfer and advocated that there be greater participation at the local level in the decision-making process. One suggestion was made that a panel with technical expertise make the final decision of whether to allow a diversion. Others maintained that the current system is best and requires no revisions.

Members of the Committee asked that drafts be prepared incorporating the suggestions made to the Committee as a starting point. South Carolina's regulatory system for interbasin transfers was suggested as a possible model for drafting purposes. The Committee also extended an invitation to members of the South Carolina Water Resources Commission to explain how the South Carolina system works. Hank Stallworth and James Atkins from the South Carolina Water Resources Commission attended one meeting and presented a detailed explanation of South Carolina's interbasin regulatory system.

After reviewing the drafts and the information presented to the Committee, members considered the need for a moratorium on interbasin transfers. Senator Tally presented a third draft to the Committee establishing a moratorium on interbasin transfers until July 1, 1991. She explained that the purpose of the bill was to maintain the status quo regarding interbasin transfers until the Committee could complete its study and to prompt State agencies to give a high priority to developing a State water management plan. In a lengthy discussion the Committee agreed to grandfather clauses that would allow interbasin transfers occurring on the effective date of the bill to continue, and that would allow two additional transfers to begin during that time. The Committee amended the draft to establish a moratorium on transfers from one named river to another, thus affecting intrabasin transfers as well as interbasin transfers. During the discussion, Senator Cochrane stated that she supported the concept of the proposed legislation, but wanted to point out to those who differed in their view from her, that they had gotten more than "half of a loaf." Senator Tally agreed with Senator Cochrane and urged the Department of Environment, Health, and Natural Resources to begin work on a State water plan immediately. Senator Royall informed the Committee that the Department was working on a water plan and had been requested to report on that plan at the next meeting of the Joint Legislative Commission

on Governmental Operations. Senator Royall stated further, "For some of you this bill is great, but for some of us it is not and that is not in the best interest of the State of North Carolina and that is why I am voting no." The Committee voted to recommend the proposed legislation as amended.

### Water Resource Projects

The need to modify State budgetary procedures to ensure federal funding for water resource projects in North Carolina was the main agenda item at the Committee's second meeting. The Water Resources Development Act of 1986 increased the percentage of State and local (hereinafter local) funds required to match federal funds for federally authorized water resource projects. However, State budget procedures have not been adjusted to reflect the correct amounts needed for the local matching funds. Failure to appropriate matching local funds will result in the loss of federal funds already appropriated but not yet expended for those projects. The loss of federal funds will affect water resource projects statewide and is not confined to one specific geographical area of the State.

John Metts and Colonel Paul Dennison, North Carolina Water Resources Congress, Larry Saunders, U. S. Army Corps of Engineers, and John Morris, Water Resources Division, Department of Environment, Health, and Natural Resources summarized federal and State budgeting practices regarding water resource projects for the Committee. Members of the Committee were advised that the process to have a locally sponsored water resource project approved for federal funding often takes years. Under the new federal law, a State's financial commitment to a congressionally authorized project is often larger than in past years and is required at an earlier stage of the federal study and funding process. State and federal agencies meet semiannually to review and update funding requests for water resource projects and identify future

needs. In the past State matching funds for these projects have been routinely requested, approved, and included in the State's budget. However, in recent years requests for local matching funds have often been regarded as new appropriations items to be fitted into the budget based on the availability of funds and geographical distribution of projects, without consideration of the State's prior commitment to the project and the federal funds appropriated in reliance on that commitment.

It was suggested that modifications to State budgeting procedures be considered by the Committee that would appropriately convey to the legislature those projects for which federal funds are appropriated and those projects in line for federal funds.

#### Albemarle Pamlico Estuary Study

Bob Holman, Director, Albemarle-Pamlico Estuary Study, provided the Committee with an update on the status of the Albemarle-Pamlico Estuary Study. The Albemarle Sound now supports only a small fraction of the aquatic life that once flourished in its waters. Many fear that the problems experienced by the Albemarle Sound may spread to the waters of the Pamlico also. The purpose of the study is to document and address environmental problems existing in the Albemarle and Pamlico Sounds. The study is divided into five components: information acquisition, information management, monitoring, priority action plans, and public involvement. The information gathering and dissemination phase of the study ended in 1989. The next phase of the study is to establish the status, trends, and probable cause of environmental problems in the two sounds. A comprehensive management plan will be developed by the end of 1992. The plan will be implemented in 1993 and 1994.



Pamlico and Tar Rivers -  
Water Quality Degradation

David McNaught, Executive Director, Pamlico-Tar River Foundation, provided the Committee with information on the degradation of water quality in the Pamlico and Tar Rivers. Mr. McNaught stated that a number of symptoms occur in the two rivers indicating serious water quality problems resulting from pollution. Those symptoms include a "commercially dead" fishery, numerous fish kills, cases of ulcerative mycosis and burnt shell disease, sedimentation and erosion problems, heavy metal contamination, and the disappearance of submerged aquatic vegetation. Sources of pollution contributing to the degradation of the water quality are agriculture, forestry, urban sprawl and residential development, industry, and municipal wastewater treatment facilities.

Committee discussion focused on the problems at the Rocky Mount waste treatment facility and the steps taken by the Environmental Management Division to obtain compliance by the City of Rocky Mount with State water quality standards. George Everett, Director, Environmental Management Division, Department of Environment, Health, and Natural Resources, informed the Committee that the Environmental Management Division had talked with the City of Rocky Mount about the problems at the waste treatment facility. Rocky Mount is currently operating under a court order that requires that a new treatment facility be completed by 1991.

## FINDINGS AND RECOMMENDATIONS

The Committee made the following findings and recommendations:

The chief concerns regarding interbasin transfers are economic and environmental. The relationship between economic growth and the availability of water resources was emphasized repeatedly. Clearly, each community has an interest in assuring that an adequate water supply exists to support the community at its current population and economic levels and to allow a reasonable margin of growth. A problem may arise if communities relying on the same water resources plan future growth unaware that the plan exceeds the limits of the resource. Downstream users are particularly vulnerable. While a community's future economic growth may be threatened by a drop in the availability of waters, its current economic status may also be detrimentally affected by a significant and unanticipated decrease in the waterflow level of a river. Reduced waterflow levels may require additional or improved pollution control techniques by a community to maintain the quality of its water supply. Improvements of this type are costly to local governments and their citizens.

Environmental concerns are equally significant. Diversions of waters and changes in the the levels of waterflow have a detrimental effect on aquatic life supported by river waters and wildlife dependant on the waters. The experience of the western states where diversions have occurred for years and the ecological impact resulting from that practice illustrate the type of environmental harm that may occur if water management plans are not developed and adopted in timely fashion.

Based on the concerns expressed above, the Committee finds that additional study is needed of water transfer issues and that a moratorium on future transfers of waters should be imposed until July 1, 1991, to allow the Committee to complete its work. The Committee recommends the following legislative proposal.

LEGISLATIVE PROPOSAL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

Senate

D

Legislative Proposal  
89-LH-369C

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Water Transfer Prohibited.

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH A MORATORIUM ON THE TRANSFER OF WATERS.  
3 The General Assembly of North Carolina enacts:  
4               Section 1. Except as provided in Section 2 of this act  
5 and notwithstanding the provisions of G.S. 153A-285, G.S. 153A-  
6 287, or any other provision of law, no entity whether public or  
7 private, or whether acting separately or jointly may divert any  
8 of the waters of this State, as defined in G.S. 143-212(6), from  
9 any named river to another nor institute any proceeding in the  
10 nature of eminent domain to acquire water, water rights, or lands  
11 having water rights attached thereto for a use that will result  
12 in waters of this State being diverted from one named river to  
13 another.  
14               Sec. 2. The prohibition in Section 1 of this act does  
15 not affect the following:

- 1                   (1) The diversion of waters from one named river  
2                   to another where the actual diversion of  
3                   waters lawfully began before the effective  
4                   date of this act;
- 5                   (2) The diversion of waters from one named river  
6                   to another if the diversion is authorized  
7                   under a certificate or permit issued before  
8                   the effective date of this act by the  
9                   Environmental Management Commission as  
10                  provided by G.S. 153A-285 and G.S. 162A-7,  
11                  provided the diversion does not exceed the  
12                  level authorized by the certificate or permit  
13                  as issued before the effective date.
- 14                  (3) The diversion of waters from one named river  
15                  to another if the diversion was included in  
16                  the plans for a federal reservoir project that  
17                  received congressional approval before the  
18                  effective date of this act but was not  
19                  constructed before the effective date of this  
20                  act.

21       This act may not be construed to reflect legislative approval  
22       or disapproval of any transfer exempted herein.

23               Sec. 3. This act is effective upon ratification and  
24       shall expire July 1, 1991.

## EXPLANATION OF LEGISLATIVE PROPOSAL

### 89-LH-369C

This bill establishes a moratorium on the transfer of waters from one named river to another. The bill affects transfers of waters between rivers located within the same basin (intrabasin transfers) and transfers of waters between rivers located in different basins (interbasin transfers). The moratorium ends July 1, 1991.

Section 2 of the bill is a grandfather clause. Under Section 2 lawful transfers of water already occurring on the effective date of the bill may continue during the moratorium. The section also provides that two types of new transfers may begin during the moratorium: (i) those made under a certificate or permit issued by the Environmental Management Commission before the effective date of the act, however, these transfers are limited to the level authorized by the certificate or permit; and (ii) those included in plans for a federal reservoir project that received Congressional authorization before the effective date of the act but that was not constructed before that date.

The final statement in Section 2 provides that the legislature takes no position with regard to the transfers that are exempted from the moratorium.

Section 3 provides that the legislation is effective upon ratification and sunsets July 1, 1991.

## APPENDIX A

### GENERAL ASSEMBLY OF NORTH CAROLINA 1989 SESSION RATIFIED BILL

#### CHAPTER 802 SENATE BILL 231

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

#### PART I. TITLE

Section 1. This act shall be known as "The Studies Act of 1989."

...

#### PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1989 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- (16) Surface Water Quality and Resources Issues, Including Interbasin Transfer, Albemarle-Pamlico Estuarine (H.J.R. 33 - Ethridge, B.), Coastal Water Quality -- study continued (H.J.R. 37 - Ethridge, B.), Haw in Scenic River System (H.B. 1224 - Hackney), Pesticides (H.J.R. 1399 - Holt), Water Resources Planning (H.B. 1945 - Payne), Toxaway River (H.B. 1955 - Colton), and Yadkin River Use and Protection (S.B. 1182 - Kaplan),

Sec. 2.2. Legislative Activity Between Legislative Sessions and Procedures to Shorten the Legislative Session. The Legislative Research Commission may study the procedures of this State's, other states' and other legislative bodies' practices and procedures regulating legislative and study activity and may make recommendations as to changes in law, procedures and rules that will lead to greater efficiency in the legislative process while safeguarding the rights of all members of the General Assembly and of the citizens in this State's legislative process.

Sec. 2.3. State Capital Assets and Improvements (S.B. 1240 - Sherron). The Legislative Research Commission may study the:

- (1) Inventory of State capital assets and the use of those assets,

- (2) Issue of preventive maintenance for State buildings, and
- (3) Need and feasibility of:
  - a. Establishing in the State budget a reserve for repairs and renovations and the administration of such a reserve, and
  - b. Charging rent to State agencies using State buildings.

Sec. 2.4. Committee Membership. For each Legislative Research Commission Committee created during the 1989-1991 biennium, the Cochairmen of the Commission each shall appoint a minimum of seven members.

Sec. 2.5. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1990 Session of the 1989 General Assembly or the 1991 General Assembly, or both.

Sec. 2.6. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.7. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

. . .

PART XXV.-----EFFECTIVE DATE

Sec. 25.1. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.



**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1989**

**H**

**1**

HOUSE JOINT RESOLUTION 33

---

Sponsors: Representatives Bowman, B. Ethridge; R. Thompson, Anderson, Chapin, and Stamey.

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Referred to: Rules.

---

January 19, 1989

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH  
2 COMMISSION TO STUDY THE PROGRESS OF THE ALBEMARLE-  
3 PAMLICO ESTUARINE STUDY.

4 Be it resolved by the House of Representatives, the Senate concurring:

5           Section 1. The Legislative Research Commission may study and evaluate  
6 the Albemarle-Pamlico Estuarine Study being conducted by the State. The  
7 Commission may monitor the progress of the Albemarle-Pamlico Estuarine Study,  
8 evaluate its recommendations, consider methods to implement the comprehensive  
9 conservation management plan to be developed by the Albemarle-Pamlico Estuarine  
10 Study, and consider any other items relevant to the Albemarle-Pamlico Estuarine  
11 Study. The Committee may make its recommendations and submit an interim report  
12 to the 1989 General Assembly, Regular Session 1990, and may make a final report to  
13 the 1991 General Assembly.

14           Sec. 2. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE JOINT RESOLUTION 37

---

Sponsors: Representatives Bowman, B. Ethridge; R. Thompson, Chapin, Stamey, Anderson, and Warner.

---

Referred to: Rules.

---

January 19, 1989

1 A JOINT RESOLUTION REQUESTING THE LEGISLATIVE RESEARCH  
2 COMMISSION TO CONTINUE THE STUDY OF COASTAL WATER  
3 QUALITY.

4 Be it resolved by the House of Representatives, the Senate concurring:

5           Section 1. The Legislative Research Commission may continue the study  
6 of coastal water quality begun pursuant to Section 152 of Chapter 1014 of the 1986  
7 Session Laws. The Commission may review and evaluate existing and proposed rules  
8 of the Environmental Management Commission, the Coastal Resources Commission,  
9 the Marine Fisheries Commission, and any other State agency regarding coastal  
10 water. The Legislative Research Commission may also consider any other issues  
11 relevant to coastal water quality.

12           Sec. 2. The Legislative Research Commission may make an interim  
13 report on the study authorized by this act to the 1989 General Assembly, Regular  
14 Session 1990, and may make a final report to the 1991 General Assembly.

15           Sec. 3. This resolution is effective upon ratification.

16

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 1224

Short Title: Haw in Scenic River System.

(Public)

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Sponsors: Representatives Hackney; Barnes, Holt, Bowman, and S. Hunt.

---

Referred to: Basic Resources.

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April 12, 1989

1

A BILL TO BE ENTITLED

2 AN ACT TO DESIGNATE THE HAW RIVER A SCENIC RIVER AREA UNDER  
3 THE NORTH CAROLINA NATURAL AND SCENIC RIVERS SYSTEM.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 113A-35.2 reads as rewritten:

6 "**§ 113A-35.2. Additional components.**

7 That segment of the Linville River beginning at the State Highway 183 bridge over  
8 the Linville River and extending approximately 13 miles downstream to the boundary  
9 between the United States Forest Service lands and lands of Duke Power Company  
10 (latitude 35° 50' 20") shall be a scenic river area and shall be included in the North  
11 Carolina Natural and Scenic River System.

12 That segment of the Horsepasture River in Transylvania County extending  
13 downstream from Bohaynee Road (N.C. 281) to Lake Jocassee shall be a natural river  
14 and shall be included in the North Carolina Natural and Scenic Rivers System.

15 That segment of the Haw River beginning south of the United States Highway 64  
16 bridge at Jordan Lake and extending approximately 28 miles upstream to the lower  
17 side of the dam at Swepsonville shall be a scenic river area and shall be included in  
18 the North Carolina Natural and Scenic Rivers System."

1           Sec. 2. The Department of Natural Resources and Community  
2 Development shall, by January 1, 1990, prepare a management plan for the Haw  
3 River section designated a scenic river area in section 1 of this act. This plan shall  
4 recognize and provide for protection of the existing undeveloped scenic and  
5 recreational features of the river so as to preserve its outstandingly scenic character in  
6 perpetuity. Further, this management plan and the river corridor selected in it shall  
7 satisfy Federal requirements for the National Wild and Scenic Rivers System set forth  
8 in 16 U.S.C. Sections 1271 and 1273(a)(ii) and (b) as amended and implementing  
9 regulations published in the Federal Register.

10           The General Assembly requests the Governor to seek inclusion of the  
11 Haw River section in the National System of Wild and Scenic Rivers by action of the  
12 Secretary of the Interior. This inclusion shall be at no cost to the Federal  
13 government, as prescribed in the National Wild and Scenic Rivers Act.

14           Sec. 3. This act is effective upon ratification.

1           Sec. 2. The Department of Natural Resources and Community  
2 Development shall, by January 1, 1990, prepare a management plan for the Haw  
3 River section designated a scenic river area in section 1 of this act. This plan shall  
4 recognize and provide for protection of the existing undeveloped scenic and  
5 recreational features of the river so as to preserve its outstandingly scenic character in  
6 perpetuity. Further, this management plan and the river corridor selected in it shall  
7 satisfy Federal requirements for the National Wild and Scenic Rivers System set forth  
8 in 16 U.S.C. Sections 1271 and 1273(a)(ii) and (b) as amended and implementing  
9 regulations published in the Federal Register.

10           The General Assembly requests the Governor to seek inclusion of the  
11 Haw River section in the National System of Wild and Scenic Rivers by action of the  
12 Secretary of the Interior. This inclusion shall be at no cost to the Federal  
13 government, as prescribed in the National Wild and Scenic Rivers Act.

14           Sec. 3. This act is effective upon ratification. .

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1989**

**H**

**2**

HOUSE BILL 1224  
Committee Substitute Favorable 5/30/89

Short Title: Haw in Scenic River System.

(Public)

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Sponsors:

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Referred to:

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April 12, 1989

- 1                                   A BILL TO BE ENTITLED  
2 AN ACT REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND  
3 COMMUNITY DEVELOPMENT TO STUDY THE FEASIBILITY OF  
4 DESIGNATING THE HAW RIVER AS A UNIT OF THE STATE NATURAL  
5 AND SCENIC RIVERS SYSTEM TO BE MANAGED AS A STATE RIVER.  
6 The General Assembly of North Carolina enacts:  
7                   Section 1. The Division of Parks and Recreation of the Department of  
8 Natural Resources and Community Development shall conduct a study and  
9 preliminary planning to determine the feasibility and costs of designating the Haw  
10 River below Swepsonville as a unit of the Natural and Scenic Rivers System to be  
11 managed as a State river. The study and planning, at a minimum, shall:  
12                   (1) Determine the eligibility and feasibility of including the river  
13                   according to requirements of the State Parks Act, Article 2C of  
14                   Chapter 113 of the General Statutes, and the Natural and Scenic  
15                   Rivers Act, Article 3 of Chapter 113A of the General Statutes;  
16                   (2) Include public participation to obtain views and information on  
17                   public needs and desires to protect and to use the area;

- 1           (3)    Make recommendations for the natural resource protection of the  
2                    area;
- 3           (4)    Make recommendations for the recreational use of the area;
- 4           (5)    Consider the presence and jurisdiction of other natural resource  
5                    agencies in the area;
- 6           (6)    Describe the resources of the area and their current uses, identify  
7                    conflicts created by those uses, and propose solutions to them.

8            Sec. 2. The Division of Parks and Recreation of the Department of  
9 Natural Resources and Community Development shall report the results of this study  
10 to the General Assembly by January 31, 1991. The Division shall deliver copies to  
11 the President of the Senate, Speaker of the House of Representatives, President Pro  
12 Tempore of the Senate, and the Speaker Pro Tempore of the House of  
13 Representatives. In addition, the Division shall deliver copies to the Governor and  
14 the Cochairmen of the Study Commission on State Parks and Recreation Areas, if  
15 that Study Commission is in existence at that time.

16            Sec. 3. There is appropriated from the General Fund to the Department  
17 of Natural Resources and Community Development, the sum of \$75,000 for the  
18 1989-90 fiscal year to conduct the feasibility study and preliminary planning.

19            Sec. 4. This act shall become effective July 1, 1989.

- 1           (3)    Make recommendations for the natural resource protection of the  
2                    area;
- 3           (4)    Make recommendations for the recreational use of the area;
- 4           (5)    Consider the presence and jurisdiction of other natural resource  
5                    agencies in the area;
- 6           (6)    Describe the resources of the area and their current uses, identify  
7                    conflicts created by those uses, and propose solutions to them.

8           Sec. 2. The Division of Parks and Recreation of the Department of  
9 Natural Resources and Community Development shall report the results of this study  
10 to the General Assembly by January 31, 1991. The Division shall deliver copies to  
11 the President of the Senate, Speaker of the House of Representatives, President Pro  
12 Tempore of the Senate, and the Speaker Pro Tempore of the House of  
13 Representatives. In addition, the Division shall deliver copies to the Governor and  
14 the Cochairmen of the Study Commission on State Parks and Recreation Areas, if  
15 that Study Commission is in existence at that time.

16           Sec. 3. There is appropriated from the General Fund to the Department  
17 of Natural Resources and Community Development, the sum of \$75,000 for the  
18 1989-90 fiscal year to conduct the feasibility study and preliminary planning.

19           Sec. 4. This act shall become effective July 1, 1989.



**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 1989**

**H**

**1**

HOUSE JOINT RESOLUTION 1399

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Sponsors: Representative Holt.

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Referred to: Rules.

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April 27, 1989

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH  
2 COMMISSION TO STUDY PESTICIDES AND RELATED ISSUES.

3 Be it resolved by the House of Representatives, the Senate concurring:

4           Section 1. The Legislative Research Commission may study pesticides  
5 and any related issues.

6           Sec. 2. The Legislative Research Commission may make an interim  
7 report, including recommendations, to the 1989 General Assembly, Regular Session  
8 1990, and a final report to the 1991 General Assembly.

9           Sec. 3. This resolution is effective upon ratification.

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1989**

**H**

**1**

HOUSE BILL 1945

Short Title: Water Resources Planning Commission.

(Public)

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Sponsors: Representatives Payne; and Bowman.

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Referred to: Rules.

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May 10, 1989

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO CREATE A LEGISLATIVE STUDY COMMISSION ON PLANNING  
3 AND FINANCING OF WATER RESOURCES DEVELOPMENT PROJECTS.

4                   Whereas, water resources development projects are essential to the  
5 economic welfare and environmental quality of North Carolina; and

6                   Whereas, the federal Water Resources Development Act of 1986 now  
7 requires larger nonfederal financial contributions to water resources development  
8 projects; and

9                   Whereas, federal law now requires nonfederal cost sharing for water  
10 resources development project feasibility studies; and

11                   Whereas, federal water resources development projects allow North  
12 Carolina to take advantage of federal planning expertise and federal financial  
13 assistance for water management; and

14                   Whereas, the present State administrative and budget process for  
15 planning and financial water resources development projects may not be suited to the  
16 new conditions created by the federal Water Resources Development Act of 1986;  
17 Now, therefore,

18 The General Assembly of North Carolina enacts:

1 Section 1. The Water Resources Development Planning and Financing  
2 Study Commission is created. The Commission shall consist of 12 members: four  
3 Senators appointed by the President Pro Tempore of the Senate, four Representatives  
4 appointed by the Speaker of the House of Representatives, and four nonlegislative  
5 members appointed by the Governor. All initial appointments shall be made by  
6 August 1, 1989. Vacancies on the Commission shall be filled in the same manner as  
7 initial appointments.

8 Sec. 2. The President Pro Tempore of the Senate shall designate one  
9 Senator as cochairman and the Speaker of the House of Representatives shall  
10 designate one Representative as cochairman.

11 Sec. 3. The Commission shall study the following:

- 12 (1) The need for water resources development projects in North  
13 Carolina;
- 14 (2) The federal planning and budgeting process for water resources  
15 development projects;
- 16 (3) State procedures for participating in planning and financing water  
17 resources development projects; and
- 18 (4) Local government participation in planning and financing projects.

19 The Commission shall make recommendations on improvements in State  
20 and local government planning, administrative, and financing procedures to allow  
21 North Carolina to take full advantage of federal water resources development projects  
22 and to provide better coordination among the local, State, and federal participants in  
23 water projects.

24 Sec. 4. The Commission shall submit a final report of its findings and  
25 recommendations to the General Assembly on or before the first day of the 1991  
26 Session of the General Assembly by filing the report with the President Pro Tempore  
27 of the Senate and the Speaker of the House of Representatives. The Commission may  
28 report to the 1990 Session of the 1989 General Assembly. Upon filing its final report,  
29 the Commission shall terminate.

30 Sec. 5. The Commission, while in the discharge of official duties, may  
31 exercise all the powers provided for under the provisions of G.S. 120-19, and G.S.  
32 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the  
33 joint call of the cochairmen. The Commission may meet in the Legislative Building  
34 or the Legislative Office Building.

1 Section 1. The Water Resources Development Planning and Financing  
2 Study Commission is created. The Commission shall consist of 12 members: four  
3 Senators appointed by the President Pro Tempore of the Senate, four Representatives  
4 appointed by the Speaker of the House of Representatives, and four nonlegislative  
5 members appointed by the Governor. All initial appointments shall be made by  
6 August 1, 1989. Vacancies on the Commission shall be filled in the same manner as  
7 initial appointments.

8 Sec. 2. The President Pro Tempore of the Senate shall designate one  
9 Senator as cochairman and the Speaker of the House of Representatives shall  
10 designate one Representative as cochairman.

11 Sec. 3. The Commission shall study the following:

- 12 (1) The need for water resources development projects in North  
13 Carolina;
- 14 (2) The federal planning and budgeting process for water resources  
15 development projects;
- 16 (3) State procedures for participating in planning and financing water  
17 resources development projects; and
- 18 (4) Local government participation in planning and financing projects.

19 The Commission shall make recommendations on improvements in State  
20 and local government planning, administrative, and financing procedures to allow  
21 North Carolina to take full advantage of federal water resources development projects  
22 and to provide better coordination among the local, State, and federal participants in  
23 water projects.

24 Sec. 4. The Commission shall submit a final report of its findings and  
25 recommendations to the General Assembly on or before the first day of the 1991  
26 Session of the General Assembly by filing the report with the President Pro Tempore  
27 of the Senate and the Speaker of the House of Representatives. The Commission may  
28 report to the 1990 Session of the 1989 General Assembly. Upon filing its final report,  
29 the Commission shall terminate.

30 Sec. 5. The Commission, while in the discharge of official duties, may  
31 exercise all the powers provided for under the provisions of G.S. 120-19, and G.S.  
32 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the  
33 joint call of the cochairmen. The Commission may meet in the Legislative Building  
34 or the Legislative Office Building.

1           Sec. 6. Members of the Commission shall receive subsistence and travel  
2 expenses as follows:

3           (1) Commission members who are members of the General Assembly,  
4           at the rates set forth in G.S. 120-3.1.

5           (2) Commission members who are also officials or employees of the  
6           State, at the rates set forth in G.S. 138-6.

7           (3) All other Commission members, at the rates set forth in G.S. 138-5.

8           Sec. 7. The Commission may contract for professional, clerical, or  
9 consultant services as provided by G.S. 120-32.02. The Legislative Services  
10 Commission, through the Legislative Administrative Officer, shall assign professional  
11 staff to assist in the work of the Commission. The House of Representatives' and the  
12 Senate's Supervisor of Clerks shall assign clerical staff to the Commission, upon the  
13 direction of the Legislative Services Commission. The expenses relating to clerical  
14 employees shall be borne by the Commission.

15           Sec. 8. The Commission may request staff support from the Department  
16 of Natural Resources and Community Development and from the Office of State  
17 Budget and Management in carrying out the Commission's responsibilities.

18           Sec. 9. All State departments and agencies and local governments and  
19 their subdivisions shall furnish the Commission with any information in their  
20 possession or available to them.

21           Sec. 10. There is appropriated from the General Fund to the General  
22 Assembly \$25,000 for the 1989-90 fiscal year and \$25,000 for the 1990-91 fiscal year  
23 to be used for the expenses of the Commission.

24           Sec. 11. This act shall become effective July 1, 1989.

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1989**

**H**

**1**

HOUSE BILL 1955

Short Title: Toxaway River Study.

(Public)

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Sponsors: Representatives Colton; N. Crawford, Nesbitt, and Greenwood.

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Referred to: Rules.

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May 10, 1989

A BILL TO BE ENTITLED

1  
2 AN ACT TO REQUIRE THE DEPARTMENT OF NATURAL RESOURCES AND  
3 COMMUNITY DEVELOPMENT, DIVISION OF PARKS AND RECREATION,  
4 TO STUDY THE FEASIBILITY OF INCLUDING THE THOMPSON,  
5 TOXAWAY, AND WHITEWATER RIVERS AREA WITHIN THE STATE  
6 PARKS AND THE SCENIC RIVERS SYSTEMS.

7 The General Assembly of North Carolina enacts:

8           Section 1. The Department of Natural Resources and Community  
9 Development, Division of Parks and Recreation, shall conduct a study and engage in  
10 preliminary planning to determine the feasibility and costs of designating the  
11 Thompson, Toxaway, and Whitewater rivers area of North Carolina as part of the  
12 State Parks System. In conducting the study and preliminary planning, the Division  
13 shall, at a minimum:

14           (1) Determine the eligibility and feasibility of including the Thompson,  
15           Toxaway, and Whitewater rivers area under the State Parks Act,  
16           Article 2C, Chapter 113 of the General Statutes, and under the  
17           Natural and Scenic Rivers Act of 1979, Article 3, Chapter 113A of  
18           the General Statutes;

- 1           (2)    Provide for public participation in the study to obtain views and  
2                    information on public needs and desires regarding protection and  
3                    use of the area;
- 4           (3)    Make recommendations for the protection of natural resources of  
5                    the area;
- 6           (4)    Make recommendations for recreational use of the area;
- 7           (5)    Consider the presence and jurisdiction of other natural resource  
8                    agencies in the area;
- 9           (6)    Describe the resources of the area and their current uses, identify  
10                   conflicts created by those uses, and propose solutions to the  
11                   conflicts; and
- 12          (7)    Consider the adjacent Horsepasture River area which is currently  
13                   designated a State natural river.

14           Sec. 2. The Department of Natural Resources and Community  
15 Development, Division of Parks and Recreation, shall report the results of its study  
16 and preliminary planning to the 1989 General Assembly by January 31, 1991. The  
17 Division shall deliver copies of the report to the President of the Senate, the Speaker  
18 of the House of Representatives, the President Pro Tempore of the Senate, and the  
19 Speaker Pro Tempore of the House of Representatives. The Division shall also  
20 deliver copies of its report to the Governor, and to the cochairmen of the Study  
21 Commission on State Parks and Recreation Areas if that Study Commission is in  
22 existence at that time.

23           Sec. 3. There is appropriated from the General Fund to the Department  
24 of Natural Resources and Community Development, Division of Parks and  
25 Recreation, \$75,000 for the 1989-90 fiscal year to be used to conduct the study and  
26 preliminary planning required by Sections 1 and 2 of this act.

27           Sec. 4. This act shall become effective July 1, 1989.

- 1           (2) Provide for public participation in the study to obtain views and  
2           information on public needs and desires regarding protection and  
3           use of the area;
- 4           (3) Make recommendations for the protection of natural resources of  
5           the area;
- 6           (4) Make recommendations for recreational use of the area;
- 7           (5) Consider the presence and jurisdiction of other natural resource  
8           agencies in the area;
- 9           (6) Describe the resources of the area and their current uses, identify  
10          conflicts created by those uses, and propose solutions to the  
11          conflicts; and
- 12          (7) Consider the adjacent Horsepasture River area which is currently  
13          designated a State natural river.

14          Sec. 2. The Department of Natural Resources and Community  
15          Development, Division of Parks and Recreation, shall report the results of its study  
16          and preliminary planning to the 1989 General Assembly by January 31, 1991. The  
17          Division shall deliver copies of the report to the President of the Senate, the Speaker  
18          of the House of Representatives, the President Pro Tempore of the Senate, and the  
19          Speaker Pro Tempore of the House of Representatives. The Division shall also  
20          deliver copies of its report to the Governor, and to the cochairmen of the Study  
21          Commission on State Parks and Recreation Areas if that Study Commission is in  
22          existence at that time.

23          Sec. 3. There is appropriated from the General Fund to the Department  
24          of Natural Resources and Community Development, Division of Parks and  
25          Recreation, \$75,000 for the 1989-90 fiscal year to be used to conduct the study and  
26          preliminary planning required by Sections 1 and 2 of this act.

27          Sec. 4. This act shall become effective July 1, 1989.



**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1989**

**S**

**1**

**SENATE BILL 1182**

Short Title: Yadkin River LRC Study.

(Public)

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Sponsors: Senators Kaplan; Allran, Bryan, Cochrane, Goldston, Kincaid, Sands, Shaw, Simpson, Smith, and Ward.

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Referred to: Rules & Operations of the Senate.

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May 4, 1989

1

**A BILL TO BE ENTITLED**

2 **AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO**  
3 **STUDY THE POTENTIAL USES AND THE PROTECTION OF THE YADKIN**  
4 **RIVER.**

5 The General Assembly of North Carolina enacts:

6           Section 1. The Legislative Research Commission may study the potential  
7 uses and the protection of the Yadkin River.

8           Sec. 2. The Commission shall make a final report of its recommendations  
9 to the General Assembly on or before the first day of the 1991 Session of the General  
10 Assembly and may make an interim report to the 1990 Session of the General  
11 Assembly.

12           Sec. 3. This act is effective upon ratification.

## APPENDIX B

### MEMBERSHIP OF LRC COMMITTEE ON SURFACE WATER

#### **LRC Member in Charge:**

Sen. Lura S. Tally  
3100 Tallywood Drive  
Fayetteville, NC 28303  
(919)484-4868

#### **Members**

##### **President Pro Tem's Appointments**

Sen. Franklin L. 'Frank' Block  
Co-Chairman  
520 Princess Street  
Wilmington, NC 28401  
(919)763-3463

Sen. Betsy L. Cochrane  
Box 517  
Advance, NC 27006  
(919)998-8893

Mr. Charles 'Charlie' Holt  
Holt Oil Company, Inc.  
2709 Clinton Road  
Fayetteville, NC 28301  
(919)483-5137

Sen. Joseph E. 'Joe' Johnson  
P.O. Box 31507  
Raleigh, NC 27622  
(919)787-5200

Dr. David Moreau  
City and Regional  
Planning Department  
UNC - Chapel Hill  
Chapel Hill, NC 27514  
(919)962-5204

Sen. Kenneth C. Royall, Jr.  
P.O. Box 51218  
Durham, NC 27717-1218  
(919)489-9191

Sen. J. K. Sherron, Jr.  
4208 Six Forks Road, Suite 302  
Raleigh, NC 27609

##### **Speaker's Appointments**

Rep. Harry E. Payne, Jr.  
Co-Chairman  
P.O. Box 1147  
Wilmington, NC 28402  
(919)762-5505

Rep. R. D. 'Don' Beard  
2918 Skye Drive  
Fayetteville, NC 28303  
(919)484-9935

Rep. Arlie F. Culp  
Route 2, Box 529  
Ramseur, NC 27316  
(919)824-2218

Rep. Julia C. Howard  
203 Magnolia Avenue  
Mocksville, NC 27028  
(704)634-3538

Mr. Frank Kime  
Piedmont Triad Water Authority  
2216 W. Meadowview Road  
Greensboro, NC 27407

Rep. E. A. 'Alex' Warner, Jr.  
3610 Frierson Street  
Hope Mills, NC 28348  
(919)424-5350

Rep. Peggy Wilson  
214 W. Hunter Street  
Madison, NC 27025

(919)781-8721

**Staff:**  
Emily Johnson  
Bill Drafting Division  
(919)733-6660

(919)548-6075

**Clerk:**  
Janet Puryear  
Legislative Building, Room 2009  
O:(919)733-5963  
H:(919)552-8224

## APPENDIX C

### STATUTES ON SURFACE WATER

#### **§ 153A-285. Prerequisites to acquisition of water, water rights, etc.**

The word "authority" as used in G.S. 162A-7(b) through (f) includes counties and cities acting jointly or through joint agencies to provide water services or sewer services or both. No county or city acting jointly and no joint agency may divert water from one stream or river to another nor institute any proceeding in the nature of eminent domain to acquire water, water rights, or lands having water rights attached thereto until the diversion or acquisition is authorized by a certificate from the Board of Water and Air Resources pursuant to G.S. 162A-7. Any proceeding to secure a certificate from the Board shall be governed by the provisions of G.S. 162A-7(b) through 162A-7(f).

#### **§ 153A-286. Law with respect to riparian rights not changed.**

Nothing in this Article changes or modifies existing common or statute law with respect to the relative rights of riparian owners or others concerning the use of or disposal of water in the streams of North Carolina.

#### **§ 153A-287. Diversion of water from certain river basins prohibited.**

Diversions of water from any major river basin the main stream of which downstream from the point of the diversion is not located entirely in North Carolina is prohibited except when the diversion is now permitted by law.

#### **§ 162A-7. Prerequisites to acquisition of water, etc., by eminent domain.**

(a) No authority shall institute proceedings in the nature of eminent domain to acquire water, water rights, or lands having water rights attached thereto without first securing from the Board a certificate authorizing such acquisition.

(b) An authority seeking such certificate shall petition the Board therefor in writing, which petition shall include a description of the waters or water rights involved, the plans for impounding or diverting such waters, and the names of riparian owners affected thereby insofar as known to the authority. Upon receipt of such petition, the Board shall hold public hearing thereon after giving at least 30 days' written notice thereof to known affected riparian owners and notice published at least once each week

for two successive weeks in a newspaper or newspapers of general circulation in each county in which lower riparian lands lie.

(c) The Board shall issue certificates only to projects which it finds to be consistent with the maximum beneficial use of the water resources in the State and shall give paramount consideration to the statewide effect of the proposed project rather than its purely local or regional effect. In making this determination, the Board shall specifically consider:

- (1) The necessity of the proposed project;
- (2) Whether the proposed project will promote and increase the storage and conservation of water;
- (3) The extent of the probable detriment to be caused by the proposed project to the present beneficial use of water in the affected watershed and resulting damages to present beneficial users;
- (4) The extent of the probable detriment to be caused by the proposed project to the potential beneficial use of water on the affected watershed;
- (5) The feasibility of alternative sources of supply to the petitioning authority and the comparative cost thereof;
- (6) The extent of the probable detriment to be caused by the use of alternative sources of supply to present and potential beneficial use of water on the watershed or watersheds affected by such alternative sources of supply;
- (7) All other factors as will, in the Board's opinion, produce the maximum beneficial use of water for all in all areas of the State affected by the proposed project or alternatives thereto.

Upon the considerations above set forth, the Board may grant its certificate in whole or in part or it may refuse the same.

(d) At the public hearing provided for in subsection (b) above the Board shall hear evidence from the authority and any others in support of its petition and from all persons opposed thereto.

(e) At any hearing authorized by this section, the Board shall have power to administer oaths; to take testimony; to issue subpoenas and compel the attendance of witnesses, which shall be served in the same manner as subpoenas issued by the superior courts of the State; and to order the taking of depositions in the same manner as depositions are taken for use in the superior court.

(f) Any final order or decision of the Board in administering the provisions of this section shall be subject to judicial review at the instance of any person or authority aggrieved by such order or decision by complying with the provisions of Article 33, Chapter 143 of the General Statutes of North Carolina.