

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 955

Short Title: Protect DENR from Co-Applicant Liability. (Public)

Sponsors: Representatives Gillespie and Samuelson (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Environment.

May 17, 2012

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE STATE FROM POTENTIAL LIABILITY ASSOCIATED WITH BECOMING A CO-APPLICANT WITH A REGIONAL WATER SUPPLY SYSTEM ON THE FEDERAL APPROVALS NEEDED FOR THE ESTABLISHMENT OR EXPANSION OF A WATER SUPPLY RESERVOIR OR OTHER WATER SUPPLY RESOURCE, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-355.7(e) reads as rewritten:

"(e) When the Department has identified the most practicable alternative, a regional water supply system may request that the Department become a co-applicant for all required federal approvals for the alternative identified by the Department. The Department may become a co-applicant when all of the following conditions are met:

- (1) The regional water supply system has acquired or will acquire the property necessary for construction of the water supply reservoir or other water supply resource.
- (2) The local water supply plan shows that the regional water supply system has implemented appropriate conservation measures similar in effect to the measures in comparably sized North Carolina regional water supply systems.
- (3) The regional water supply system has developed and is implementing measures to replace existing leaking infrastructure that is similar in effect to the measures being implemented by comparably sized North Carolina regional water systems.
- (4) The regional water supply system has entered into a contractual agreement with the Department to pay the expenses incurred by the Department as a co-applicant for the project approval.
- (5) The regional water supply system has entered into a contractual agreement with the Department to indemnify, defend, and hold the Department and the State, its officers, employees, agents, and assigns harmless from any liability or other costs incurred related to (i) personal injury or injury to real or personal property of any kind, accruing or resulting to any other person or entity in connection with any federal approvals, arising out of the ordinary negligence; willful, wanton, or gross negligence; intentional acts or omissions; or unlawful conduct of the regional water supply, its officers,



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1 employees, agents, assigns, or subcontractors, and (ii) any violation or
2 alleged violation of the federal approval or other law or regulation related to
3 federal approval, whether or not caused by the regional water supply. The
4 obligations of the regional water system under this subdivision shall include
5 all fees, costs, penalties, fines, judgments, orders, and other obligations to
6 which the State may be subject or that the State may incur."

7 **SECTION 2.** This act is effective when it becomes law.