

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

H

5

HOUSE BILL 1099  
Committee Substitute Favorable 5/7/09  
Committee Substitute #2 Favorable 5/12/09  
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted  
8/4/09  
Fifth Edition Engrossed 8/5/09

Short Title: Amend Environmental Laws 2009.

(Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

1 AN ACT TO AMEND CERTAIN ENVIRONMENTAL LAWS TO: (1) EXTEND BY ONE  
2 YEAR THE IMPLEMENTATION OF WATER SYSTEM EFFICIENCY CRITERIA FOR  
3 ELIGIBILITY FOR STATE WATER INFRASTRUCTURE FUNDS; (2) PROHIBIT THE  
4 USE OF HIGH ARSENIC CONTENT GLASS BEADS WHEN MARKING STATE OR  
5 MUNICIPAL ROADS OR PUBLIC VEHICULAR AREAS; (3) AMEND THE  
6 BERNARD ALLEN MEMORIAL EMERGENCY DRINKING WATER FUND; (4)  
7 PROVIDE THAT CITY AND COUNTY BUILDING INSPECTORS MAY RELY UPON  
8 A THIRD-PARTY CERTIFICATION FOR PARKING LOTS AND ANY  
9 BIORETENTION AREAS DESIGNED AND CONSTRUCTED TO COMPLY WITH  
10 G.S. 113A-71; (5) MODIFY THE NUTRIENT MANAGEMENT STRATEGY AND  
11 ADOPT A SEDIMENTATION STRATEGY FOR CERTAIN DRINKING WATER  
12 SUPPLY RESERVOIRS; (6) PROTECT AND RESTORE WATER QUALITY AND  
13 QUANTITY IN THE UPPER NEUSE RIVER BASIN, FALLS LAKE, AND OTHER  
14 DRINKING WATER SUPPLY RESERVOIRS BY DIRECTING THE  
15 ENVIRONMENTAL MANAGEMENT COMMISSION TO PROVIDE CREDIT TO  
16 LOCAL GOVERNMENTS, LANDOWNERS, AND OTHERS WHO REDUCE WATER  
17 POLLUTION IN THE UPPER NEUSE RIVER BASIN BEFORE PERMANENT RULES  
18 ARE ADOPTED; (7) DIRECT THE REVENUE LAWS STUDY COMMITTEE AND  
19 THE ENVIRONMENTAL REVIEW COMMISSION TO CONDUCT A STUDY OF  
20 REVENUE GENERATING OPPORTUNITIES ASSOCIATED WITH ENTITIES USING  
21 CERTAIN NATURAL RESOURCES OF THE STATE IN ORDER TO FUND  
22 ACTIVITIES THAT WILL PROTECT AND ENHANCE PUBLIC HEALTH AND THE  
23 ENVIRONMENT; (8) LIMIT TRANSFERS OF WATER FROM THE CATAWBA  
24 RIVER BASIN UNDER THE CONCORD AND KANNAPOLIS INTERBASIN  
25 TRANSFER CERTIFICATE; AND (9) CREATE THE YADKIN RIVER TRUST TO  
26 ACQUIRE AND OPERATE THE YADKIN PROJECT, AN EXISTING  
27 HYDROELECTRIC FACILITY.

28  
29 The General Assembly of North Carolina enacts:

30 **SECTION 1.** Section 21 of S.L. 2008-143 reads as rewritten:

31 **"SECTION 21.** Sections 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 20, and 21 of this  
32 act are effective when this act becomes law. Water Shortage Response Plans revised to comply



\* H 1 0 9 9 - V - 5 \*

1 with G.S. 143-355.2, as enacted by Section 5 of this act, shall be submitted no later than 1 July  
2 2009. Subsection (c) of Section 14 of this act expires when rules adopted pursuant to subsection  
3 (b) of Section 14 of this act become effective. Sections 1, 2, and 19 of this act become effective  
4 1 October 2008. Section 11 of this act becomes effective 1 December 2008 and applies to  
5 offenses committed on or after that date. Section 9 of this act becomes effective ~~1 July 2009.~~  
6 1 July 2009, except that subdivision (1) of subsection (b) of G.S. 143-355.4, as enacted by  
7 Section 9 of this act, becomes effective 1 July 2010."

8 **SECTION 2.(a)** The General Assembly finds and declares that inorganic arsenic is  
9 a hazardous substance and is recognized by the United States Environmental Protection Agency  
10 and the United States Occupational Safety and Health Administration as a human carcinogen;  
11 that release of this substance into the environment may lead to contamination of soil and water;  
12 that the ingestion or inhalation of soil, water, plant material, or animal tissues contaminated  
13 with inorganic arsenic may lead to lung cancer, damage to the nervous system, or, in extreme  
14 cases, death from systemic poisoning; that reflective glass beads are used to reflect light when  
15 applied to roadway markers; that glass beads that contain more than 75 parts per million  
16 inorganic arsenic may represent a danger to workers who handle and apply them and a  
17 contamination potential to soil and water surrounding roadways. The General Assembly  
18 therefore determines that it is in the public interest to prohibit the use of glass beads containing  
19 more than 75 parts per million inorganic arsenic used to reflect light when applied to markings  
20 on roadways.

21 **SECTION 2.(b)** Chapter 136 of the General Statutes is amended by adding a new  
22 section to read:

23 **"§ 136-30.2. Prohibit the use of high content arsenic glass beads in paint used for**  
24 **pavement marking.**

25 No pavement markings shall be placed on or along any road in the State highway system, in  
26 any municipal street system, or on any public vehicular area, as defined in G.S. 20-4.01, that is  
27 made from paint that has been mixed, in whole or in part, with reflective glass beads containing  
28 more than 75 parts per million inorganic arsenic, as determined by the United States  
29 Environmental Protection Agency Method 6010B in conjunction with the United States  
30 Environmental Protection Agency Method 3052 modified."

31 **SECTION 3.** G.S. 87-98 reads as rewritten:

32 **"§ 87-98. Bernard Allen Memorial Emergency Drinking Water Fund.**

33 (a) The Bernard Allen Memorial Emergency Drinking Water Fund is established under  
34 the control and direction of the Department. The Fund shall be a nonreverting, interest-bearing  
35 fund consisting of monies appropriated by the General Assembly or made available to the Fund  
36 from any other source and investment interest credited to the Fund.

37 (b) ~~The Fund may be used to pay for notification, to the extent practicable, of persons~~  
38 ~~aged 18 and older who reside in any dwelling unit, and the senior official in charge of any~~  
39 ~~business, at which drinking water is supplied from a private drinking water well or improved~~  
40 ~~spring that is located within 1,500 feet of, and at risk from, known groundwater contamination.~~  
41 ~~The senior official in charge of the business shall take reasonable measures to notify all~~  
42 ~~employees of the business of the groundwater contamination, including posting a notice of the~~  
43 ~~contamination in a form and at a location that is readily accessible to the employees of the~~  
44 ~~business; the personnel and other direct costs associated with developing regional groundwater~~  
45 quality assessments based on groundwater quality from water supply wells, additional testing  
46 data indicated by emerging contamination issues, and other sources of groundwater data. The  
47 purposes of such groundwater quality assessments shall be to improve public policy for  
48 groundwater protection, to develop groundwater quality plans in accordance with  
49 G.S. 143-215.8A, and to increase public awareness of the quality of the groundwater supply  
50 and the occurrence of groundwater contamination. The Fund may also be used by the  
51 Department to pay the costs of testing of private drinking water wells and improved springs for

1 suspected contamination up to once every three years upon request by a person who uses the  
2 well and for the temporary or permanent provision of alternative drinking water supplies to  
3 persons whose drinking water well or improved spring is contaminated. Under this subsection,  
4 an alternative drinking water supply includes the repair or replacement of a contaminated well  
5 or the connection to a public water supply.

6 (c) Up to fifty percent (50%) of the funds available each year may be allocated to  
7 developing groundwater quality assessments in accordance with subsection (b) of this section  
8 and groundwater quality plans in accordance with G.S. 143-215.8A. The Department shall  
9 disburse monies from the Fund for covering the costs for alternative drinking water supplies  
10 based only on financial need and on the risk to public health posed by groundwater  
11 contamination and shall give priority to the provision of services under this section to instances  
12 when an alternative source of funds is not available. The Fund shall not be used to provide  
13 alternative water supply to households with incomes greater than three hundred percent (300%)  
14 of the current federal poverty level. The Fund may be used to provide alternative drinking  
15 water supplies if the Department determines that the concentration of one or more contaminants  
16 in the private drinking water well or improved spring exceeds the federal maximum  
17 contaminant level, or the federal drinking water action level as defined in 40 Code of Federal  
18 Regulations § 141.1 through § 141.571 (1 July 2007) and 40 Code of Federal Regulations §  
19 143.3 (1 July 2007). For a contaminant for which a federal maximum contaminant level or  
20 drinking water action level has not been established, the State groundwater standard established  
21 by the Environmental Management Commission for the concentration of that contaminant shall  
22 be used to determine whether the Fund may be used to provide alternative drinking water  
23 supplies. The Fund may also be used to provide alternative drinking water supplies as provided  
24 in this section if the Department determines that the concentration of one or more contaminants  
25 in a private drinking water well is increasing over time and that there is a significant risk that  
26 the concentration of a contaminant will exceed the federal maximum contaminant level or  
27 drinking water action level, or the State groundwater standard. A determination of the  
28 concentration of a contaminant shall be based on a sample of water collected from the private  
29 drinking water well within the past 12 months.

30 (c1) In disbursing monies from the ~~Fund~~, Fund for alternative drinking water supplies,  
31 the Department shall give preference to provision of permanent replacement water supplies by  
32 connection to public water supplies and repair or replacement of contaminated wells over the  
33 provision of temporary water supplies. In providing alternative drinking water supplies, the  
34 Department shall give preference to connection to a public water supply system or to  
35 construction of a new private drinking water well over the use of a filtration system if the  
36 Department determines that the costs of periodic required maintenance of the filtration system  
37 would be cost-prohibitive for users of the alternative drinking water supply.

38 (c2) If the Department provides an alternative drinking water supply by extension of a  
39 waterline, the Department may disburse from the Fund no more than ten thousand dollars  
40 (\$10,000) per household or other service connection. No more than one-third of the total cost of  
41 the project may be paid from the ~~Fund~~, Fund for any project totaling more than fifty thousand  
42 dollars (\$50,000). The Department may combine monies from the Fund with monies from other  
43 sources in order to pay the total cost of the project.

44 (c3) The Fund shall be used to provide alternative drinking water supplies only if the  
45 Department determines that the person or persons who are responsible for the contamination of  
46 the private drinking water well is or are not financially viable or cannot be identified or located  
47 and if the Department determines that one of the following applies:

- 48 (1) The contamination of the private drinking water well is naturally occurring.
- 49 (2) The owner of the property on which the private drinking water well is  
50 located did not cause or contribute to the contamination or control the source  
51 of the contamination.

1 (3) The source of the contamination is the application or disposal of a hazardous  
2 substance or pesticide that occurred without the consent of the owner of the  
3 property on which the private drinking water well is located.

4 (c4) The Department may use up to one hundred thousand dollars (\$100,000) of the  
5 monies in the Fund to pay the personnel and other direct costs associated with the  
6 implementation of this section.

7 (c5) The Fund shall not be used for remediation of groundwater contamination.

8 (c6) Nothing in this section expands, contracts, or modifies the obligation of responsible  
9 parties under Article 9 or 10 of Chapter 130A of the General Statutes, this Article, or Article  
10 21A of this Chapter to assess contamination, identify receptors, or remediate groundwater or  
11 soil contamination.

12 (d) The Department shall establish criteria by which the Department is to evaluate  
13 applications and disburse monies from this Fund and may adopt any rules necessary to  
14 implement this section.

15 (e) The Department, in consultation with the Commission for Public Health and local  
16 health departments, shall report no later than 1 October of each year to the Environmental  
17 Review Commission, the House of Representatives and Senate Appropriations Subcommittees  
18 on Natural and Economic Resources, and the Fiscal Research Division of the General  
19 Assembly on the implementation of this section. The report shall include the purpose and  
20 amount of all expenditures from the Fund during the prior fiscal year, a discussion of the  
21 benefits and deficiencies realized as a result of implementation of the section, the progress of  
22 regional groundwater quality assessments and groundwater quality plans, any recommendations  
23 for additional testing parameters for private drinking water wells indicated by regional  
24 groundwater assessments, and may also include recommendations for any legislative action."

25 **SECTION 4.(a)** G.S. 153A-357(d) reads as rewritten:

26 "(d) No permit shall be issued pursuant to subsection (a) of this section for any  
27 land-disturbing activity that is subject to, but does not comply with, the requirements of  
28 G.S. 113A-71. For purposes of this subsection, the inspector may rely upon a third-party  
29 certification, provided by the applicant, that the parking lot and any stormwater bioretention  
30 area are properly designed and constructed to comply with G.S. 113A-71 in accordance with  
31 the guidelines developed by the Department of Environment and Natural Resources.  
32 Certification must be provided under seal by a licensed professional engineer or other licensed  
33 professional who is recognized as having expertise in the design and construction of pervious  
34 parking areas or stormwater bioretention areas, as appropriate."

35 **SECTION 4.(b)** G.S. 160A-417(c) reads as rewritten:

36 "(c) No permit shall be issued pursuant to subsection (a) of this section for any  
37 land-disturbing activity that is subject to, but does not comply with, the requirements of  
38 G.S. 113A-71. For purposes of this subsection, the inspector may rely upon a third-party  
39 certification, provided by the applicant, that the parking lot and any stormwater bioretention  
40 area are properly designed and constructed to comply with G.S. 113A-71 in accordance with  
41 the guidelines developed by the Department of Environment and Natural Resources.  
42 Certification must be provided under seal by a licensed professional engineer or other licensed  
43 professional who is recognized as having expertise in the design and construction of pervious  
44 parking areas or stormwater bioretention areas, as appropriate."

45 **SECTION 5.(a)** Section 3 of S.L. 2005-190, as amended by Section 31 of S.L.  
46 2006-259, reads as rewritten:

47 **"SECTION 3.(a) Applicability of section to certain reservoirs.** – This section applies  
48 only to drinking water supply reservoirs that meet all of the following criteria as of 1 July 2005:

49 (1) The reservoir serves a population greater than 300,000 persons.

50 (2) The Environmental Management Commission has classified all or any part  
51 of the water in the reservoir as a nutrient sensitive water (NSW).

- 1 (3) Water quality monitoring data indicates that water quality in the reservoir  
2 violates the chlorophyll A standard.
- 3 (4) The Division of Water Quality of the Department of Environment and  
4 Natural Resources has not prepared or updated a calibrated nutrient response  
5 model for the reservoir since 1 July 2002.

6 **"SECTION 3.(b) Temporary limitation on increased nutrient loading.** – If the  
7 Environmental Management Commission determines either that water quality in all or in any  
8 part of a drinking water supply reservoir to which this section applies does not meet current  
9 water quality standards or that it is likely that water quality will not meet water quality  
10 standards at any time prior to 1 July 2010, the Commission shall not make any new or  
11 increased nutrient loading allocation to any person who is required to obtain a permit under  
12 G.S. 143-215 for an individual wastewater discharge directly or indirectly into that reservoir.  
13 This limitation on new or increased nutrient loading allocation shall not be construed to  
14 prohibit a person who holds a permit for a wastewater discharge into a drinking water supply  
15 reservoir from purchasing a nutrient loading allocation from another person who holds a permit  
16 for a wastewater discharge into the same drinking water supply reservoir. This subsection  
17 expires with respect to a drinking water supply reservoir when permanent rules adopted by the  
18 Commission to implement the nutrient management strategy for that reservoir become  
19 effective.

20 **"SECTION 3.(c) Nutrient management strategy.** – The Environmental Management  
21 Commission shall develop a nutrient management strategy for drinking water supply reservoirs  
22 to which this section applies by ~~1 July 2009~~ 15 January 2011. The nutrient management  
23 strategy shall be based on a calibrated nutrient response model that meets the requirement of  
24 G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory  
25 measures to achieve the reduction goals. ~~The Commission shall consider the cost of the~~  
26 ~~proposed measures in relation to the effectiveness of the measures.~~ In developing the nutrient  
27 management strategy, the Commission shall consider the effectiveness of measures previously  
28 implemented in the watershed and the cost of the proposed measures in relation to their  
29 effectiveness. These measures could include, but are not limited to, buffers, erosion and  
30 sedimentation control requirements, post-construction stormwater management, agricultural  
31 nutrient reduction measures, the addition of nutrient removal treatment processes to point  
32 source permitted wastewater treatment plants, the removal of point source discharging  
33 wastewater treatments through regionalization and conversion to non-discharge treatment  
34 technologies, measures to address nutrient inputs from on-site wastewater treatment systems,  
35 control of atmospheric deposition, allowing the sale and purchase of nutrient offsets, allowing  
36 trading of nutrient loading allocations and credits for nutrient reductions, and any other  
37 measures that the Commission determines to be necessary to meet the nutrient reduction goals.  
38 To the extent that one or more other State programs already mandate any of these measures, the  
39 nutrient management strategy shall incorporate the mandated measures and any extension of  
40 those measures and any additional measures that may be necessary to achieve the nutrient  
41 reduction goals. In making a nutrient loading allocation to a permit holder, the Commission  
42 shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts  
43 taken by the permit holder to protect water quality prior to the development of the nutrient  
44 management strategy.

45 **"SECTION 3.(d) Eligibility under the Clean Water Revolving Loan and Grant Act.** –  
46 The definitions set out in G.S. 159G-3 apply to this subsection. The operator of a wastewater  
47 treatment works that is owned by an agency of the State may apply for a loan or grant under  
48 Chapter 159G of the General Statutes on the same basis as any other applicant if the operator is  
49 a local government unit and if the local government unit operates the wastewater treatment  
50 works pursuant to a contract with the State agency that contemplates that the local government  
51 unit will eventually acquire ownership of the wastewater treatment works.

1       **"SECTION 3.(e) Implementation; rulemaking.** – The Environmental Management  
2 Commission shall adopt permanent rules to implement the nutrient management strategies  
3 required by this section by ~~1 July 2009~~ 15 January 2011. The rules shall require that reductions  
4 in nutrient loading from all sources begin no later than five years after the rules become  
5 effective. The rules shall require that stormwater management programs to reduce nutrient  
6 loading from new development be implemented no later than 30 months after the rules become  
7 effective.

8       **"SECTION 3.(f) Reports.** – The Environmental Management Commission shall report its  
9 progress in implementing this section to the Environmental Review Commission as a part of  
10 each quarterly report it makes pursuant to G.S. 143B-282(b)."

11       **SECTION 5.(b)** S.L. 2005-190, as amended by Section 31 of S.L. 2006-259, is  
12 amended by adding three new subsections to read:

13       **"SECTION 3.(g) Compensatory mitigation for riparian buffer loss; nutrient offset**  
14 **purchases.** – Compensatory mitigation for riparian buffer loss in the watershed of a drinking  
15 water supply to which this section applies must be performed in the watershed of the drinking  
16 water supply. The Environmental Management Commission may further limit the area in  
17 which compensatory mitigation for riparian buffer loss must be performed in the watershed of a  
18 drinking water supply to which this section applies. Any nutrient offset purchased to offset  
19 loading in the watershed of a drinking water supply to which this section applies may only be  
20 obtained from an offset project located in the watershed of the drinking water supply. The  
21 Environmental Management Commission may further limit the area from which nutrient offsets  
22 may be obtained in the watershed of a drinking water supply to which this section applies.

23       **"SECTION 3.(h) Additional standards for land disturbing activities in the water**  
24 **supply watershed.** – For purposes of this section, "land-disturbing activity" does not include  
25 the land-disturbing activities set out in G.S. 113A-52.01. In addition to any other requirements  
26 of State, federal, and local law, land-disturbing activity in the watershed of the water supply  
27 reservoir to which this section applies shall meet all of the following design standards for  
28 sedimentation and erosion control:

- 29           (1) Erosion and sedimentation control measures, structures, and devices shall be  
30 planned, designed, and constructed to provide protection from the runoff of  
31 the 25-year storm that produces the maximum peak rate of runoff as  
32 calculated according to procedures set out in the United States Department  
33 of Agriculture Soil Conservation Service's "National Engineering Field  
34 Manual for Conservation Practices" or according to procedures adopted by  
35 any other agency of the State or the United States or any generally  
36 recognized organization or association.
- 37           (2) Sediment basins shall be planned, designed, and constructed so that the basin  
38 will have a settling efficiency of at least 70 percent (70%) for the 40 micron  
39 size soil particle transported into the basin by the runoff of the two-year  
40 storm that produces the maximum peak rate of runoff as calculated  
41 according to procedures in the United States Department of Agriculture Soil  
42 Conservation Service's "National Engineering Field Manual for  
43 Conservation Practices" or according to procedures adopted by any other  
44 agency of the State or the United States or any generally recognized  
45 organization or association.
- 46           (3) Newly constructed open channels shall be planned, designed, and  
47 constructed with side slopes no steeper than two horizontal to one vertical if  
48 a vegetative cover is used for stabilization unless soil conditions permit  
49 steeper slopes or where the slopes are stabilized by using mechanical  
50 devices, structural devices, or other acceptable ditch liners. In any event, the  
51 angle for side slopes shall be sufficient to restrain accelerated erosion.

1 (4) For an area of land-disturbing activity where grading activities have been  
2 completed, temporary or permanent ground cover sufficient to restrain erosion shall be  
3 provided as soon as practicable, but in no case later than seven days after completion of  
4 grading. For an area of land-disturbing activity where grading activities have not been  
5 completed, temporary groundcover shall be provided as follows:

- 6 a. For an area with no slope, temporary groundcover shall be provided  
7 for the area if it has not been disturbed for a period of 14 days.  
8 b. For an area of moderate slope, temporary groundcover shall be  
9 provided for the area if it has not been disturbed for a period of 10  
10 days. For purposes of this subdivision, "moderate slope" means an  
11 inclined area, the inclination of which is less than or equal to 3 units  
12 of horizontal distance to 1 unit of vertical distance.  
13 c. For an area of steep slope, temporary groundcover shall be provided  
14 for the area if it has not been disturbed for a period of seven days.  
15 For purposes of this subdivision, "steep slope" means an inclined  
16 area, the inclination of which is greater than 3 units of horizontal  
17 distance to 1 unit of vertical distance.

18 **"SECTION 3.(i)** The Department of Environment and Natural Resources, in consultation  
19 with the Environmental Management Commission, shall identify improvements needed in the  
20 design, operation, and siting of septic tank systems in order to reduce excess nutrient loading  
21 from septic tank systems in the watershed of a drinking water supply to which this section  
22 applies. The Department shall report its findings and recommendations for specific changes to  
23 standards adopted by the Commission for Public Health pursuant to G.S. 130A-355 to the  
24 Commission for Public Health and to the Environmental Review Commission no later than  
25 March 1, 2010."

26 **SECTION 6.(a)** Concurrent with the permanent rule making required by Section 3  
27 of S.L. 2005-190, as amended by Section 31 of S.L. 2006-259 and Section 5(a) of this act, and  
28 pursuant to G.S. 143-215.8B, the Environmental Management Commission shall adopt  
29 temporary rules. The Commission shall adopt the temporary rules required by this section by  
30 January 15, 2011.

31 **SECTION 6.(b)** For purposes of this section, "land-disturbing activity" does not  
32 include the land-disturbing activities set out in G.S. 113A-52.01. No later than December 31,  
33 2011, the Sedimentation Control Commission shall adopt rules of statewide applicability for  
34 the control of erosion and sedimentation resulting from land-disturbing activities in the  
35 watersheds of water supply reservoirs. In developing the rules, the Commission shall consider  
36 the standards established pursuant to Section 3(h), as enacted by Section 5(b) of this act.

37 **SECTION 7.(a)** Definition. – For purposes of this section, the term "Upper Neuse  
38 River Basin" is that portion of the Neuse River Basin upstream of the Falls Dam, including  
39 Falls Lake.

40 **SECTION 7.(b)** Credit for Early Adoption. – The Environmental Management  
41 Commission shall encourage local governments, landowners, and others to develop, adopt, and  
42 implement policies and practices to reduce the runoff and discharge of nitrogen, phosphorus,  
43 sediment, and other pollutants into the surface waters and drinking water supply reservoirs in  
44 the Upper Neuse River Basin before it adopts permanent rules to implement the nutrient  
45 management strategy and the turbidity strategy for Upper Falls Lake. The Environmental  
46 Management Commission shall, in its permanent rules, provide credit for the early  
47 implementation of the nutrient management strategy for the Upper Neuse River Basin and the  
48 turbidity strategy for Falls Lake to local governments, landowners, and others who implement  
49 policies and practices after January 1, 2007, to reduce runoff and discharge of nitrogen,  
50 phosphorus, and sediment in the Upper Neuse River Basin.





- 1           (2)    Trust. – The Yadkin River Trust as established by this Article.  
2           (3)    Yadkin Project. – Project No. 2197 as described in a license issued by the  
3               Federal Energy Regulatory Commission as of May 1, 1958, and as thereafter  
4               amended and otherwise subject to the regulation of the Federal Energy  
5               Regulatory Commission.  
6           (4)    Yadkin Project License. – The license issued by the Federal Energy  
7               Regulatory Commission as of May 1, 1958, which expired on April 30,  
8               2008, the year-to-year annual licenses that have been issued since that time,  
9               and any future renewal license for Project No. 2197.

10 **"§ 77-152. Board of Directors.**

11       (a)    Appointment. – The Board of Directors of the Yadkin River Trust shall consist of  
12       seven directors who shall be appointed by the Governor upon the advice of the Speaker of the  
13       House of Representatives and the President Pro Tempore of the Senate and subject to  
14       confirmation by the General Assembly by joint resolution. Two of the directors shall have  
15       substantial work experience within the operations of electric cooperatives or investor-owned  
16       utilities or substantial experience on an electric cooperative board or investor-owned utility  
17       board but must not serve as an employee or board member of an electric cooperative or  
18       investor-owned utility during their term as directors of the Yadkin River Trust. The names of  
19       directors to be appointed by the Governor shall be submitted by the Governor to the General  
20       Assembly for confirmation by the General Assembly on or before June 1 of the year in which  
21       the terms for which the appointments are to be made are to expire. Upon failure of the  
22       Governor to submit names by that date, the President Pro Tempore of the Senate and Speaker  
23       of the House of Representatives jointly shall submit the names of a like number of directors to  
24       the General Assembly on or before June 15 of the same year for confirmation by the General  
25       Assembly. Regardless of the way in which the names of directors are submitted, confirmation  
26       of directors must be accomplished prior to adjournment of the then current session of the  
27       General Assembly. The Governor may remove any director of the Board for misfeasance,  
28       malfeasance, or nonfeasance.

29       (b)    Terms. – The term of office of directors of the Board is four years. A director may  
30       be reappointed to any number of successive four-year terms. A director in office continues to  
31       serve until the director's successor is duly confirmed and qualified, but the holdover does not  
32       affect the expiration date of the succeeding term.

33       (c)    Chair; Vice-Chair. – Upon confirmation of the directors by the General Assembly as  
34       provided in subsection (a) of this section, the Governor shall designate one of the directors to  
35       serve as chair of the Board for the succeeding four years and until the director's successor is  
36       duly confirmed and qualified. Upon death or resignation of the director appointed as chair, the  
37       Governor shall designate the chair from the remaining directors and appoint a successor in  
38       accordance with this section to fill the vacancy on the Board. The Governor shall convene the  
39       first meeting of the Board, at which time the members of the Board shall elect from their  
40       membership a vice-chair of the Board.

41       (d)    Vacancies. – In case of death, incapacity, resignation, or vacancy for any other  
42       reason in the office of any director prior to the expiration of the director's term of office, the  
43       name of the director's successor shall be submitted by the Governor within four weeks after the  
44       vacancy arises to the General Assembly for confirmation by the General Assembly. Upon  
45       failure of the Governor to submit the name of the successor, the President Pro Tempore of the  
46       Senate and the Speaker of the House of Representatives jointly shall submit the name of a  
47       successor to the General Assembly within six weeks after the vacancy arises. Regardless of the  
48       way in which the names of directors are submitted, confirmation of directors must be  
49       accomplished prior to the adjournment of the then current session of the General Assembly. If a  
50       vacancy arises in the office of director when the General Assembly is not in session, and the

1 appointment is deemed urgent by the Governor, the Governor may appoint a director to serve  
2 on an interim basis pending confirmation by the General Assembly.

3 (e) Organization of the Board. – The Board shall adopt bylaws with respect to the  
4 calling of meetings, quorums, voting procedures, the keeping of records, and other  
5 organizational and administrative matters as the Board may determine. A quorum consists of a  
6 majority of the members of the Board. No vacancy in the membership of the Board impairs the  
7 right of a quorum to exercise all rights and to perform all the duties of the Board and the Trust.

8 (f) Compensation of the Board. – No part of the revenues or assets of the Trust shall  
9 inure to the benefit of or be distributable to the members of the Board or officers or other  
10 private persons. The members of the Board shall receive no salary for their services but shall be  
11 entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

12 **"§ 77-153. Authority to acquire Yadkin Project and Yadkin Project License.**

13 The Trust may acquire the Yadkin Project License and may pursue transfer of the license at  
14 the Federal Energy Regulatory Commission, file an application for a new license, amend the  
15 existing license, and take any other actions necessary to become the licensee for the Yadkin  
16 Project on behalf of the State. If the Trust acquires the license, it shall promptly thereafter  
17 request permission from the General Assembly to issue revenue bonds or other financing  
18 authority to enable acquisition and operation of the Yadkin Project. The State may negotiate,  
19 pursue transfer of title for property or permits, and execute agreements necessary for  
20 acquisition of the Yadkin Project. If the Yadkin Project License and the Yadkin Project are  
21 acquired, the Trust cannot agree to voluntarily surrender, terminate, transfer, or sell the Yadkin  
22 River License or the Yadkin Project unless an act of the General Assembly approves the action.

23 **"§ 77-154. Operation of the Trust.**

24 (a) Management. – The Board shall determine the policies of the Trust by majority vote  
25 of the members of the Board present and voting, a quorum having been established. Once a  
26 policy is determined, the Board must communicate it to the executive director, who shall have  
27 the sole and exclusive authority to execute the policy of the Trust. No member of the Board has  
28 the responsibility or authority to give operational directives to any employee of the Trust other  
29 than the executive director.

30 (b) Employees. – The Board shall appoint an executive director, whose salary is fixed  
31 by the Board, to serve at its pleasure. The executive director or a person designated by the  
32 executive director shall appoint, employ, dismiss, and, within the limits of available funding,  
33 fix the compensation of other employees as considered necessary. During any fiscal year, the  
34 Trust may not expend funds for merit and performance-based salary increases in excess of the  
35 funds that would have been expended had the employees of the Trust received the same  
36 across-the-board salary increases granted by the General Assembly to State employees subject  
37 to the State Personnel Act. These merit and performance-based salary increases may be  
38 awarded on an aggregated average basis according to rules adopted by the Trust. Except as to  
39 the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, the employees of the  
40 Trust are exempt from the State Personnel Act.

41 (c) Consultants. – The Board may employ consulting engineers, architects, attorneys,  
42 real estate counselors, appraisers, and other consultants as needed.

43 (d) Operator. – The Board may enter into a contract with an investor-owned utility,  
44 electric membership corporation, or other qualified third party with experience in the operation  
45 of electric generating facilities to operate the Yadkin Project on behalf of the Trust, provided  
46 that such contract does not abrogate the duties of the Trust as established by G.S. 77-156 and is  
47 otherwise consistent with the provisions of this Article.

48 **"§ 77-155. Powers of the Trust.**

49 The Trust has all the powers necessary to execute the provisions of this Article, including  
50 the following:

- 1           (1)    To adopt, alter, or repeal its bylaws and adopt, amend, or repeal rules to  
2           implement the provisions of this Article. The Trust and its activities are not  
3           subject to review or approval by the North Carolina Utilities Commission.
- 4           (2)    To sue and be sued, to make contracts, to adopt and use a common seal, and  
5           to alter the adopted seal as needed.
- 6           (3)    To contract and enter into agreements with the State, local governments,  
7           other authorities of North Carolina, and other states for the interchange of  
8           business and to facilitate the business of the Trust.
- 9           (4)    To procure and maintain adequate insurance or otherwise provide for  
10           adequate protection to indemnify the Trust and its officers, directors, agents,  
11           employees, adjoining property owners, or the general public against loss or  
12           liability resulting from any act or omission by or on behalf of the Trust.
- 13           (5)    To establish, purchase, construct, operate, and regulate hydroelectric  
14           facilities on the Yadkin River to implement the provisions of this Article.
- 15           (6)    To manufacture, produce, and generate hydroelectric power using the waters  
16           of the Yadkin River and to sell the hydroelectric power to utilities within and  
17           without the State of North Carolina.
- 18           (7)    To acquire, purchase, establish, build, construct, maintain, equip, and  
19           operate any structure or facilities necessary, useful, or customarily used and  
20           employed in generation of hydroelectric power.
- 21           (8)    To seek enforcement of environmental laws and contribution to  
22           environmental cleanup costs, consistent with its obligations under this  
23           Article.

24 **"§ 77-156. Duties of the Trust.**

25       (a)    If the Trust acquires the Yadkin Project and Yadkin Project License as provided in  
26 this Article, the Trust must:

- 27           (1)    Conduct environmental site assessments of all properties located in the  
28           Yadkin River Basin currently or formerly owned and operated by Alcoa  
29           Power Generating, Inc., or Alcoa, Inc., or their subsidiaries, to the extent  
30           necessary to evaluate risks to public health or the environment posed by  
31           contamination at or emanating from such properties. The Trust shall pursue  
32           remediation of such properties to levels sufficient to allow the unrestricted  
33           use of such properties, including, to the extent necessary, by taking legal  
34           action against the parties responsible for such contamination.
- 35           (2)    Conduct environmental site assessments of hazardous waste sites that were  
36           associated with the disposal of waste materials from the Badin Works site,  
37           excluding properties owned or under the control of Alcoa Power Generating,  
38           Inc., Alcoa, Inc., or their subsidiaries. The Trust shall pursue remediation of  
39           such properties described to levels sufficient to support the unrestricted use  
40           of such properties, including, to the extent necessary, by taking legal action  
41           against the parties responsible for such contamination.
- 42           (3)    Institute operational changes to the Yadkin Project that will retain more  
43           water in Badin, Falls, High Rock, and Tuckertown Lakes and provide a  
44           consistent flow of water to downstream water users.
- 45           (4)    Apportion up to twenty-five percent (25%) of the net proceeds from the  
46           Yadkin Project's electrical output for use by a regional "Power for Jobs"  
47           fund to be established by the Department of Commerce. The Power for Jobs  
48           fund may make grants to businesses and not-for-profit corporations to create  
49           or retain jobs in the Yadkin River Basin.
- 50           (5)    After performance of subdivisions (1) through (4) of this subsection,  
51           compliance with subsection (b) of this section, and retention of any

1           necessary operating reserves, the Trust shall utilize up to twenty-five percent  
2           (25%) of the remaining annual net revenues from the Yadkin Project to  
3           make grants to the Community Colleges System Office for allocation by the  
4           State Board of Community Colleges for instructional equipment at the  
5           community colleges as determined by the State Board.

6           (6) After performance of subdivisions (1) through (5) of this subsection,  
7           compliance with subsection (b) of this section, and retention of any  
8           necessary operating reserves, the Trust shall utilize the annual net revenues  
9           from the Yadkin Project exclusively to fund projects to protect and improve  
10           the health of the Yadkin River and the water quality in the Yadkin River  
11           Basin.

12           (b) If the Trust acquires the Yadkin Project and Yadkin Project License as provided in  
13           this Article, the Trust must, to the maximum extent practicable, comply with all terms and  
14           conditions of the Relicensing Settlement Agreement filed with the Federal Energy Regulatory  
15           Commission on May 7, 2007, for the Yadkin Project and shall assume, to the maximum extent  
16           practicable, all rights and obligations of the Licensee as provided in the Agreement.

17           **"§ 77-157: Reserved for future codification purposes.**

18           **"§ 77-158. Use of revenues.**

19           Revenues from the Yadkin River Project must be used to pay the following obligations:

- 20           (1) To operate the Yadkin Project.  
21           (2) To fulfill the duties under G.S. 77-156.

22           **"§ 77-159: Reserved for future codification purposes.**

23           **"§ 77-160. Report; audit.**

24           (a) Report. – The Trust must submit a report regarding its operations and transactions  
25           for the preceding fiscal year to the Joint Legislative Commission on Governmental Operations,  
26           the Joint Legislative Utility Review Committee, and the House and Senate Committees on  
27           Appropriations on or before July 1 of each year. The annual report must include the following  
28           information:

- 29           (1) The amount of power and energy produced by the Trust.  
30           (2) The Trust's financial statements for the preceding fiscal year, prepared in  
31           accordance with generally accepted accounting principles.  
32           (3) The price of power and energy sold by the Trust.  
33           (4) The amount of water distributed to each entity or water user.  
34           (5) The status of environmental testing, assessment, and remediation of  
35           contamination at the Badin Works and other sites located in Stanly County.

36           (b) Audit. – The operations of the Trust are subject to the oversight of the State Auditor  
37           under Article 5A of Chapter 147 of the General Statutes.

38           **"§ 77-161. Conflicts of interest.**

39           A director, officer, or employee of the Trust who has a conflict of interest in a contract with  
40           the Trust must disclose this interest to the Board, and the Board must note the conflict of  
41           interest in its minutes. The director, officer, or employee who has a conflict of interest may not  
42           participate on behalf of the Trust in the authorization of that contract. Failure to take the actions  
43           required by this section does not affect the validity of any bonds or notes issued by the Trust.

44           A director, officer, or employee of the Trust has a conflict of interest if any one or more of  
45           the following applies:

- 46           (1) The director, officer, or employee has a direct or indirect interest in a  
47           contract with the Trust.  
48           (2) The director, officer, or employee is an officer or employee of a firm or  
49           corporation, not including a unit of local government, that has a direct or  
50           indirect interest in a contract with the Trust.

1           (3)    The director, officer, or employee has an ownership interest in a firm or  
2           corporation that has a direct or indirect interest in a contract with the Trust."

3           **SECTION 10.(b)** Notwithstanding G.S. 77-152, as enacted by Section 10(a) of this  
4 act, in order to provide for the staggering of the terms of the Board of Directors of the Yadkin  
5 River Trust, the terms of the initial appointments of the directors made by the Governor shall  
6 be made as follows: (i) two shall be for a period of two years; (ii) two shall be for a period of  
7 three years; and (iii) three shall be for a period of four years.

8           **SECTION 10.(c)** G.S. 66-58(b) is amended by adding a new subdivision to read:

9           "(b)    The provisions of subsection (a) of this section shall not apply to:

10           ...

11           (27)   The Yadkin River Trust, established in G.S. 77-150."

12           **SECTION 10.(d)** G.S. 126-5(c1) reads as rewritten:

13           "(c1)   Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this  
14 Chapter shall not apply to:

15           ...

16           (30)   Employees of the Yadkin River Trust."

17           **SECTION 10.(e)** G.S. 150B-1(c) reads as rewritten:

18           "(c)    Full Exemptions. – This Chapter applies to every agency except:

19           (1)    The North Carolina National Guard in exercising its court-martial  
20           jurisdiction.

21           (2)    The Department of Health and Human Services in exercising its authority  
22           over the Camp Butner reservation granted in Article 6 of Chapter 122C of  
23           the General Statutes.

24           (3)    The Utilities Commission.

25           (4)    The Industrial Commission.

26           (5)    The Employment Security Commission.

27           (6)    The State Board of Elections in administering the HAVA Administrative  
28           Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.

29           (7)    The North Carolina State Lottery.

30           (8)    The Yadkin River Trust, established in G.S. 77-150."

31           **SECTION 10.(f)** The General Assembly strongly encourages the continuation of  
32 discussions between the State of North Carolina, Alcoa Power Generating, Inc., and other  
33 interested parties to explore potential settlement of the dispute concerning the Federal Energy  
34 Regulatory Commission license for and operation of the Yadkin Project. The Department of  
35 Justice shall report to the Joint Legislative Commission on Governmental Operations and the  
36 Joint Legislative Utility Review Committee on or before July 1, 2010, on the status of the  
37 matter.

38           **SECTION 10.(g)** The Secretary of Commerce shall present a detailed business  
39 plan for the operation of the Yadkin River Trust to the Joint Legislative Commission on  
40 Governmental Operations and the Joint Legislative Utility Review Committee on or before  
41 March 1, 2010.

42           **SECTION 10.(h)** With the exception of G.S. 77-154(d), as enacted by Section  
43 10(a) of this act, the provisions of this act shall not apply to any investor-owned utilities  
44 regulated by the North Carolina Utilities Commission.

45           **SECTION 10.(i)** If the Federal Energy Regulatory Commission issues a new  
46 multiyear license to Alcoa Power Generating, Inc., for the Yadkin Project No. 2197, the  
47 provisions of this act shall expire upon issuance of that license.

48           **SECTION 11.** Section 2 of this act becomes effective October 1, 2009, and applies  
49 to any contracts for road projects entered into, or any pavement remarking that takes place, on  
50 or after that date. Section 4 of this act is effective retroactively to April 1, 2009. Section 3(h)  
51 of S.L. 2005-190, as enacted by Section 5(b) of this act, becomes effective January 1, 2010,

- 1 applies to land-disturbing activities begun on or after January 1, 2010, and expires on the date
- 2 that rules adopted pursuant to Section 6(b) of this act become effective. The remaining sections
- 3 of this act are effective when this act becomes law.