

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

H

1

HOUSE BILL 687

Short Title: Interbasin Transfer Amendments. (Public)

Sponsors: Representatives Yarborough, Brody, and Arp (Primary Sponsors).  
*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Wildlife Resources, if favorable, Judiciary 4, if favorable, Rules, Calendar, and Operations of the House

April 27, 2021

1 A BILL TO BE ENTITLED  
2 AN ACT TO REMOVE INTRABASIN TRANSFERS AMONG SUBBASINS OF A RIVER  
3 BASIN FROM INTERBASIN TRANSFER REQUIREMENTS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 143-215.22G(1b) reads as rewritten:

6 "(1b) "River basin" ~~means any of the following river basins designated on the map~~  
7 ~~entitled "Major River Basins and Sub-basins in North Carolina" and filed in~~  
8 ~~the Office of the Secretary of State on 16 April 1991.~~ means the area within  
9 North Carolina denoted by the cataloging unit or series of cataloging units  
10 organized by the United States Geologic Survey as designated in this  
11 subdivision. The term "river basin" includes any portion of the river basin that  
12 extends into another state. Any area outside North Carolina that is not included  
13 in one of the river basins listed in this subdivision comprises a separate river  
14 basin.

15	a.	1-1	<del>Broad River.</del>
16	b.	2-1	<del>Haw River.</del>
17	c.	2-2	<del>Deep River.</del>
18	d.	2-3	<del>Cape Fear River.</del>
19	e.	2-4	<del>South River.</del>
20	f.	2-5	<del>Northeast Cape Fear River.</del>
21	g.	2-6	<del>New River.</del>
22	h.	3-1	<del>Catawba River.</del>
23	i.	3-2	<del>South Fork Catawba River.</del>
24	j.	4-1	<del>Chowan River.</del>
25	k.	4-2	<del>Meherrin River.</del>
26	l.	5-1	<del>Nolichucky River.</del>
27	m.	5-2	<del>French Broad River.</del>
28	n.	5-3	<del>Pigeon River.</del>
29	o.	6-1	<del>Hiwassee River.</del>
30	p.	7-1	<del>Little Tennessee River.</del>
31	q.	7-2	<del>Tuskasegee (Tuckasegee) River.</del>
32	r.	8-1	<del>Savannah River.</del>
33	s.	9-1	<del>Lumber River.</del>
34	t.	9-2	<del>Big Shoe Heel Creek.</del>



\* H 6 8 7 - V - 1 \*

1	u.	9-3	Waccamaw River.
2	v.	9-4	Shalotte River.
3	w.	10-1	Neuse River.
4	x.	10-2	Contentnea Creek.
5	y.	10-3	Trent River.
6	z.	11-1	New River.
7	aa.	12-1	Albemarle Sound.
8	bb.	13-1	Ocoee River.
9	ee.	14-1	Roanoke River.
10	dd.	15-1	Tar River.
11	ee.	15-2	Fishing Creek.
12	ff.	15-3	Pamlico River and Sound.
13	gg.	16-1	Watauga River.
14	hh.	17-1	White Oak River.
15	ii.	18-1	Yadkin (Yadkin-Pee Dee) River.
16	jj.	18-2	South Yadkin River.
17	kk.	18-3	Uwharrie River.
18	ll.	18-4	Rocky River.
19	a.	<u>Albemarle Sound: 03010205.</u>	
20	b.	<u>Broad River: 03050105.</u>	
21	c.	<u>Cape Fear River: 03030002, 03030003, 03030004, 03030005,</u>	
22		<u>03030006, and 03030007.</u>	
23	d.	<u>Catawba River: 03050101, 03050102, and 03050103.</u>	
24	e.	<u>Chowan River: 03010201, 03010202, 03010203, and 03010204.</u>	
25	f.	<u>French Broad River: 06010105, 06010106, and 06010108.</u>	
26	g.	<u>Hiwassee River: 06020002 and 06020003.</u>	
27	h.	<u>Little Tennessee River: 06010202, 06010203, and 06010204.</u>	
28	i.	<u>Lumber River: 03040203, 03040204, 03040206, and 03040208.</u>	
29	j.	<u>Neuse River: 03020201, 03020202, 03020203, and 03020204.</u>	
30	k.	<u>New River: 05050001.</u>	
31	l.	<u>Onslow Bay: 03020301 and 03020302.</u>	
32	m.	<u>Roanoke River: 03010102, 03010103, 03010104, 03010106, and</u>	
33		<u>03010107.</u>	
34	n.	<u>Savannah River: 03060101 and 03060102.</u>	
35	o.	<u>Tar-Pamlico River: 03020101, 03020102, 03020103, 03020104, and</u>	
36		<u>03020105.</u>	
37	p.	<u>Watauga River: 06010103.</u>	
38	q.	<u>Yadkin-Pee Dee River: 03040101, 03040102, 03040103, 03040104,</u>	
39		<u>03040105, 03040201, and 03040202."</u>	

**SECTION 2.** G.S. 143-215.22L reads as rewritten:

"(a) Certificate Required. – No person, without first obtaining a certificate from the Commission, may:

- (1) Initiate a transfer of 2,000,000 gallons of water or more per day, calculated as a daily average of a calendar month and not to exceed 3,000,000 gallons per day in any one day, from one river basin to another.
- (2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending 1 July 1993 if the total transfer including the increase is 2,000,000 gallons or more per day.

1 (3) Increase an existing transfer of water from one river basin to another above  
2 the amount approved by the Commission in a certificate issued under  
3 G.S. 162A-7 prior to 1 July 1993.

4 (b) Exception. – Notwithstanding the provisions of subsection (a) of this section, a  
5 certificate shall not be required to transfer water from one river basin to another up to the full  
6 capacity of a facility to transfer water from one basin to another if the facility was in existence  
7 or under construction on 1 July 1993.

8 (c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of intent to  
9 file a petition that includes a nontechnical description of the applicant's request and an  
10 identification of the proposed water source. Within 90 days after the applicant files a notice of  
11 intent to file a petition, the applicant shall hold at least one public meeting in the source river  
12 basin upstream from the proposed point of withdrawal, at least one public meeting in the source  
13 river basin downstream from the proposed point of withdrawal, and at least one public meeting  
14 in the receiving river basin to provide information to interested parties and the public regarding  
15 the nature and extent of the proposed transfer and to receive comment on the scope of the  
16 environmental documents. Written notice of the public meetings shall be provided at least 30  
17 days before the public meetings. At the time the applicant gives notice of the public meetings,  
18 the applicant shall request comment on the alternatives and issues that should be addressed in the  
19 environmental documents required by this section. The applicant shall accept written comment  
20 on the scope of the environmental documents for a minimum of 30 days following the last public  
21 meeting. Notice of the public meetings and opportunity to comment on the scope of the  
22 environmental documents shall be provided as follows:

23 (1) By publishing notice in the North Carolina Register.

24 (2) By publishing notice in a newspaper of general circulation in:

25 a. Each county in this State located in whole or in part of the area of the  
26 source river basin upstream from the proposed point of withdrawal.

27 b. Each city or county located in a state located in whole or in part of the  
28 surface drainage basin area of the source river basin ~~that also falls~~  
29 ~~within, in whole or in part, the area denoted by one of the following~~  
30 ~~eight digit cataloging units as organized by the United States~~  
31 ~~Geological Survey:~~

32 ~~03050105 (Broad River: NC and SC);~~

33 ~~03050106 (Broad River: SC);~~

34 ~~03050107 (Broad River: SC);~~

35 ~~03050108 (Broad River: SC);~~

36 ~~05050001 (New River: NC and VA);~~

37 ~~05050002 (New River: VA and WV);~~

38 ~~03050101 (Catawba River: NC and SC);~~

39 ~~03050103 (Catawba River: NC and SC);~~

40 ~~03050104 (Catawba River: SC);~~

41 ~~03010203 (Chowan River: NC and VA);~~

42 ~~03010204 (Chowan River: NC and VA);~~

43 ~~06010105 (French Broad River: NC and TN);~~

44 ~~06010106 (French Broad River: NC and TN);~~

45 ~~06010107 (French Broad River: TN);~~

46 ~~06010108 (French Broad River: NC and TN);~~

47 ~~06020001 (Hiwassee River: AL, GA, TN);~~

48 ~~06020002 (Hiwassee River: GA, NC, TN);~~

49 ~~06010201 (Little Tennessee River: TN);~~

50 ~~06010202 (Little Tennessee River: TN, GA, and NC);~~

51 ~~06010204 (Little Tennessee River: NC and TN);~~

- 1 03060101 (~~Savannah River: NC and SC~~);
- 2 03060102 (~~Savannah River: GA, NC, and SC~~);
- 3 03060103 (~~Savannah River: GA and SC~~);
- 4 03060104 (~~Savannah River: GA~~);
- 5 03060105 (~~Savannah River: GA~~);
- 6 03040203 (~~Lumber River: NC and SC~~);
- 7 03040204 (~~Lumber River: NC and SC~~);
- 8 03040206 (~~Lumber River: NC and SC~~);
- 9 03040207 (~~Lumber River: NC and SC~~);
- 10 03010205 (~~Albemarle Sound: NC and VA~~);
- 11 06020003 (~~Ocoee River: GA, NC, and TN~~);
- 12 03010101 (~~Roanoke River: VA~~);
- 13 03010102 (~~Roanoke River: NC and VA~~);
- 14 03010103 (~~Roanoke River: NC and VA~~);
- 15 03010104 (~~Roanoke River: NC and VA~~);
- 16 03010105 (~~Roanoke River: VA~~);
- 17 03010106 (~~Roanoke River: NC and VA~~);
- 18 06010102 (~~Watauga River: TN and VA~~);
- 19 06010103 (~~Watauga River: NC and TN~~);
- 20 03040101 (~~Yadkin River: VA and NC~~);
- 21 03040104 (~~Yadkin River: NC and SC~~);
- 22 03040105 (~~Yadkin River: NC and SC~~);
- 23 03040201 (~~Yadkin River: NC and SC~~);
- 24 03040202 (~~Yadkin River: NC and SC~~)-basin.

- 25 c. Each county in this State located in whole or in part of the area of the
- 26 source river basin downstream from the proposed point of withdrawal.
- 27 d. Any area in the State in a river basin for which the source river basin
- 28 has been identified as a future source of water in a local water supply
- 29 plan prepared pursuant to G.S. 143-355(l).
- 30 e. Each county in the State located in whole or in part of the receiving
- 31 river basin.
- 32 (3) By giving notice by first-class mail or electronic mail to each of the following:
- 33 a. The board of commissioners of each county in this State or the
- 34 governing body of any county or city that is politically independent of
- 35 a county in any state that is located entirely or partially within the
- 36 source river basin of the proposed ~~transfer and that also falls within, in~~
- 37 ~~whole or in part, the area denoted by one of the eight digit cataloging~~
- 38 ~~units listed in sub-subdivision b. of subdivision (2) of this~~
- 39 ~~subsection-transfer.~~
- 40 b. The board of commissioners of each county in this State or the
- 41 governing body of any county or city that is politically independent of
- 42 a county in any state that is located entirely or partially within the
- 43 receiving river basin of the proposed ~~transfer and that also falls within,~~
- 44 ~~in whole or in part, the area denoted by one of the eight digit~~
- 45 ~~cataloging units listed in sub-subdivision b. of subdivision (2) of this~~
- 46 ~~subsection-transfer.~~
- 47 c. The governing body of any public water system that withdraws water
- 48 upstream or downstream from the withdrawal point of the proposed
- 49 transfer.
- 50 d. If any portion of the source or receiving river basins is located in
- 51 another state, all state water management or use agencies,

1 environmental protection agencies, and the office of the governor in  
2 that state upstream or downstream from the withdrawal point of the  
3 proposed transfer.

4 e. All persons who have registered a water withdrawal or transfer from  
5 the proposed source river basin under this Part or under similar law in  
6 an another state.

7 f. All persons who hold a certificate for a transfer of water from the  
8 proposed source river basin under this Part or under similar law in an  
9 another state.

10 g. All persons who hold a National Pollutant Discharge Elimination  
11 System (NPDES) wastewater discharge permit for a discharge of  
12 100,000 gallons per day or more upstream or downstream from the  
13 proposed point of withdrawal.

14 h. To any other person who submits to the applicant a written request to  
15 receive all notices relating to the petition.

16 (d) Environmental Documents. – Except as provided in this subsection, the definitions  
17 set out in G.S. 113A-9 apply to this section. Notwithstanding the thresholds for significant  
18 expenditure of public monies or use of public land set forth in G.S. 113A-9, the Department shall  
19 conduct a study of the environmental impacts of any proposed transfer of water for which a  
20 certificate is required under this section. The study shall meet all of the requirements set forth in  
21 G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. Notwithstanding G.S. 113A-4(2), the  
22 study shall include secondary and cumulative impacts. An environmental ~~assessment-impact~~  
23 statement shall be prepared for any petition for a certificate under this section. ~~The determination~~  
24 ~~of whether an environmental impact statement shall also be required shall be made in accordance~~  
25 ~~with the provisions of Article 1 of Chapter 113A of the General Statutes; except that an~~  
26 ~~environmental impact statement shall be prepared for every proposed transfer of water from one~~  
27 ~~major river basin to another for which a certificate is required under this section.~~ The applicant  
28 who petitions the Commission for a certificate under this section shall pay the cost of special  
29 studies necessary to comply with Article 1 of Chapter 113A of the General Statutes. An  
30 environmental impact statement prepared pursuant to this subsection shall include all of the  
31 following:

32 (1) A comprehensive analysis of the impacts that would occur in the source river  
33 basin and the receiving river basin if the petition for a certificate is granted.

34 (2) An evaluation of alternatives to the proposed interbasin transfer, including  
35 water supply sources that do not require an interbasin transfer and use of water  
36 conservation measures.

37 (3) A description of measures to mitigate any adverse impacts that may arise from  
38 the proposed interbasin transfer.

39 ...

40 (k) Final Determination: Factors to be Considered. – In determining whether a certificate  
41 may be issued for the transfer, the Commission shall specifically consider each of the following  
42 items and state in writing its findings of fact and conclusions of law with regard to each item:

43 ...

44 (5) The availability of reasonable alternatives to the proposed transfer, including  
45 the potential capacity of alternative sources of water, the potential of each  
46 alternative to reduce the amount of or avoid the proposed transfer, probable  
47 costs, and environmental impacts. In considering alternatives, the  
48 Commission is not limited to consideration of alternatives that have been  
49 proposed, studied, or considered by the applicant. The determination shall  
50 include a specific finding as to why the applicant's need for water cannot be  
51 satisfied by alternatives within the receiving basin, including unused capacity

1 under a transfer for which a certificate is in effect or that is otherwise  
 2 authorized by law at the time the applicant submits the petition. The  
 3 determination shall consider the extent to which access to potential sources of  
 4 surface water or groundwater within the receiving river basin is no longer  
 5 available due to depletion, contamination, or the declaration of a capacity use  
 6 area under Part 2 of Article 21 of Chapter 143 of the General Statutes. The  
 7 determination shall consider the feasibility of the applicant's purchase of water  
 8 from other water suppliers within the receiving basin and of the transfer of  
 9 water from another sub-basin within the receiving major river basin. ~~Except~~  
 10 ~~in circumstances of technical or economic infeasibility or adverse~~  
 11 ~~environmental impact, the Commission's determination as to reasonable~~  
 12 ~~alternatives shall give preference to alternatives that would involve a transfer~~  
 13 ~~from one sub-basin to another within the major receiving river basin over~~  
 14 ~~alternatives that would involve a transfer from one major river basin to another~~  
 15 ~~major river basin.~~

16 ...

17 (n) Final Determination: Certificate Conditions and Limitations. – The Commission may  
 18 grant the certificate in whole or in part, or deny the certificate. The Commission may impose any  
 19 conditions or limitations on a certificate that the Commission finds necessary to achieve the  
 20 purposes of this Part including a limit on the period for which the certificate is valid. The  
 21 conditions and limitations shall include any mitigation measures proposed by the applicant to  
 22 minimize any detrimental effects within the source and receiving river basins. In addition, the  
 23 certificate shall require all of the following conditions and limitations:

24 ...

- 25 (4) A provision that the Commission may amend a certificate to reduce the  
 26 maximum amount of water authorized to be transferred whenever it appears  
 27 that an alternative source of water is available to the certificate holder from  
 28 within the receiving river basin, including, but not limited to, the purchase of  
 29 water from another water supplier within the receiving basin ~~or to the transfer~~  
 30 ~~of water from another sub-basin within the receiving major river basin.~~

31 ...."

32 SECTION 3. G.S. 143-215.8B reads as rewritten:

33 "**§ 143-215.8B. Basinwide water quality resources management plans.**

34 (a) ~~The Commission shall develop and implement a basinwide water quality management~~  
 35 ~~plan for each of the 17 major river basins in the State. In order to assure the availability of~~  
 36 ~~adequate supplies of good quality water to protect the public health and to support desirable~~  
 37 ~~economic growth, the Commission shall develop and implement a basinwide water resources~~  
 38 ~~management plan for each of the 17 major river basins in the State. In developing and~~  
 39 ~~implementing each plan, the Commission shall consider the cumulative impacts of all of the~~  
 40 ~~following:~~

- 41 (1) All activities across a river basin that impact surface water or groundwater  
 42 quality and quantity, including all points of withdrawal, and all point sources  
 43 and nonpoint sources of pollutants, including municipal wastewater facilities,  
 44 industrial wastewater systems, septic tank systems, stormwater management  
 45 systems, golf courses, farms that use ~~fertilizers~~ irrigation, fertilizers,  
 46 herbicides and pesticides for crops, public and commercial lawns and gardens,  
 47 waste disposal sites, atmospheric deposition, and animal operations.
- 48 (2) All surface water transfers into and from a river basin that are required to be  
 49 registered under ~~G.S. 143-215.22H.~~ G.S. 143-215.22H, current available  
 50 surface water resources, available groundwater resources to the extent known  
 51 by the Department, other withdrawals, instream flow needs and requirements,

1 an estimate of return flows, inflow data, local water supply plans, and any  
2 other scientific and technical information the Department deems relevant.

3 (b) Each basinwide water ~~quality-resources~~ management plan shall:

4 (1) Provide that all point sources and nonpoint sources of pollutants jointly share  
5 the responsibility of reducing the pollutants in the State's waters in a fair,  
6 reasonable, and proportionate manner, using computer modeling and the best  
7 science and technology reasonably available and considering future  
8 anticipated population growth and economic development.

9 (2) If any of the waters located within the river basin are designated as nutrient  
10 sensitive waters, then the basinwide water ~~quality-resources~~ management plan  
11 shall establish a goal to reduce the average annual mass load of nutrients that  
12 are delivered to surface waters within the river basin from point and nonpoint  
13 sources. The Commission shall establish a nutrient reduction goal for the  
14 nutrient or nutrients of concern that will result in improvements to water  
15 quality such that the designated uses of the water, as provided in the  
16 classification of the water under G.S. 143-214.1(d), are not impaired. The plan  
17 shall require incremental progress toward achieving the goal. In developing  
18 the plan, the Commission shall determine and allow appropriate credit toward  
19 achieving the goal for reductions of water pollution by point and nonpoint  
20 sources through voluntary measures.

21 (3) Include the information and projections required for local water supply  
22 plans by G.S. 143-355(l) and a summary of water conservation and water  
23 reuse programs described in local water supply plans.

24 (4) Identify potential conflicts and incompatibilities among the various local water  
25 supply plans and ways in which local water supply programs could be better  
26 coordinated.

27 (5) Determine through hydrologic modeling, where feasible, the places, times,  
28 frequencies, and intervals where yields may be inadequate to meet designated  
29 uses of water and projections of future withdrawals in response to different  
30 variables, conditions, and scenarios.

31 (6) If the use of groundwater or surface water or both is having an unreasonably  
32 adverse effect upon such waters and has resulted or probably will result in a  
33 generalized condition of water depletion within the basin to the extent that the  
34 availability for use of such water has been impaired for existing or proposed  
35 uses and that injury to the public health, safety, or welfare will result if  
36 increased or additional withdrawals or discharges occur, the Department shall  
37 recommend that the Commission consider declaration of a Capacity Use Area  
38 in accordance with the Water Use Act of 1967.

39 (c) The Commission shall review and revise its 17 basinwide water ~~quality-resources~~  
40 management plans at least every 10 years to reflect changes in water quality, water quantity,  
41 improvements in modeling methods, improvements in wastewater treatment technology,  
42 advancements in conservation and reuse, and advances in scientific knowledge and, as need to  
43 support designated uses of water, modifications to management strategies.

44 (d) As a part of the report required pursuant to G.S. 143-355(p), the Commission and the  
45 Department shall each report on or before November 1 of each year on an annual basis to the  
46 Environmental Review Commission on the progress in developing and implementing basinwide  
47 water ~~quality-resources~~ management plans and on increasing public involvement and public  
48 education in connection with basinwide water ~~quality-resources~~ management planning. The  
49 report to the Environmental Review Commission by the Department shall include a written  
50 statement as to all concentrations of heavy metals and other pollutants in the surface waters of

1 the State that are identified in the course of preparing or revising the basinwide water ~~quality~~  
2 resources management plans.

3 (e) A basinwide water ~~quality-resources~~ management plan is not a rule and Article 2A of  
4 Chapter 150B of the General Statutes does not apply to the development of basinwide water  
5 ~~quality-resources~~ management plans. Any water quality standard or classification and any  
6 requirement or limitation of general applicability that implements a basinwide water ~~quality~~  
7 resources management plan is a rule and must be adopted as provided in Article 2A of Chapter  
8 150B of the General Statutes."

9 **SECTION 4.** G.S. 143-355(o) reads as rewritten:

10 "(o) Basinwide Hydrologic Models. – The Department shall develop a basinwide  
11 hydrologic model for each of the 17 major river basins in the State as provided in this subsection.

12 (1) Definitions. – As used in this subsection:

- 13 a. "Ecological flow" means the stream flow necessary to protect  
14 ecological integrity.  
15 b. "Ecological integrity" means the ability of an aquatic system to  
16 support and maintain a balanced, integrated, adaptive community of  
17 organisms having a species composition, diversity, and functional  
18 organization comparable to prevailing ecological conditions and,  
19 when subject to disruption, to recover and continue to provide the  
20 natural goods and services that normally accrue from the system.  
21 c. "Groundwater resource" means any water flowing or lying under the  
22 surface of the earth or contained within an aquifer.  
23 d. "Prevailing ecological conditions" means the ecological conditions  
24 determined by reference to the applicable period of record of the  
25 United States Geological Survey stream gauge data, including data  
26 reflecting the ecological conditions that exist after the construction and  
27 operation of existing flow modification devices, such as dams, but  
28 excluding data collected when stream flow is temporarily affected by  
29 in-stream construction activity.  
30 e. "Surface water resource" means any lake, pond, river, stream, creek,  
31 run, spring, or other water flowing or lying on the surface of the earth.

32 (2) Schedule. – The Department shall develop a ~~schedule for basinwide~~  
33 ~~hydrologic model development. In developing the schedule, the Department~~  
34 ~~shall give priority to developing hydrologic models for river basins or portions~~  
35 ~~of river basins that are experiencing or are likely to experience water supply~~  
36 ~~shortages, where the ecological integrity is threatened or likely to become~~  
37 ~~threatened, or for which an existing hydrologic model has not been developed~~  
38 ~~by the Department or other persons or entities, and update basinwide~~  
39 hydrologic models in accordance with G.S. 143-215.8B(c).

40 (3) Model. – Each basinwide hydrologic model shall:

- 41 a. Include surface water resources within the river basin, groundwater  
42 resources within the river basin to the extent known by the  
43 Department, transfers into and out of the river basin that are required  
44 to be registered under G.S. 143-215.22H, other withdrawals,  
45 ~~ecological flow~~, instream flow requirements, projections of future  
46 withdrawals, an estimate of return flows within the river basin, inflow  
47 data, local water supply plans, and other scientific and technical  
48 information the Department deems relevant.  
49 b. Be designed to simulate the flows of each surface water resource  
50 within the basin that is identified as a source of water for a withdrawal  
51 registered under G.S. 143-215.22H in response to different variables,



- 1 conditions, and scenarios. The model shall specifically be designed to  
2 predict the places, times, frequencies, and intervals at which any of the  
3 following may occur:
- 4 1. Yield may be inadequate to meet all needs.
  - 5 2. Yield may be inadequate to meet all essential water uses.
  - 6 3. Ecological flow may be adversely affected.
- 7 c. Be based solely on data that is of public record and open to public  
8 review and comment.
- 9 (4) Ecological flow. – The Department shall characterize the ecology in the  
10 different river basins and identify the flow necessary to maintain ecological  
11 integrity. The Department shall create a Science Advisory Board to assist the  
12 Department in characterizing the natural ecology and identifying the flow  
13 requirements. The Science Advisory Board shall include representatives from  
14 the Divisions of Water Resources and Water Quality of the Department, the  
15 North Carolina Wildlife Resources Commission, the North Carolina Marine  
16 Fisheries Commission, and the Natural Heritage Program. The Department  
17 shall also invite participation by the United States Fish and Wildlife Service;  
18 the National Marine Fisheries Service; representatives of organizations  
19 representing agriculture, forestry, manufacturing, electric public utilities, and  
20 local governments, with expertise in aquatic ecology and habitat; and other  
21 individuals or organizations with expertise in aquatic ecology and habitat. The  
22 Department shall ask the Science Advisory Board to review any report or  
23 study submitted to the Department for consideration that is relevant to  
24 characterizing the ecology of the different river basins and identifying flow  
25 requirements for maintenance of ecological integrity. The Department shall  
26 consider such other information, including site specific analyses, that either  
27 the Board or the Department considers relevant to determining ecological flow  
28 requirements.
- 29 (5) Interstate cooperation. – To the extent practicable, the Department shall work  
30 with neighboring states to develop basinwide hydrologic models for each river  
31 basin shared by North Carolina and another state.
- 32 (6) ~~Approval and modification of hydrologic models.~~ Hydrologic model not a  
33 rule. –
- 34 a. ~~Upon completion of a hydrologic model, the Department shall:~~
- 35 1. ~~Submit the model to the Commission for approval.~~
  - 36 2. ~~Publish in the North Carolina Register notice of its~~  
37 ~~recommendation that the Commission approve the model and~~  
38 ~~of a 60 day period for providing comment on the model.~~
  - 39 3. ~~Provide electronic notice to persons who have requested~~  
40 ~~electronic notice of the notice published in the North Carolina~~  
41 ~~Register.~~
- 42 b. ~~Upon receipt of a hydrologic model, the Commission shall:~~
- 43 1. ~~Receive comment on the model for the 60 day period noticed~~  
44 ~~in the North Carolina Register.~~
  - 45 2. ~~Act on the model following the 60 day comment period.~~
- 46 c. ~~The Department shall submit any significant modification to an~~  
47 ~~approved hydrologic model to the Commission for review and~~  
48 ~~approval under the process used for initial approval of the model.~~
- 49 d. A hydrologic model meeting the requirements of this subsection is not  
50 a rule, and Article 2A of Chapter 150B of the General Statutes does  
51 not apply to the development of a hydrologic model.

- 1 (7) Existing hydrologic models. – The Department shall not develop a hydrologic  
2 model for a river basin for which a hydrologic model has already been  
3 developed by a person or entity other than the Department, if the Department  
4 determines that the hydrologic model meets the requirements of this  
5 subsection. The Department may adopt a hydrologic model that has been  
6 developed by another person or entity that meets the requirements of this  
7 subsection in lieu of developing a hydrologic model as required by this  
8 subsection. The Department may make any modifications or additions to a  
9 hydrologic model developed by another person or entity that are necessary to  
10 meet the requirements of this subsection.
- 11 (7a) Exception. – The requirement to use existing hydrologic models set forth in  
12 subdivision (7) of this subsection shall not apply if there are one or more transfers  
13 registered under G.S. 143-215.22H. In such cases, the Department shall  
14 develop a single hydrologic model that includes all the basins with the  
15 registered transfers and shall coordinate modeling efforts with the persons  
16 registering the transfer. The requirement set forth in this subdivision for a  
17 single model shall not apply to the extent that it conflicts with any interstate  
18 agreement pertaining to water supply issues to which the State is a signatory.
- 19 (8) Construction of subsection. – Nothing in this subsection shall be construed to  
20 vary any existing, or impose any additional regulatory requirements, related  
21 to water quality or water resources.
- 22 (9) Repealed by Session Laws 2017-10, s. 4.16(b), effective May 4, 2017."  
23 **SECTION 5.** This act is effective when it becomes law.