

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 151

Environment and Natural Resources Committee Substitute Adopted 5/14/91

Short Title: Protect Natural/Scenic Rivers.

(Public)

Sponsors:

Referred to:

February 20, 1991

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE NATURAL AND SCENIC RIVERS SYSTEM AND TO REQUIRE ZONING AND OTHER LAND-USE CONTROLS TO PROTECT DESIGNATED RIVERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-32 reads as rewritten:

"§ 113A-32. Declaration of purpose.

The purpose of this Article is to implement the policy as set out in G.S. 113A-31 by instituting a North Carolina ~~natural and scenic rivers system~~, Natural and Scenic Rivers System, and by prescribing methods for inclusion of components to the ~~system~~ System from time to time."

Sec. 2. G.S. 113A-33 reads as rewritten:

"§ 113A-33. Definitions.

As used in this Article, unless the context requires otherwise:

(1) 'Component' means any river or segment approved by the General Assembly for inclusion in the System.

~~(1)~~(2) 'Department' means the Department of Environment, Health, and Natural Resources.

~~(2)~~(3) 'Free-flowing,' as applied to any river or ~~section of a river~~, ~~segment~~, means existing or flowing in natural condition without substantial impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence of low dams, diversion works, and other minor structures at the time any river is proposed for

1 inclusion in the ~~North Carolina natural and scenic rivers system~~ System
 2 shall not automatically bar its consideration for such ~~inclusion~~.
 3 ~~Provided, inclusion, provided~~ that this shall not be construed to
 4 authorize, intend, or encourage future construction of such structures
 5 within components of the ~~system~~ System.

6 (3)(4) 'River' means a typically flowing body of ~~water or estuary or a section,~~
 7 ~~portion, or tributary thereof,~~ water, including rivers, streams, creeks,
 8 runs, kills, rills, estuaries, and small lakes.

9 (4)(5) 'Road' means public or private highway, hard-surface road, dirt road,
 10 or railroad.

11 (5)(6) 'Scenic easement' means a perpetual easement in land which (i) is held
 12 for the benefit of the people of North Carolina, (ii) is specifically
 13 enforceable by its holder or beneficiary, and (iii) limits or obligates the
 14 holder of the servient estate, his heirs, and assigns with respect to their
 15 use and management of the land and activities conducted thereon. The
 16 object of such limitations and obligations is the maintenance or
 17 enhancement of the natural beauty of the land in question or of the
 18 areas affected by it.

19 (6)(7) 'Secretary' means the Secretary of ~~the Department of~~ Environment,
 20 Health, and Natural Resources.

21 (8) 'Segment' means any portion or part of a river having specified
 22 upstream and downstream boundaries.

23 (9) 'System' means the North Carolina Natural and Scenic Rivers
 24 System."

25 Sec. 3. G.S. 113A-34 reads as rewritten:

26 "**§ 113A-34. Types of scenic rivers.**

27 The following types of rivers and segments are eligible for inclusion in the North
 28 Carolina ~~natural and scenic rivers system~~ Natural and Scenic Rivers System:

29 (1) Class I. ~~Natural river areas~~ River Areas. Those free-flowing rivers or
 30 segments ~~of rivers~~ and adjacent lands existing in a natural condition.
 31 Those rivers or segments ~~of rivers~~ that are free of man-made
 32 impoundments and generally inaccessible except by trail, with the
 33 lands within the boundaries essentially primitive and the waters
 34 essentially unpolluted. ~~These~~ Natural River Areas represent vestiges of
 35 primitive America.

36 (2) Class II. ~~Scenic river areas~~ River Areas. Those rivers or segments ~~of~~
 37 ~~rivers~~ that are largely free of impoundments, with the lands within the
 38 boundaries largely primitive and largely undeveloped, but accessible in
 39 places by roads. Scenic River Areas provide beautiful views and
 40 aesthetically pleasing vistas that may include forested landscapes and
 41 agricultural or pastoral areas.

42 (3) Class III. ~~Recreational river areas~~ River Areas. Those rivers or
 43 segments ~~of rivers~~ that offer outstanding recreation and scenic values
 44 and that are largely free of impoundments. They may have some

1 development along their shorelines and have more extensive public
 2 access than ~~natural or scenic river segments.~~ Natural River Areas or
 3 Scenic River Areas. ~~Recreational river segments.~~ River Areas may also
 4 link two or more ~~natural and/or scenic river segments.~~ Natural River
 5 Areas or Scenic River Areas to provide a contiguous designated ~~river~~
 6 ~~area.~~ component. ~~No provision of this section shall interfere with flood~~
 7 ~~control measures; provided that recreational river users can continue to~~
 8 ~~travel the river."~~

9 Sec. 4. G.S. 113A-35 reads as rewritten:

10 **"§ 113A-35. Criteria for ~~system.~~ System.**

11 For the inclusion of any river or segment ~~of river~~ in the ~~natural and scenic river system,~~
 12 North Carolina Natural and Scenic River System, the following criteria must be present:

- 13 (1) River or segment length —must be no less than one mile.
 14 (2) ~~Boundaries~~ —of the system shall be the visual horizon or such distance
 15 ~~from each shoreline as may be determined to be necessary by the~~
 16 ~~Secretary, but shall not be less than 20 feet.~~
 17 (3) Water quality —shall not be less than that required for Class 'C' waters
 18 as established by the North Carolina Environmental Management
 19 Commission.
 20 (4) Water flow —shall be sufficient to assure a continuous flow and shall
 21 not be subjected to withdrawal or regulation to the extent of
 22 substantially altering the natural ecology of the stream.
 23 (5) Public access —shall be ~~limited,~~ limited as provided in G.S. 113A-34.
 24 ~~but~~ Public access to a component may be permitted to the extent
 25 deemed ~~proper~~ appropriate by the ~~Secretary, and in keeping~~ Secretary
 26 and consistent with the ~~any~~ property interest acquired by the
 27 Department and the policies and purpose of this Article."

28 Sec. 5. G.S. 113A-35.1 reads as rewritten:

29 **"§ 113A-35.1. Components of ~~system;~~ System; management plan; acquisition of**
 30 **land and easements; inclusion in ~~national system.~~ National System.**

31 (a) That segment of the south fork of the New River extending from its
 32 confluence with Dog Creek in Ashe County downstream through Ashe and Alleghany
 33 Counties to its confluence with the north fork of the New River and the main fork of the
 34 New River in Ashe and Alleghany Counties downstream to the Virginia State line ~~shall~~
 35 ~~be a scenic river area and shall be included in the North Carolina Natural and Scenic Rivers~~
 36 ~~System.~~ is hereby designated a Scenic River Area within the North Carolina Natural and
 37 Scenic Rivers System.

38 (b) The Department shall prepare and implement a management plan for ~~said river~~
 39 ~~section.~~ the New River Scenic River Area. This management plan shall recognize and
 40 provide for the protection of the existing undeveloped scenic and pastoral features of the
 41 river. Furthermore, it shall specifically provide for continued use of the lands adjacent
 42 to the river for normal agricultural activities, including, but not limited to, cultivation of
 43 crops, raising of cattle, growing of trees and other practices necessary to such
 44 agricultural pursuits.

1 (c) For purposes of implementing this section and the management plan, the
2 Department is authorized to acquire lands or interests in lands not to exceed 2,200 acres,
3 to acquire such lands in fee simple or to acquire such interests in lands as easements, to
4 provide for protection of scenic values as described in G.S. 113A-38, and to provide for
5 public access. Easements obtained for the purpose of implementing this section and the
6 management plan shall not abridge the water rights being exercised on ~~May 26, 1975.~~
7 May 1975.

8 (d) Should the Governor seek inclusion of ~~the said river segment~~ the New River
9 Scenic River Area in the National System of Wild and Scenic Rivers System pursuant to
10 the Wild and Scenic Rivers Act, Pub. L. No. 90-542, 82 Stat. 906, 16 U.S.C. § 1271 et
11 seq., by action of the Secretary of Interior, such inclusion shall be at no cost to the federal
12 government, as prescribed in the National United States as required by the Wild and Scenic
13 Rivers Act, and therefore shall be under the terms described in this section of the North
14 Carolina Wild and Scenic Rivers Act and in managed pursuant to this Article and the
15 management plan developed pursuant thereto.

16 (b) (e) The Department shall prepare an annual status report on the progress
17 made in implementing the management plan required pursuant to subsection (a)-(b) of
18 this section and the progress in implementing the management plan submitted by the
19 Department in support of the request to the Secretary of the Interior for the river's
20 inclusion of the New River Scenic River Area in the National System of Wild and Scenic
21 Rivers. Rivers System. The status report shall evaluate the extent to which current
22 implementation of the management plans has in fact maintained the river's free-flowing
23 state of the New River Scenic River Area and protected the scenic conditions of the river
24 the New River Scenic River Area and the adjacent lands consistent with the policies and
25 purpose of this Article. If implementation of either management plan is incomplete at
26 the time the report is filed, the Secretary shall submit a schedule for implementing the
27 remainder of the plan. The status report shall be filed with the General Assembly no
28 later than January 15 of each year, beginning in 1990. 15 January of each year beginning 15
29 January 1990."

30 Sec. 6. G.S. 113A-35.2 reads as rewritten:

31 "**§ 113A-35.2. Additional ~~components.~~ components of the System.**

32 (a) That segment of the Linville River beginning at the State Highway 183 bridge
33 over the Linville River and extending approximately 13 miles downstream to the
34 boundary between the United States Forest Service lands and lands of Duke Power
35 Company (latitude 35° 50' 20") ~~shall be a natural river area and shall be included in~~
36 hereby designated a Natural River Area within the North Carolina Natural and Scenic
37 River System.

38 (b) That segment of the Horsepasture River in Transylvania County extending
39 downstream from Bohaynee Road (N.C. 281) to Lake Jocassee ~~shall be a natural river and~~
40 shall be included in is hereby designated a Natural River Area within the North Carolina
41 Natural and Scenic Rivers System.

42 (c) That segment of the Lumber River extending from county road 1412 in
43 Scotland County downstream to the North Carolina-South Carolina state line, a distance
44 of approximately 102 river miles, ~~shall be included in the~~ is hereby designated a

1 component of the North Carolina Natural and Scenic Rivers System ~~and classified as~~
2 follows: the segment from county road 1412 in Scotland County downstream to the
3 junction of the Lumber River and Back Swamp ~~shall be classified as scenic; is designated~~
4 a Scenic River Area; the segment from the junction of the Lumber River and Back
5 Swamp downstream to the junction of the Lumber River and Jacob Branch and the river
6 within the Fair Bluff town limits ~~shall be classified as recreational; is designated a~~
7 Recreational River Area; and the segment from the junction of the Lumber River and
8 Jacob Branch downstream to the North Carolina-South Carolina state line, excepting the
9 Fair Bluff town limits, ~~shall be classified as natural. is designated a Natural River Area."~~

10 Sec. 7. G.S. 113A-36 reads as rewritten:

11 "**§ 113A-36. Administrative agency; federal grants; additions to the system;**
12 **regulations. System.**

13 (a) The Department ~~is the agency of the State of North Carolina with the duties~~
14 ~~and responsibilities to~~ shall administer and control the North Carolina natural and scenic
15 rivers system. Natural and Scenic Rivers System.

16 (b) The Department ~~shall be the agency of the State with the authority to accept~~
17 ~~federal grants of assistance in planning, developing (which would include the may~~
18 accept grants from the United States or from any other source for use in planning,
19 development, acquisition of land or an interest in land), land, and administering the
20 natural and scenic rivers system. System.

21 (c) The Secretary of the Department ~~shall study and from time to time submit to~~
22 ~~the Governor and to the General Assembly proposals for the additions to the system of~~
23 ~~rivers and segments of rivers which, in his judgment, fall within one or more of the~~
24 ~~categories set out in G.S. 113A-34. Each proposal shall specify the category of the~~
25 ~~proposed addition and shall be accompanied by a detailed report of the facts which, in~~
26 ~~the Secretary's judgment, makes the area a worthy addition to the system. The Secretary~~
27 shall periodically assess the condition of the rivers within the State and shall determine
28 whether any river or segment should be designated a component of the System. The
29 Secretary may propose that a river or segment be designated a component of the System
30 by submitting to the Governor and to the General Assembly a proposal which includes
31 the following:

32 (1) A description of the river or segment;

33 (2) The proposed classification of the river or segment under G.S. 113A-
34 34;

35 (3) An analysis of the manner and extent to which designation of the river
36 or segment as a component of the System would further the policies
37 and purpose of this Article;

38 (4) An analysis of the feasibility of including the river or segment in the
39 System;

40 (5) An analysis of the manner and extent to which designation of the river
41 or segment as a component of the System would compliment and be
42 consistent with the State Parks System Plan prepared and adopted
43 pursuant to G.S. 113-44.11;

1 (6) An estimate of the cost of planning, acquisition of land and interests in
2 land, capital improvements, maintenance, operations, management,
3 and administration;

4 (7) Local government action necessary to protect the river or segment; and

5 (8) Any other relevant information.

6 (d) ~~Before submitting any proposal to the Governor or and the General Assembly~~
7 ~~for the addition to the system of a river or segment of a river, under this section, the~~
8 ~~Secretary or his authorized representative, shall hold a public hearing in the county or~~
9 ~~counties where said river or segment of river is situated. each county through which or along~~
10 ~~the border of which any part of the river or segment that is proposed for designation as a~~
11 ~~component flows. Notice of such public hearing shall be given by publishing a notice~~
12 ~~once each week for two consecutive weeks in a newspaper having general circulation in~~
13 ~~the county where said the hearing is to be held, the second of said notices notice~~
14 ~~appearing not less than 10 days before said the hearing. Any person attending said the~~
15 ~~hearing shall be given an opportunity to be heard. Notwithstanding the provisions of the~~
16 ~~foregoing, no No public hearing shall be required with respect to a river or segment~~
17 ~~bounded solely by the property of one owner, who consents in writing to the addition of~~
18 ~~such river or segment to the system. System.~~

19 ~~The Department shall also conduct an investigation on the feasibility of the inclusion~~
20 ~~of a river or a segment of river within the system and file a written report with the~~
21 ~~Governor when submitting a proposal.~~

22 (e) ~~The Department shall also, before submitting such a proposal to the Governor or the~~
23 ~~General Assembly, Before proposing to the Governor and the General Assembly that a~~
24 ~~river or segment be included in the System, the Secretary shall notify in writing the~~
25 ~~owner, lessee, or tenant of any lands adjoining said the river or segment of river of its the~~
26 ~~intention to make such proposal. In the event the Department, Secretary, after due~~
27 ~~diligence, is unable to determine the owner or lessee of any such land, the Department~~
28 ~~may Secretary shall publish a notice for four successive weeks in a newspaper having~~
29 ~~general circulation in the county where the land is situated of its the intention to make a~~
30 ~~proposal to the Governor or and to the General Assembly for the addition of a river or~~
31 ~~segment of river to the system. that the river or segment be included in the System.~~

32 (e) (f) ~~Upon receipt of a request in the form of a resolution from the commissioners~~
33 ~~of the county or counties in which a river or segment is located and upon studying the~~
34 ~~river or segment and determining that it meets the criteria set forth in G.S. 113A-35, the~~
35 ~~Secretary may designate the segment a potential component of the natural and scenic~~
36 ~~rivers system. System. The designation as a potential component shall be transmitted to~~
37 ~~the Governor and all appropriate State agencies. Any river or segment so designated is~~
38 ~~subject to the provisions of this Article and rules adopted pursuant to this Article~~
39 ~~applicable to designated rivers, components, except for acquisition by condemnation or~~
40 ~~otherwise, and to any rules adopted pursuant to this Article. by any other means. A~~
41 ~~designation of a river or segment as a potential component shall be temporary and shall~~
42 ~~expire after two years. The Secretary shall make a full report and, if appropriate, a proposal~~
43 ~~for an addition to the natural and scenic rivers system to the General Assembly within 90 days~~
44 ~~after the convening of the next session following issuance of the designation, and the~~

1 (g) Within one year after designating a river or segment as a potential component, the
2 Secretary shall either remove the designation as a potential component or shall propose
3 that the designation be made permanent pursuant to G.S. 113A-36. The General
4 Assembly shall determine whether to designate the river or segment as a component of
5 the natural and scenic rivers system. System. Notwithstanding any rule or resolution to the
6 contrary, proposed legislation to designate a river or segment as a component of the
7 System may be introduced and considered at any session of the General Assembly. If
8 the next session of the General Assembly fails to take affirmative action on the
9 designation, the designation as a potential component shall expire.

10 (d) ~~The Department may adopt rules to implement this Article."~~

11 Sec. 8. G.S. 113A-37 reads as rewritten:

12 **"§ 113A-37. Raising the status of an area.**

13 ~~Whenever in the judgment of the Secretary of the Department a scenic river segment a~~
14 ~~component has been sufficiently restored and enhanced in its natural scenic natural,~~
15 ~~scenic, and recreational qualities, such segment qualities so that a higher classification~~
16 ~~under G.S. 113A-34 is more appropriate, such component may be reclassified with the~~
17 ~~approval of the Department, to a natural river area status by the Secretary to a higher~~
18 ~~classification and thereafter administered accordingly."~~

19 Sec. 9. G.S. 113A-38 reads as rewritten:

20 **"§ 113A-38. Land acquisition.**

21 ~~(a) The Department of Administration is authorized to acquire for the~~
22 ~~Department, within the boundaries of a river or segment of river as set out in G.S.~~
23 ~~113A-35 on behalf of the State of North Carolina, lands in fee title or a lesser interest in~~
24 ~~land, preferably 'scenic easements.' Upon the recommendation of the Secretary, the~~
25 ~~Department of Administration is authorized to acquire lands necessary and appropriate~~
26 ~~to implement the policies and purpose of this Article. Lands may be acquired in fee~~
27 ~~simple or in any lesser interest. Wherever possible and cost-effective, the Department~~
28 ~~of Administration shall acquire a scenic easement rather than fee simple title.~~
29 ~~Acquisition of land or interest therein may be by donation, purchase with donated or~~
30 ~~appropriated funds, exchange exchange, or otherwise.~~

31 ~~(b) The Department of Administration in In acquiring real property or a property~~
32 ~~interest therein as set out in this Article section, the Department of Administration shall~~
33 ~~have and may exercise the power of eminent domain in accordance with Article 3 of~~
34 ~~Chapter 40A of the General Statutes."~~

35 Sec. 10. G.S. 113A-39 reads as rewritten:

36 **"§ 113A-39. Claim and allowance of charitable deduction for contribution or gift of**
37 **easement.**

38 ~~The contribution or donation of a 'scenic easement,' right-of-way or any other easement~~
39 ~~or scenic easement, right-of-way, any other easement, land, or any interest in land to~~
40 ~~the State of North Carolina, as provided in this Article, shall be deemed a contribution~~
41 ~~to the State of North Carolina within the provisions of G.S. 105-130.9 and 105-147(16).~~
42 ~~The value of the contribution or donation shall be the fair market value of the easement~~
43 ~~or other interest in land when the contribution or donation is made."~~

44 Sec. 11. G.S. 113A-40 reads as rewritten:

1 **"§ 113A-40. Component as part of State park, wildlife refuge, etc.**

2 Any component of the ~~State natural and scenic rivers system that is or shall become~~
3 System that is or becomes a part of any State park, wildlife refuge, or state-owned area
4 shall be subject to the provisions of this Article and ~~the Articles under which the other areas~~
5 may be administered, and Article, rules adopted pursuant to this Article, all other
6 applicable provisions of law and any applicable local ordinances and, in the case of a
7 conflict between the provisions of these Articles applicable provisions, the more restrictive
8 provisions shall apply."

9 Sec. 12. G.S. 113A-41 reads as rewritten:

10 **"§ 113A-41. Component as part of ~~national wild and scenic river system.~~ National**
11 **Wild and Scenic Rivers System.**

12 Nothing in this Article shall preclude a river or segment ~~of a river~~ from becoming
13 part of the ~~national wild and scenic river system.~~ National Wild and Scenic Rivers System.
14 The Secretary ~~of the Department is directed to~~ shall encourage and assist any federal
15 studies for the inclusion of North Carolina rivers in the national system. The Secretary
16 may enter into cooperative agreements for joint federal-state administration of a North
17 Carolina river or segment ~~of river.~~ Provided, provided that such agreements relating to
18 water and land use are not less restrictive than the requirements of this Article."

19 Sec. 13. G.S. 113A-43 reads as rewritten:

20 **"§ 113A-43. Authorization of advances.**

21 The Department of Administration is hereby authorized to advance from land-
22 purchase appropriations necessary amounts for the purchase of land in those cases
23 where reimbursement will be ~~later effected by the Bureau of Outdoor Recreation of the~~
24 made by the National Park Service or the United States Department of the Interior."

25 Sec. 14. G.S. 113A-44 reads as rewritten:

26 **"§ 113A-44. Restrictions on ~~project works on natural or scenic river.~~ projects in**
27 **components.**

28 (a) Every State agency shall act in a manner consistent with the policies and
29 purpose of this Article and shall take those steps necessary to protect and enhance the
30 natural, scenic, and recreational qualities of components of the System.

31 (b) The ~~State~~ North Carolina Utilities Commission may not permit the
32 construction of any dam, water conduit, reservoir, ~~powerhouse~~ powerhouse, transmission
33 line, or any other project works on or directly affecting any river that is designated as a
34 component or potential component of the State Natural and Scenic Rivers System.
35 component. No department or agency of the State may assist by loan, grant, license,
36 permit, or otherwise in the construction of any ~~water resources~~ project that would have a
37 direct and adverse effect on any ~~river that is designated as a component or potential~~
38 component of the State Natural and Scenic Rivers System. component. This section shall
39 not, however, preclude licensing of or assistance to a development below or above a
40 ~~designated component~~ or potential component. No department or agency of the State
41 may recommend authorization of any ~~water resources~~ project that would have a direct
42 and adverse effect on any ~~river that is designated as a component or potential component of~~
43 the State Natural and Scenic Rivers System, component, or request appropriations to begin
44 construction of any such project, regardless of when authorized, without advising the

1 Secretary in writing of its intention to do so at least 60 days in ~~advance~~ advance of
2 taking such action. Such ~~A~~ department or agency making such recommendation or
3 request shall submit a written impact statement to the General Assembly to accompany
4 the recommendation or request specifically describing how construction of the project
5 would be in conflict with the ~~purposes of this act~~ policies and purpose of this Article and
6 how it would affect the component or potential component."

7 Sec. 15. Article 3 of Chapter 113A of the General Statutes is amended by
8 adding a new section to read:

9 **"§ 113A-45. Land-use controls.**

10 (a) In addition to the acquisition of lands in fee simple or lesser interest as
11 authorized by G.S. 113A-38, land along components may be protected by land-use
12 controls that regulate the use and development of land along the river corridor. The
13 Department shall adopt land-use rules to establish minimum standards for use by units
14 of local government in adopting ordinances to control the use of land along components.

15 (b) For rivers or segments included in the System after 1 July 1991, each unit of
16 local government with jurisdiction over land along rivers or segments has a two-year
17 period after designation to certify to the Department that land-use controls in effect in
18 its jurisdiction are at least as restrictive as the minimum standards established pursuant
19 to subsection (a) of this section. Land-use controls adopted pursuant to this section
20 shall be designed to affect the minimum amount of land necessary to protect the river
21 corridor and to allow compatible uses as determined by the Department. Certification
22 shall be accompanied by a copy of the ordinance and a zoning or other land-use control
23 map.

24 (c) A designation as a component shall continue in effect if land-use controls are
25 adopted, as required by subsection (b) of this section, by a unit or units of local
26 government having jurisdiction over land adjacent to either side of a river or segment
27 designated as a component, or any part thereof that meets the minimum length criteria
28 set out in G.S. 113A-35, and so long as such land-use controls remain in force.

29 (d) Failure to meet the requirements of subsections (b) and (c) of this section
30 shall result in the repeal of the designation of the river or segment, or such part of a
31 river or segment for which such requirements are not met, as a component."

32 Sec. 16. Article 3 of Chapter 113A of the General Statutes is amended by
33 adding a new section to read:

34 **"§ 113A-46. Delegation of powers and duties by the Secretary; adoption of rules.**

35 (a) The Secretary may delegate any power or duty under this Article to
36 appropriate officials of the Department.

37 (b) The Department may adopt rules to implement this Article pursuant to
38 Chapter 150B of the General Statutes."

39 Sec. 17. This act becomes effective 1 October 1991.