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# The Governors' Leadership Role in Developing Modern North Carolina Environmental Law: 1967-1983

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# THE GOVERNORS' LEADERSHIP ROLE IN DEVELOPING MODERN NORTH CAROLINA ENVIRONMENTAL LAW: 1967-1983

MILTON S. HEATH, JR. AND ALEX L. HESS, III\*

INTRODUCTION.....	2031
I. A SUMMARY OF NORTH CAROLINA'S ENVIRONMENTAL LEGISLATION, 1967-1974 .....	2035
II. THE INPUT OF GOVERNORS MOORE, SCOTT, AND HOLSHOUSER.....	2040
A. <i>Governor Moore</i> .....	2041
B. <i>Governor Scott</i> .....	2044
C. <i>Governor Holshouser</i> .....	2047
III. LEGISLATOR SUPPORT .....	2050
IV. THE HUNT ADMINISTRATION .....	2053
CONCLUSION: THE PROMISE OF STATE INNOVATION .....	2056
APPENDIX: ENVIRONMENTAL LEGISLATION 1967-1983 .....	2058

## INTRODUCTION

Since the early 1970s, Americans have grown accustomed to the perception of a federally dominated system of environmental law that waxes and wanes only with the ups and downs of national politics.

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This view was spawned by congressional enactment of the National Environmental Policy Act of 1969,<sup>1</sup> the Clean Air Act Amendments of 1970,<sup>2</sup> and the Clean Water Act of 1972.<sup>3</sup> This spate of legislation was followed by a steady flow of federal lawmaking throughout the 1970s, including the Federal Environmental Pesticide Control Act of 1972,<sup>4</sup> the Safe Drinking Water Act of 1974,<sup>5</sup> the Coastal Zone Management Act of 1972,<sup>6</sup> the Resource Conservation and Recovery Act of 1976,<sup>7</sup> and Superfund legislation.<sup>8</sup> In contrast, state governments were commonly perceived as sometimes following a federal lead in environmental protection, but more often marching to the drumbeat of business and commercial interests that smother or oppose environmental protection initiatives whenever possible.<sup>9</sup>

More recent commentary has begun to question the validity of this perception. As Richard Whisnant observed in his book, *Cleanup Law of North Carolina*:

[T]he central piece of “comprehensive” cleanup legislation that enables the Superfund program, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), directly supplies the law for a very small percentage of the thousands of sites in North Carolina (and other states) where contamination is acknowledged to exist. In North Carolina, CERCLA directly provides the law for perhaps 100 (.8 percent) of the approximately 12,000 known contaminated sites . . . . [M]ost of the final decisions—about

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1. Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. §§ 4321-47 (2000 & Supp. II 2002)).

2. Pub. L. No. 91-604, 84 Stat. 1676 (1970) (codified as amended at 42 U.S.C. §§ 7401-7671q (2000 & Supp. II 2002)).

3. Federal Water Pollution Control Act Amendments of 1972, Pub. L. No. 92-500, 86 Stat. 816 (1972) (codified as amended at 33 U.S.C. §§ 1251-1387 (2000 & Supp. II 2002)).

4. Pub. L. No. 92-516, 86 Stat. 973 (1972) (codified as amended at 7 U.S.C. §§ 136-136y (2000 & Supp. II 2002)).

5. Pub. L. No. 93-523, 88 Stat. 1660 (1974) (codified as amended at 42 U.S.C. §§ 300f to 300j-25 (2000 & Supp. II 2002)).

6. Pub. L. No. 92-583, 86 Stat. 1280 (1972) (codified as amended at 16 U.S.C. §§ 1451-65 (2000 & Supp. II 2002)).

7. Pub. L. No. 94-580, 90 Stat. 2795 (1976) (codified as amended at 42 U.S.C. §§ 6901-87 (2000 & Supp. II 2002)).

8. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767 (1980) (codified as amended at 42 U.S.C. §§ 9601-75 (2000 & Supp. II 2002)).

9. There is a rich law review literature on the subject of intergovernmental relations in environmental law. See Richard L. Revesz, *Rehabilitating Interstate Competition: Rethinking the “Race-to-the-Bottom” Rationale for Federal Environmental Regulation*, 67 N.Y.U. L. REV. 1210, 1210-11 (1992).

ninety-five-plus percent of cleanups—where, what, how, who pays, how clean is clean—are governed by state or local law.<sup>10</sup>

A strong and innovative state role in environmental protection since 1980 is also evident in North Carolina's environmental protection laws. These laws include:

- Clean Smokestacks Law of 2002<sup>11</sup> and the state's pending lawsuit against the Tennessee Valley Authority, alleging inadequate control of electric generating plant emissions,<sup>12</sup> reflecting the state's efforts to fill growing gaps in federal clean air programs;
- Clean Water Management Trust Fund,<sup>13</sup> an ongoing source of generous state funding for local water quality improvement efforts;
- state-based agricultural cost share program,<sup>14</sup> an early state non-point source control program that distributes five to ten million dollars yearly to farmers for agricultural non-point source pollution control;
- state-local water supply watershed protection law,<sup>15</sup> a permanent part of North Carolina's drinking water program after surviving a major litigation challenge;<sup>16</sup>
- river basin water quality management program,<sup>17</sup> a model relied on by the EPA to encourage other states to develop regional programs.

This essay focuses on another important aspect of state presence in environmental law, the origins of North Carolina's modern

10. RICHARD WHISNANT, *CLEANUP LAW OF NORTH CAROLINA 1* (2003).

11. Act of June 20, 2002, ch. 4, 2002 N.C. Sess. Laws 72 (codified as amended at N.C. GEN. STAT. § 62-133.6 and in scattered sections of ch. 143, art. 21B (2005)).

12. See Wade Rawlins, *N.C. Sues TVA for Cleaner Air: Coal-Fired Power Plants in Neighboring States Hurt Our Economy and Health, the Suit Says*, NEWS AND OBSERVER (Raleigh, N.C.), Jan. 31, 2006, at B1.

13. An Act to Modify the Continuation Budget Operations Appropriations Act of 1996, ch. 18, § 27.6, 1995 N.C. Sess. Laws (2d Spec. Sess. 1996) 631, 825-30 (current version at N.C. GEN. STAT. §§ 113A-251 to -259 (2005)).

14. Act of July 15, 1986, ch. 1014, § 149(a), 1985 N.C. Sess. Laws (Reg. Sess. 1986) 418, 552-53 (codified as amended at N.C. GEN. STAT. §§ 143-215.74 to -215.74B (2005)). See MILTON S. HEATH, JR., *GUIDEBOOK ON THE LAW AND PRACTICE OF SOIL AND WATER CONSERVATION IN NORTH CAROLINA 34*, 48-49 (2004).

15. Act of June 23, 1989, ch. 426, 1989 N.C. Sess. Laws 934 (current version at N.C. GEN. STAT. §§ 143-214.5, -215.2(a), -215.6A(7) (2005)).

16. *Town of Spruce Pine v. Avery County*, 123 N.C. App. 704, 475 S.E.2d 233 (1996), *rev'd*, 346 N.C. 787, 488 S.E.2d 144 (1997) (upholding constitutionality of act against anti-delegation challenge).

17. Act of Aug. 27, 1997, ch. 458, 1997 N.C. Sess. Laws 1938 (codified as amended at N.C. GEN. STAT. §§ 143-215.8B, 143B-282(a)(2)(k), 143B-282(c)-(d) (2005)).

environmental legislation, in the years 1967 to 1983. After summarizing the major trends of that period, it looks back to the years 1967 to 1974, when the foundations of state environmental law were laid by the general assembly under the forceful leadership of Governors Moore, Scott, and Holshouser, and to the years 1975 to 1983 when Governor Hunt and the general assembly continued to treat environmental law as a major priority. It then turns to the generous legislator support that responded to the leadership of these four governors. The essay concludes by returning to its opening theme of state-federal relations.

The capability of state government to mount and sustain major environmental program initiatives is reflected in North Carolina's impressive legislative output in the years 1967 to 1983. This proven capability of state government may be called upon again to fill gaps in fading national leadership. There is a widely shared sense today that federal environmental programs are waning during a period of sustained business-oriented conservative political leadership.

The declining federal presence in protecting the environment is multifaceted. It is not limited to the obvious budget reductions and faltering leadership at the White House and at the EPA. Of equal or greater long-term moment are institutional developments that threaten the foundations of modern national environmental law. Notable among these developments are the decisions of an increasingly conservative United States Supreme Court that shrink the constitutional power base of the national government,<sup>18</sup> while simultaneously broadening the reach of the Tenth Amendment.<sup>19</sup>

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18. See, e.g., *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44 (1996); *United States v. Lopez*, 514 U.S. 549 (1995). In *Lopez*, the Supreme Court, in a five-to-four decision that sharply departed from modern Commerce Clause decisions, held that the Gun-Free School Zone Act was not within the scope of the commerce power. See *Lopez*, 514 U.S. at 551. In *Seminole Tribe*, the Court, overruling a recent decision, held that the Eleventh Amendment prohibits states from being sued in federal court to enforce a commerce-based federal statute (the Gaming Law). See *Seminole Tribe*, 517 U.S. at 47.

19. See *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992); *Hodel v. Va. Surface Mining and Reclamation Ass'n, Inc.*, 452 U.S. 264 (1981). In the *New York* and *Printz* cases, the Supreme Court applied a formula first articulated in *Hodel* that the United States may not "commandeer the legislative processes of the states by directly compelling them to enact and enforce regulatory provisions." See *Hodel*, 452 U.S. at 288 (holding that the federal surface mining law did *not* commandeer the states into regulating mining). In *New York*, the Court reaffirmed the *Hodel* formula and restated it in more generalized language: "federal action may not commandeer state governments into the service of federal regulatory programs." *New York*, 505 U.S. at 175. In *Printz*, the Court offered another, more generalized, restatement of *Hodel*: "the Federal Government may not compel the states to implement, by legislative or executive action, federal regulatory programs." *Printz*, 521 U.S. at 925.

The shadow of these developments is lengthened by conservative U.S. Court of Appeals opinions that reinforce the high Court's assault on the powers of the national government.<sup>20</sup>

### I. A SUMMARY OF NORTH CAROLINA'S ENVIRONMENTAL LEGISLATION, 1967-1974

In 1967, North Carolina began a new wave of state environmental lawmaking, creating laws that would emphasize stopping pollution, protecting (not using) natural resources, and drawing on a range of enforcement tools—all backed by the force of law. The style of legislation<sup>21</sup> enacted before the modern environmental era assumed a philosophy of voluntarism, a goal of utilizing the assimilative capacity of the great sinks of water and air, and a widely shared understanding that enforcement was a dirty word.<sup>22</sup>

Before 1967, North Carolina, along with most of the United States before the environmental revolution, had a water quality management law of the old, largely voluntary style, but no air quality law, no solid or hazardous waste law, no environmental policy law, and a pesticide law that served only to protect farmers against being swindled by pesticide vendors.<sup>23</sup> By the mid-1970s, North Carolina had filled all of these statutory gaps and more.

20. See, for example, Judge Alito's dissenting opinion in *United States v. Rybar*, 103 F.3d 273 (3d Cir. 1996), using a narrow view of the scope of the Commerce Clause to challenge the constitutionality of a federal statute banning possession of machine guns. *Id.* at 286 (Alito, J., dissenting).

21. This style is illustrated by the North Carolina Stream Sanitation Law. See Act of Apr. 6, 1951, ch. 606, 1951 N.C. Sess. Laws 530 (codified as amended in scattered sections of N.C. GEN. STAT. §§ 143-211 to -215.8 (2005)).

22. For example, following the enactment of North Carolina's Stream Sanitation Law, the state Stream Sanitation Committee held a series of public hearings concerning proposed water quality classifications of the state's streams, river basin by river basin. Chairman J. Vivian Whitfield of the Committee opened each of these hearings by expressing his resistance to any emphasis on enforcement, saying, "[T]he longest way to clean up the streams of any state is through a courthouse door." Milton S. Heath, Jr., *A Comparative Study of State Water Pollution Control Laws and Programs*, in WATER RESOURCES RESEARCH INSTITUTE OF THE UNIVERSITY OF NORTH CAROLINA 60 (1972).

23. Insecticide, Fungicide and Rodenticide Act of 1947, ch. 1087, 1947 N.C. Sess. Laws 1610 (codified as amended at N.C. GEN. STAT. §§ 106-65.1 to -65.12), *repealed by* Act of July 12, 1971, ch. 832, § 4, 1971 N.C. Sess. Laws 1199, 1224. See LEGISLATIVE RESEARCH COMM'N, PESTICIDES, REPORT OF THE LEGISLATIVE RESEARCH COMMISSION TO THE 1971 GENERAL ASSEMBLY 20-21 (1970).

Beginning with the 1967 general assembly, North Carolina moved forward into the environmental era in a series of spurts and surges of legislative activity.

*Initially there was the 1967 Water Legislation Package.* It was highlighted by capacity use areas,<sup>24</sup> well construction standards,<sup>25</sup> and dam safety<sup>26</sup> laws.<sup>27</sup> Water law elements added during the next twenty years included the Stored Water Act of 1971,<sup>28</sup> the North Carolina Drinking Water Act,<sup>29</sup> assurances of state cooperation in federal reservoir projects<sup>30</sup> and authorization for transfer of storage rights to local governments,<sup>31</sup> interbasin transfer legislation,<sup>32</sup> and important amendments to several of the statutes.<sup>33</sup> The key statutes in this package, such as the capacity use areas law, share certain fundamental characteristics of modern environmental legislation: they are both animated by the spirit of resource protection, and are permit- and enforcement-driven. Crucial political leadership for the 1967 package was supplied by Governor Dan Moore, building upon years of spadework by General James Townsend, chair of the old Board of Water Resources.

During the late 1950s and the 1960s, General Townsend served as City Manager of Greensboro, a city perennially affected by water shortages, and as chair of the State Board of Water Commissioners, a water study group appointed by Governor Hodges in the wake of the early 1950s drought that was ended by Hurricane Hazel. For a

24. Water Use Act of 1967, ch. 933, 1967 N.C. Sess. Laws 1236 (codified as amended at N.C. GEN. STAT. §§ 143-215.11 to -215.22B (2005)).

25. North Carolina Well Construction Act, ch. 1157, 1967 N.C. Sess. Laws 1784 (codified as amended at N.C. GEN. STAT. §§ 87-83 to -96 (2005)).

26. Dam Safety Law of 1967, ch. 1068, 1967 N.C. Sess. Laws 1580, 1580-85 (codified as amended at N.C. GEN. STAT. §§ 143-215.23 to -215.37 (2005)).

27. For a summary of the capacity use areas, well construction, and dam safety laws, see Table 9 in the Appendix.

28. Act of Mar. 24, 1971, ch. 111, 1971 N.C. Sess. Laws 81 (codified as amended at N.C. GEN. STAT. §§ 143-215.44 to -215.50 (2005)).

29. North Carolina Drinking Water Act, ch. 788, 1979 N.C. Sess. Laws 908, 908-17 (current version at N.C. GEN. STAT. §§ 130A-311 to -328 (2005)).

30. Act of July 3, 1967, ch. 1071, 1967 N.C. Sess. Laws 1587, 1587-88 (codified as amended at N.C. GEN. STAT. §§ 143-354(a)(1), -354(a)(10)-(11), -355(b)(1), -355(b)(7) (2005)).

31. Act of Mar. 24, 1971, ch. 111, 1971 N.C. Sess. Laws 81, 82 (codified at N.C. GEN. STAT. § 143-215.49 (2005)).

32. Act of July 16, 1991, ch. 712, 1991 N.C. Sess. Laws 2292, 2292-96 (codified as amended at N.C. GEN. STAT. §§ 143-215.22A, -215.22G, -215.22H (2005)); Act of July 4, 1991, ch. 567, 1991 N.C. Sess. Laws 1243 (codified as amended at N.C. GEN. STAT. § 143-215.22A (2005)).

33. For a summary of the Drinking Water Act and interbasin transfer laws, see Table 9 in the Appendix.

decade, that board and its successor, the State Board of Water Resources, explored water law reform, and finally recommended a water legislation package that was enacted in 1967.<sup>34</sup> Dan Moore was an active member of the Board of Water Resources in the years leading up to 1967.

*Next came a buildup from 1969 to 1974 of a large body of environmental land management law, focusing especially (but not only) on coastal lands.* This included the estuarine dredge and fill permit law of 1969,<sup>35</sup> the coastal wetlands order law of 1971,<sup>36</sup> and several comprehensive studies<sup>37</sup> that were crowned by the enactment of the Coastal Area Management Act (the “CAMA”) in 1974,<sup>38</sup> along with the Land Policy Act.<sup>39</sup> Governor James Holshouser played a pivotal role in the enactment of CAMA. Despite Governor Holshouser’s best efforts, no mountain area management counterpart to CAMA (no “MAMA”) was ever enacted. Ultimately, in 1983, the Mountain Ridge Protection Act of 1983<sup>40</sup> (orchestrated by Hugh Morton and brokered by House Speaker Liston Ramsey) was added to this set of land use laws.

*Then came Governor Robert Scott’s 1971 environmental program message to the general assembly, spearheaded by his Deputy Secretary of Administration, Professor Leigh Hammond (on leave from North Carolina State University).* This speech provided a blueprint for an outburst of environmental legislation from 1971 to 1975. This blueprint was the source of the North Carolina Environmental Policy Act of 1971,<sup>41</sup> a complete overhaul of the state’s water and air pollution control laws,<sup>42</sup> the Oil Pollution Control Act of 1973,<sup>43</sup> the

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34. Milton S. Heath, Jr. & Warren J. Wicker, *Water Resources*, POPULAR GOV’T, Oct. 1967, at 39, 39–45.

35. Act of June 11, 1969, ch. 791, 1969 N.C. Sess. Laws 824, 824–27 (codified as amended at N.C. GEN. STAT. § 113-229 (2005)).

36. Act of July 21, 1971, ch. 1159, § 7, 1971 N.C. Sess. Laws 1707, 1711–12 (codified as amended at N.C. GEN. STAT. § 113-230 (2005)).

37. See Milton S. Heath, Jr., *A Legislative History of the Coastal Area Management Act*, 53 N.C. L. REV. 345, 345–47 (1974).

38. Coastal Area Management Act of 1974, ch. 1284, 1973 N.C. Sess. Laws (2d Sess.) 463, 463–89 (codified as amended at N.C. GEN. STAT. §§ 113A-100 to -134.3 (2005)).

39. Land Policy Act of 1974, ch. 1306, 1973 N.C. Sess. Laws (2d Sess.) 597, 597–606 (codified as amended at N.C. GEN. STAT. §§ 113A-150 to -159 (2005)).

40. Mountain Ridge Protection Act of 1983, ch. 676, 1983 N.C. Sess. Laws 645, 645–50 (codified as amended at N.C. GEN. STAT. §§ 113A-205 to -214, 153A-448, 160A-458.2 (2005)).

41. North Carolina Environmental Policy Act of 1971, ch. 1203, 1971 N.C. Sess. Laws 1763, 1763–66 (codified as amended at N.C. GEN. STAT. §§ 113A-1 to -13 (2005)).

42. Act of May 23, 1973, ch. 698, 1973 N.C. Sess. Laws 1039, 1039–48 (codified as amended in scattered sections of N.C. GEN. STAT. ch. 143, art. 21 (2005)).



Natural and Scenic Rivers Act of 1971,<sup>44</sup> and support for additional commission-inspired laws, such as the North Carolina Pesticide Law of 1971,<sup>45</sup> the Mining Act of 1971,<sup>46</sup> the Sedimentation Pollution Control Act of 1973,<sup>47</sup> and the regional water supply legislation of 1971.<sup>48</sup>

*After 1975 came intermittent streams of other fundamental environmental laws:* the Pollution Prevention Pays Program,<sup>49</sup> the Clean Water Bond Act of 1977,<sup>50</sup> the comprehensive solid and hazard waste management laws of the late 1970s and early 1980s,<sup>51</sup> the North Carolina Drinking Water Act,<sup>52</sup> the Plant Protection and Conservation Act of 1979,<sup>53</sup> the Archaeological Resources Protection and Nature Preserves Acts,<sup>54</sup> the Hazardous Chemicals Right-to-

43. Oil Pollution Control Act of 1973, ch. 534, 1973 N.C. Sess. Laws 816, 816-25 (codified as amended at N.C. GEN. STAT. §§ 143-215.75 to -215.94 (2005)).

44. Natural and Scenic Rivers Act of 1971, ch. 1167, § 2, 1971 N.C. Sess. Laws 1718, 1718-21 (codified as amended at N.C. GEN. STAT. §§ 113A-30 to -44 (2005)).

45. North Carolina Pesticide Law of 1971, ch. 832, 1971 N.C. Sess. Laws 1199, 1199-1225 (codified as amended at N.C. GEN. STAT. §§ 143-434 to -470.1 (2005)).

46. The Mining Act of 1971, ch. 545, 1971 N.C. Sess. Laws 466 (codified as amended at N.C. GEN. STAT. §§ 74-46 to -68 (2005)). The Mining Act is North Carolina's first regulatory statute to address the impact of mining activities on neighboring lands, resources, and environmental quality. It was preceded by a Mining Registration Act that required all mining companies to register with the state. Mining Registration Act of 1969, ch. 1204, 1969 N.C. Sess. Laws 1394, *repealed by* Act of June 23, 1977, ch. 712, 1977 N.C. Sess. Laws 901. These two statutes were triggered by mining developments of the 1960s, such as the Texas Gulf Sulphur phosphate mine in Beaufort County and proposed hard-metal mining in Orange County. See Table 9 in the Appendix for more information.

47. Sedimentation Pollution Control Act of 1973, ch. 392, 1973 N.C. Sess. Laws 476, 476-85 (codified as amended at N.C. GEN. STAT. §§ 113A-50 to -67 (2005)).

48. Act of July 20, 1971, ch. 1024, 1971 N.C. Sess. Laws 1598; Regional Water Supply Planning Act of 1971, ch. 892, 1971 N.C. Sess. Laws 1413 (codified as amended at N.C. GEN. STAT. §§ 162A-20 to -25 (2005)).

49. Act of May 30, 1989, ch. 168, § 7, 1989 N.C. Sess. Laws 320, 348-49 (codified as amended at N.C. GEN. STAT. § 113-8.01 (2005)).

50. North Carolina Clean Water Bond Act of 1977, ch. 677, 1977 N.C. Sess. Laws 789, 789-803.

51. Waste Management Act of 1981, ch. 704, 1981 N.C. Sess. Laws 1010, 1010-26 (codified as amended at N.C. GEN. STAT. §§ 130A-291 to -309, 104E-1 to -29 (2005)); Act of June 16, 1978, ch. 1216, 1977 N.C. Sess. Laws (2d Sess.) 146, 146-52 (current version at N.C. GEN. STAT. §§ 130A-290 to -310.58 (2005)).

52. North Carolina Drinking Water Act, ch. 788, 1979 N.C. Sess. Laws 908, 908-17 (current version at N.C. GEN. STAT. §§ 130A-311 to -328 (2005)).

53. Plant Protection and Conservation Act, ch. 964, 1979 N.C. Sess. Laws 1297, 1297-1303 (current version at N.C. GEN. STAT. §§ 106-202.12 to -202.22 (2005)).

54. Nature Preserves Act, ch. 216, 1985 N.C. Sess. Laws 182, 182-85 (codified as amended at N.C. GEN. STAT. §§ 113A-164.1 to -164.11 (2005)); Archaeological Resources Protection Act, ch. 904, 1981 N.C. Sess. Laws 1339, 1339-42 (current version at N.C. GEN. STAT. §§ 70-10 to -20 (2005)).

Know Act,<sup>55</sup> the Southeast Interstate Low-Level Radioactive Waste Management Compact,<sup>56</sup> the coastal submerged lands laws,<sup>57</sup> important state agency reorganizations,<sup>58</sup> and more. By 1975, North Carolina had its fundamental state environmental legislation firmly in place.<sup>59</sup> The governor and general assembly built upon this foundation in the ensuing years.

The origins of several of *the most basic federal environmental protection statutes* overlapped the terms of Governors Scott and Holshouser—notably the National Environmental Policy Act (1969), the Clean Air Act (1970), the Clean Water Act (1973), and the Drinking Water Act (1974). The origins of *the major federal chemical era* statutes overlapped Governor Holshouser's term and the first two

55. Hazardous Chemicals Right to Know Act, ch. 775, 1985 N.C. Sess. Laws 1135, 1135-43 (codified as amended at N.C. GEN. STAT. §§ 95-173 to -218 (2005)).

56. Act of July 11, 1983, ch. 714, 1983 N.C. Sess. Laws 723 (codified as amended at N.C. GEN. STAT. §§ 104F-1 to -5 (1990 & Supp. 1998)), *repealed by* Act of July 20, 1999, ch. 357, § 2, 1999 N.C. Sess. Laws 1338, 1338-39.

57. Act of May 30, 1985, ch. 279, 1985 N.C. Sess. Laws 228, 228 (codified as amended at N.C. GEN. STAT. § 113-206 (2005)); Act of May 30, 1985, ch. 278, 1985 N.C. Sess. Laws 227, 227-28 (codified as amended at N.C. GEN. STAT. § 146-20.1 (2005)); Act of May 30, 1985, ch. 277, 1985 N.C. Sess. Laws 227 (codified as amended at N.C. GEN. STAT. § 1-45.1 (2005)); Act of May 30, 1985, ch. 276, 1985 N.C. Sess. Laws 226, 226-27 (codified as amended at N.C. GEN. STAT. § 146-6 (2005)).

58. In 1977, the Department of Natural and Economic Resources ("DNER") was reorganized into the Department of Natural Resources and Community Development ("DNRCD"). Act of June 28, 1977, ch. 771, 1977 N.C. Sess. Laws 1008, 1008-13 (codified as amended at N.C. GEN. STAT. §§ 143B-279.1 to -344.23 (2005)). In 1989, the DNRCD was reorganized into the Department of Environment, Health and Natural Resources ("DEHNR"). Act of July 1, 1989, ch. 727, 1989 N.C. Sess. Laws 2125, 2125-2268 (codified as amended at N.C. GEN. STAT. §§ 143B-279.1 to -344.23 (2005)). In 1997, the DEHNR was reorganized into the Department of Environment and Natural Resources ("DENR") and Health Services was transferred to the new Department of Health and Human Services. Current Operations and Capital Improvements Appropriations Act of 1997, ch. 443, §§ 11A.1-130, 1997 N.C. Sess. Laws 1344, 1508-1628 (codified as amended at N.C. GEN. STAT. §§ 143B-279.1 to -344.23 (2005)).

59. The author (Heath) served as legislative committee counsel for the general assembly's standing committees that addressed environmental legislation from the 1967 through the 1983 legislative sessions. During that period, he was the sole or principal drafter of the Capacity Use Areas Act, the Dam Safety Act, the estuarine protection and coastal wetlands laws, the Coastal Area Management Act (with Professor Philip Green), the mountain area management bills, the Land Policy Act, the pesticide law, the Oil Pollution Control Act (with Thomas Rosser), North Carolina's first hazardous waste law, the Mining Registration Act, the regional water supply laws, the Environmental Policy Act, the 1967 flood plain management law, the Floodway Act, and the Mountain Ridge Protection Act. He assisted in the drafting of the Well Construction Standards Act, the 1971 Stored Water Act, the Mining Act, the Clean Water Bond Act, and the overhaul of the water and air pollution control laws. From 1965 through 1974, he also was the editor of the University of North Carolina Institute of Government's Legislative Reporting Service. In that capacity, he reviewed and analyzed the texts of every bill introduced during those legislative sessions.

terms of Governor Hunt—the Pesticide Control Act (1972), the Resource Conservation and Recovery Act (1976), the Toxic Substance Control Act (1977), and Superfund (1980). The blending of these parallel strands of federal and state law will be more closely examined in the conclusion of this essay.

## II. THE INPUT OF GOVERNORS MOORE, SCOTT, AND HOLSHOUSER

Governors Dan Moore, Robert Scott, and James Holshouser provided extraordinary executive input to the state's fundamental environmental legislation from 1967 through 1974—far beyond the recognition of even the informed and active environmental community. The composition and background of this trio of governors is rather striking. Governor Dan Moore was a business lawyer associated with the conservative wing of the Democratic Party.<sup>60</sup> James Holshouser was a Republican elected in the 1972 Nixon sweep that drew largely on conservative Republicans and Democrats for support.<sup>61</sup> Robert Scott was a dairy farmer whose political roots were in an agricultural sector not ordinarily supportive of environmental protection laws.<sup>62</sup>

After the modern three-decade trend of two-term governors in North Carolina, it is easy to forget that Governors Moore, Scott, and Holshouser were each constitutionally limited to a single four-year term in office.<sup>63</sup> North Carolina's one-term governors had, at best, two legislative sessions in which to achieve their program goals. The one-term governor had little time after a typically arduous election campaign to prepare for a first legislature, and two years later might be treated as a lame duck by a second legislature.

How did one-term governors overcome these obstacles and craft the outstanding legislative records of Moore, Scott and Holshouser, especially in a contentious field such as environmental law? The answers for these three governors are the combination of solid preparation, interpersonal skills, and the ability to take decisive action, coupled with the support of key staff members and legislative allies.

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60. NORTH CAROLINA MANUAL, 1971, at 611 (Thad Eure ed., 1971).

61. Jack Childs, *James Eubert Holshouser, Jr.*, in ADDRESSES AND PUBLIC PAPERS OF JAMES EUBERT HOLSHOUSER, JR., GOVERNOR OF NORTH CAROLINA, 1973-1977, at xvii-xix, (Memory F. Mitchell ed., 1978).

62. NORTH CAROLINA MANUAL, 1969, at 499 (Thad Eure ed., 1969).

63. The one-term limit applied before adoption of a constitutional amendment repealing it by popular vote at the general election held November 8, 1977. Act of May 11, 1977, ch. 363, 1977 N.C. Sess. Laws 369, 369-70 (codified as amended at N.C. CONST. art. III, § 2).

### A. Governor Moore

In 1967, Dan Moore, during his second legislative session as governor, championed an extraordinary package of water management legislation—"nine laws . . . covering almost one hundred printed pages," in the words of University of North Carolina Professor William Aycock.<sup>64</sup> Following the 1967 general assembly, Professor Aycock and his son, William Aycock, Jr., wrote a comprehensive analysis of the 1967 water legislation that was published in the *North Carolina Law Review*.<sup>65</sup> That legislation included the Capacity Use Areas Act (the Water Use Act of 1967), the Well Construction Standards Act, the Dam Safety Act, the state's first flood-plain management legislation, and a reorganization of water and air resources programs.

Before the 1967 general assembly, there was no significant legislation authorizing quantity controls of either ground water or surface water. "The most significant feature of the 1967 legislation," observed Professor Aycock, "vests authority in [a new Board of Water and Air Resources] to invoke quantity controls on water use . . . [under] the Water Use Act of 1967 and the North Carolina Well Construction Act."<sup>66</sup> In Governor Moore's words, the legislation creating the new Department of Water and Air Resources and the Water Use Act "give North Carolina a unified program of water quality and quantity control unequalled in the eastern states."<sup>67</sup>

In retrospect, the Capacity Use Areas Act can be recognized as North Carolina's first environmental legislation, both in concept and in its permit and rulemaking machinery. Governor Moore's quiet but firmly supportive stance—in contrast to today's familiar adversary, stakeholder-oriented style—gave the freshmen legislators who had introduced and managed the legislation and House Speaker David Britt precisely what was needed to steer this legislative package through the general assembly.<sup>68</sup>

Before he became governor, Dan Moore developed a reputation as a quiet but commanding political strategist—a

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64. William B. Aycock, *Introduction to Water Use Law in North Carolina*, 46 N.C. L. REV. 1, 30 (1967).

65. *Id.* at 1–38.

66. *Id.* at 31.

67. Daniel K. Moore, Governor of N.C., Speech to Annual Convention of the North Carolina Savings and Loan League (July 18, 1967), in MESSAGES, ADDRESSES, AND PUBLIC PAPERS OF DANIEL KILLIAN MOORE, GOVERNOR OF NORTH CAROLINA, 1965–1969, at 385 (Memory F. Mitchell ed., 1971).

68. Norwood E. Bryan, Jr., Untitled Speech, in THE NEW LEGISLATOR 23–25 (Milton S. Heath, Jr. ed., 1967).

reputation probably drawn from his lobbying activities in Raleigh on behalf of Champion Paper Company, his service on the State Board of Water Resources, and his earlier years as a superior court judge. A story that went the rounds in Raleigh illustrates how Moore's fellow lobbyists viewed his professional trips to the capital city. The word was, "if you hear a rustling in the eaves, you know that Dan Moore was here."<sup>69</sup>

Much of Dan Moore's early professional life was spent in the mountain area of Sylva (Jackson County) and Canton (Haywood County). There, he served as Sylva Town Attorney, Jackson County Attorney, and one term as a state legislator before World War II. He returned home from the Army to renew his public life as a solicitor and superior court judge (like his father before him).<sup>70</sup> His special place in modern North Carolina political history reflects his western Carolina political origins: when he was elected, Moore was the state's first twentieth-century governor from west of Asheville.<sup>71</sup> As this implies, success in statewide elections does not come easily to western Carolinians, distant as they are from the center of gravity of North Carolina politics. In his first statewide race (for governor), Dan Moore overcame not only this obstacle, but several others. He survived a tight first primary against two better-known opponents, Dr. I. Beverly Lake and L. Richardson Preyer, and went on to defeat Preyer in the second primary before defeating Republican candidate Robert Gavin in the general election.<sup>72</sup> His success was not the product of a flair for electioneering—quite the contrary.<sup>73</sup> Somehow, his supporters cobbled together enough effective allies for Moore to win the 1964 gubernatorial election.<sup>74</sup>

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69. The author (Heath) heard this story repeated from time to time during his work in preparation for the 1967 legislation.

70. MESSAGES, ADDRESSES, AND PUBLIC PAPERS OF DANIEL KILLIAN MOORE, GOVERNOR OF NORTH CAROLINA, 1965-1969, *supra* note 67, at xix-xxi.

71. NORTH CAROLINA GOVERNMENT, 1585-1979, at 423 (John L. Cheney ed., 1981).

72. MESSAGES, ADDRESSES, AND PUBLIC PAPERS OF DANIEL KILLIAN MOORE, GOVERNOR OF NORTH CAROLINA, 1965-1969, *supra* note 67, at xxi, xxiv.

73. *Id.* at xxii.

74. The author (Heath) was first impressed by Dan Moore's political clout at a joint meeting of the Board of Water Resources and the Stream Sanitation Committee at Champion Paper Company's Lake Logan resort in the spring of 1963. When Heath entered through the meeting room door he saw J. Vivian Whitfield (the chair of the Stream Sanitation Committee and former state senator from Burgaw) standing in a group with a large political button on his lapel, that read "Dan Moore in '64." At that time no hint of Moore's candidacy had reached the mid-state media. That Whitfield, a powerful eastern North Carolina political leader, would demonstrate his support for Moore's candidacy in this forceful way was a strong signal that Moore's allies were already developing the interregional support network essential for a meaningful campaign.

In the end, perennial State Treasurer Edwin Gill (addressing the Vance-Aycock Dinner before the 1964 election) probably best captured Governor Moore's intrinsic qualities and appeal in these words: "[Dan Moore speaks] with the most persuasive of all eloquence—an eloquence characterized by clarity, simplicity, and, above all, by sincerity. The integrity of the man shines in his every word. Without pretense or fanfare, he has won the trust, the confidence[,] and the hearts of our people."<sup>75</sup> Moore brought to the task a business law background that would probably be perceived today as antienvironmental (division counsel to Champion Paper Company and a superior court judgeship that included an early key water rights decision<sup>76</sup>). Moore did not use his business connections to curry favor with business and industry in the style that has become so familiar in recent years. In fact, he used this background to help develop the 1967 legislation while he served on the State Board of Water Resources that generated the proposed legislation. Early in his gubernatorial term, Moore drew on his previous professional relationships to launch a three-person blue ribbon panel containing two of the world's leading ground water scientists, who provided the technical background essential to support the Capacity Use Areas Act.<sup>77</sup> The panel's study combined over 150 pages of technical background with a set of recommendations that anticipated the Capacity Use Areas Act.<sup>78</sup> This study, in essence, was a classic "Brandeis Brief"<sup>79</sup> in support of constructive public policy.

"Conservation," in the words of Charles Dunn, was always "close to the . . . heart" of Governor Moore.<sup>80</sup> His service on the Board of Water Resources and the legislative program that it

Charles Dunn, later to be Governor Moore's administrative assistant, was another witness to the same campaign "announcement." *Id.* at xxi.

75. *Id.* at xxiv.

76. See *Young v. City of Asheville*, 241 N.C. 618, 618–28, 86 S.E.2d 408, 408 (1955).

77. BOARD OF CONSULTANTS, N.C. DEP'T OF WATER RES., EVALUATION OF POTENTIAL IMPACT OF PHOSPHATE MINING ON GROUND-WATER RESOURCES OF EASTERN NORTH CAROLINA vii (1967).

78. For a list of the 1967 Water Laws, see Table 1 in the Appendix.

79. The term "Brandeis brief" refers to a:

brief . . . that makes use of social and economic studies in addition to legal principles and citations. The brief is named after Justice Louis D. Brandeis, who as an advocate filed the most famous such brief in *Muller v. Oregon*, 208 U.S. 412 . . . (1908), in which he persuaded the Court to uphold a statute setting a maximum ten-hour workday for women.

BLACK'S LAW DICTIONARY 200 (8th ed. 2004).

80. MESSAGES, ADDRESSES, AND PUBLIC PAPERS OF DANIEL KILLIAN MOORE, GOVERNOR OF NORTH CAROLINA, 1965–1969, *supra* note 67, at xxxiv.

generated were early signs of his conservation leanings.<sup>81</sup> Ultimately, his concern for conservation outranked any attachment to business interests in Governor Moore's scale of values.

In the final buildup to house passage of the bill, Moore calmly deflected a major lobbying attack by a leading Wall Street law firm.<sup>82</sup> Governor Moore was a master of personal relations who generated the kind of trust that sustains the alliances necessary for successful legislative strategies.<sup>83</sup>

See Table 1 in the Appendix for a list of the 1967 Water Laws.

### B. Governor Scott<sup>84</sup>

During the past year we have witnessed a ground swell of public concern for the environment. This concern stems from a

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81. The author (Heath) was privileged to work closely with Governor Moore from the time of Moore's service on the Board of Water Resources to the end of his term as Governor. Moore's command of water resources law and policy was apparent when he began his service on the water board. At one of his first water board meetings, he proposed the repeal of an early North Carolina irrigation permit law that had proved almost impossible to administer—in order to “clear the board,” as Moore put it, for future water law reform that Moore accurately forecast was soon to come. See Act of Apr. 14, 1951, ch. 1049, 1951 N.C. Sess. Laws 1045, *repealed* by Act of May 2, 1961, ch. 315, 1961 N.C. Sess. Laws 445.

Following Governor Moore's second legislative session in 1967, he joined legislative leaders in recommending that the author develop a two-day legislative orientation conference for the General Assembly at the Institute of Government. Governor Moore showed his serious interest in the conference by attending both days and by sponsoring an evening banquet for the attending legislators. For further reflections of the author's working relationship with Governor Moore, see *supra* notes 69 and 74 and *infra* notes 82 and 83.

82. During the last week of the 1967 legislative session Governor Moore received a letter from a Wall Street law firm challenging the constitutionality of the Capacity Use Areas Bill, which had passed the senate and was awaiting house action. He asked the author (Heath) to evaluate the letter and to attend a meeting at the capitol with Speaker David Britt, the three principal house and senate sponsors of the bill, and legal counsel Tim Valentine. Governor Moore then asked Heath if there was “anything new” in the letter, and he replied “no.” He then turned to Speaker Britt and said, “if you are ready, let's run the bill.”

83. In 1966 the author (Heath) had a firsthand experience with Governor Moore's capacity to generate trust. During the buildup to the 1967 legislative session, the author was concerned at the prospect of explaining the Capacity Use Areas Bill to legislators critical of the bill. At that time the author was only an Institute of Government faculty member who happened to have drafted the legislation, and did not have the benefit of his later status as legislative committee counsel. Heath visited Governor Moore at the State Capitol to ask whether he could expect Moore's support if this happened. Governor Moore replied, “of course I will,” and he more than kept his word at the meeting described in footnote 82.

84. For lists of the environmental laws enacted or proposed in the Scott years, see Tables 2, 3, and 4 in the Appendix.

realization that population growth, economic development, and technological changes often work to the detriment of our physical environment . . . . Our task is that of blending the enhancement of our physical environment with the enhancement of our economic and social well-being.<sup>85</sup>

With these words Governor Scott opened his environmental message to the General Assembly on April 8, 1971. The message and five major environmental bills incorporating many of his recommendations culminated more than two months of determined work by his Administration to assemble a coherent environmental program.<sup>86</sup> Scott's early interest in environmental legislation was evident when he backed a comprehensive study of the state's conservation and development agencies during his term as lieutenant governor in 1967.<sup>87</sup> He had served on the State Board of Conservation and Development from 1961 to 1964.<sup>88</sup>

Early in his second legislative session, Governor Scott, correctly gauging the potential political support for environmental legislation, called on his legislative liaison, Dr. Leigh Hammond (on leave from the North Carolina State University faculty), to work with the author to generate an environmental legislative program for state agencies. The resulting product laid out a complete blueprint for an outpouring of the most far-reaching environmental program ever proposed in North Carolina, which would be enacted almost in its entirety during the next three years.

Altogether, Governor Scott's five major program bills, plus several others he endorsed or anticipated, embodied what might otherwise have been many more separate bills. One of the products of the administration's efforts was to mesh this medley into a manageable number of bills organized around a few concepts. These organizing concepts were, primarily: environmental policy,<sup>89</sup> water

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85. Robert Walter Scott, Governor of N.C., Environmental Message (Apr. 8, 1971), in ADDRESSES AND PUBLIC PAPERS OF ROBERT WALTER SCOTT, GOVERNOR OF NORTH CAROLINA, 1969-1973, at 71, 71-72 (Memory F. Mitchell ed., 1974).

86. INST. OF GOV'T, LEGISLATIVE SERVICE, WEEKLY LEGISLATIVE SUMMARY (Apr. 23, 1971); see *infra* notes 89-93.

87. S. Res. 80, 1967 Gen. Assem., 1967 N.C. Sess. Laws, 1980, 1980-81.

88. NORTH CAROLINA MANUAL, 1965, at 452 (Thad Eure ed., 1965).

89. See S. 394, 1971 Gen. Assem., Reg. Sess. (N.C. 1971); H.R. 649, 1971 Gen. Assem., Reg. Sess. (N.C. 1971). This bill embodied the North Carolina Environmental Policy Act, with its provisions for state and local environmental impact and assessment statements.



and air resources,<sup>90</sup> coastal resources,<sup>91</sup> other natural resources,<sup>92</sup> and the visual environment.<sup>93</sup>

The complete Scott package included CAMA,<sup>94</sup> the Pesticide Law of 1971,<sup>95</sup> the North Carolina Environmental Policy Act of 1971,<sup>96</sup> a major overhaul of the air and water pollution control laws,<sup>97</sup> the Natural and Scenic Rivers Act of 1971,<sup>98</sup> the Sedimentation Pollution Control Act of 1973,<sup>99</sup> the Oil Spill Control Act of 1973,<sup>100</sup> and a major reorganization of environmental agencies.<sup>101</sup> By 1974, the general assembly had enacted this entire program in a fitting tribute to the vision and strength of Governor Scott's political leadership.

Robert Scott had "governor" in his veins from his young adulthood as the son of Governor Kerr Scott. Robert Scott was

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90. See S. 432, 1971 Gen. Assem., Reg. Sess. (N.C. 1971); H.R. 720, 1971 Gen. Assem., Reg. Sess. (N.C. 1971). This thirty-page bill included provisions for natural and scenic rivers, floodway regulation, a regional sewage revolving fund, reporting of air and water contamination, a one-acre lot requirement for septic tank systems, watercraft waste disposal, motor vehicle emission standards, and expanded air and water pollution control enforcement authority. An animal waste regulation proposal was withheld for later introduction.

91. See S. 431, 1971 Gen. Assem., Reg. Sess. (N.C. 1971); H.R. 705, 1971 Gen. Assem., Reg. Sess. (N.C. 1971). This bill was the last coastal resources proposal that preceded the Coastal Area Management Bill. It contained provisions concerning sand dune protection, estuarine protection, and a revolving fund for beach erosion protection projects.

92. See S. 420, 1971 Gen. Assem., Reg. Sess. (N.C. 1971); H.R. 685, 1971 Gen. Assem., Reg. Sess. (N.C. 1971). This bill contained provisions concerning oil pollution control and a site control program for electric power plants, which was not enacted.

93. See S. 428, 1971 Gen. Assem., Reg. Sess. (N.C. 1971); H.R. 706, 1971 Gen. Assem., Reg. Sess. (N.C. 1971). This visual protection bill contained provisions concerning littering, junk automobiles, and municipal appearance commissions. Enactment of a major visual environment proposal would have to await 1983's mountain ridge law. Mountain Ridge Protection Act of 1983, ch. 676, 1983 N.C. Sess. Laws 645 (codified as amended at N.C. GEN. STAT. §§ 113A-205 to -214, 153A-448, 160A-458.2 (2005)).

94. Coastal Area Management Act of 1974, ch. 1284, 1973 N.C. Sess. Laws (2d Sess.) 463, 463-89 (codified as amended at N.C. GEN. STAT. §§ 113A-100 to -134.3 (2005)).

95. North Carolina Pesticide Law of 1971, ch. 832, 1971 N.C. Sess. Laws 1199, 1199-1225 (codified as amended at N.C. GEN. STAT. §§ 143-434 to -470.1 (2005)).

96. North Carolina Environmental Policy Act of 1971, ch. 1203, 1971 N.C. Sess. Laws 1763, 1763-66 (codified as amended at N.C. GEN. STAT. §§ 113A-1 to -13 (2005)).

97. Act of May 23, 1973, ch. 698, 1973 N.C. Sess. Laws 1039, 1039-48 (codified as amended in scattered sections of N.C. GEN. STAT. § 143 (2005)).

98. Natural and Scenic Rivers Act of 1971, ch. 1167, § 2, 1971 N.C. Sess. Laws 1718, 1718-21 (codified as amended at N.C. GEN. STAT. §§ 113A-30 to -44 (2005)).

99. Sedimentation Pollution Control Act of 1973, ch. 392, 1973 N.C. Sess. Laws 476, 476-85 (codified as amended at N.C. GEN. STAT. §§ 113A-50 to -67 (2005)).

100. Oil Pollution Control Act of 1973, ch. 534, 1973 N.C. Sess. Laws 816, 816-25 (codified as amended at N.C. GEN. STAT. §§ 143-215.75 to -215.94 (2005)).

101. Act of Apr. 11, 1974, ch. 1262, § 11-86, 1973 N.C. Sess. Laws (2d Sess.) 373, 377-417 (current version at N.C. GEN. STAT. §§ 143B-279.1 to -344.23 (2005)).

twenty years old when his father became governor in 1949.<sup>102</sup> In 1957, he was president of the North Carolina Society of Farm Managers and Rural Appraisers.<sup>103</sup> He was master of the State Grange from 1961 to 1963, and became involved in precinct politics during those years.<sup>104</sup> He was elected to his first statewide office as Lieutenant Governor, serving from 1964 to 1968.<sup>105</sup> Therefore, as a result of his unique experiences, Bob Scott came to office exceptionally well prepared to be governor and drew on the full range of the powers of the executive branch to achieve success with his environmental program.

See Tables 2, 3, and 4 in the Appendix for lists of the environmental laws enacted or proposed in the Scott years.

### C. Governor Holshouser

In the fall 1972 election, James Holshouser scored a somewhat unexpected victory over Senator Hargrove "Skipper" Bowles (author of the North Carolina Environmental Bill of Rights) after a narrow primary victory over a conservative opponent, former Congressman James Gardner, and became North Carolina's first Republican Governor since Reconstruction.<sup>106</sup> The Nixon sweep that helped carry the day for Holshouser also propelled fifteen senate Republicans and thirty-five house Republicans into office during an era when twenty-two Republican legislators was a typical total for both houses.<sup>107</sup> The fifty Republican lawmakers who served in the 1973 general assembly included a number of inexperienced conservatives. Although their fifty votes did not approach a majority

102. NORTH CAROLINA MANUAL, 1965, at 452 (Thad Eure ed., 1965).

103. *Id.*

104. *Id.*

105. NORTH CAROLINA MANUAL, 1969, at 499 (Thad Eure ed., 1969).

106. Election returns are in NORTH CAROLINA MANUAL, 1973, at 338-45 (John L. Cheney, Jr. ed., 1973).

Vote for Governor, Republican Party—First Primary, May 6, 1972

James C. Gardner - 84,906

James E. Holshouser, Jr. - 83,637

Leroy Gibson - 1,083

Thomas E. Chappell - 957

Vote for Governor, Republican Party—Second Primary, June 3, 1972

James E. Holshouser, Jr. - 69,916

James C. Gardner - 68,134

Vote for Governor—General Election, November 7, 1972

James E. Holshouser, Jr. - 767,470

Hargrove Bowles - 729,104

Arlis F. Pettyjohn - 8,211

107. 1973 N.C. Sess. Laws iv-vi; 1973 NORTH CAROLINA HOUSE JOURNAL 3-11.

in either house, they gave Governor Holshouser a measure of leverage in the 1973 and 1974 general assemblies.

James Holshouser came to the governor's office with the benefit of four terms as a Watauga County Republican representative, in 1963, 1965, 1969, and 1971.<sup>108</sup> While this experience gave him useful insights into the legislative process, it also must have left him acutely aware of the limited ability of a Republican legislator of that era to influence the outcome of legislation. During Holshouser's four terms as a legislator, Republicans never had more than twenty-nine votes in the 120-member house, and averaged only twenty-two members.<sup>109</sup> Holshouser, a moderate Republican lawyer who made friends easily, was respected and appreciated by many of his Democratic legislator colleagues.

A number of professionals, the author included, had helped to assemble the Scott legislative program, including a coastal management proposal that had been in preparation for several years of intensive study and planning.<sup>110</sup> Our initial reaction to the defeat of Senator Bowles and the election of governor-to-be Holshouser was one of anxiety about the fate of coastal management. Imagine our astonishment when Governor Holshouser invited us and a small group of legislators to the executive mansion early in 1973 to learn that he would support a coastal management bill, but only if matched by a mountain area management bill. At that time Holshouser lived in Watauga County, which he had represented in the house. Holshouser recognized firsthand the need for protection of fragile mountain area resources.<sup>111</sup>

In the 1973 and 1974 legislative sessions, Governor Holshouser and his Secretary and Assistant Secretary of Natural and Economic Resources (James Harrington and Dr. Arthur Cooper, on leave from the North Carolina State University) managed to corral consistent support from their band of Republican lawmakers for CAMA and a

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108. Childs, *supra* note 61, at xvii.

109. See 1971 NORTH CAROLINA HOUSE JOURNAL 3-10; 1969 NORTH CAROLINA HOUSE JOURNAL 3-9; 1965 NORTH CAROLINA HOUSE JOURNAL 3-6; 1963 NORTH CAROLINA HOUSE JOURNAL 3-6.

110. Heath, *supra* note 37, at 345-47.

111. The proposed Mountain Area Management Act ("MAMA") would have applied to North Carolina's mountain region a set of planning and regulatory measures that were modeled after CAMA. In 1974, time ran out on a mountain area management bill (S. 973, H.R. 1374) and a renewed attempt in 1975 ended when the versions of the reintroduced bill (S. 467, H.R. 596) were left in committee. See Milton S. Heath, Jr. & Christy Eve Reid, *Environmental Legislation*, in NORTH CAROLINA LEGISLATION 1975, at 107, 123 (Joan G. Brannon ed., 1975).

series of environmental proposals that had originated in the Scott Administration. Among the Scott proposals finally enacted during the Holshouser years of 1973 to 1975 were CAMA,<sup>112</sup> the Land Policy Act of 1974,<sup>113</sup> the Sedimentation Pollution Control Act,<sup>114</sup> the Oil Pollution Control Act,<sup>115</sup> the Ground Absorption Act (regulating septic tanks),<sup>116</sup> and the modernization of water and air pollution control legislation.<sup>117</sup> Ironically, if Bowles and a typical pre-1973 Democratic legislative majority had been elected in 1972, Bowles might have had more difficulty in finding supportive Democratic votes, especially for CAMA, that would have matched the more conservative Republicans who followed Governor Holshouser's lead. The Piedmont Democrats who would have followed Bowles could not have equaled the combination of conservative coastal and mountain Democrats and conservative Republicans who probably would have opposed Bowles on these issues.

A recent observation by former Governor Holshouser reflects the spirit of bipartisan cooperation that prevailed during the environmental law reform era of 1967 to 1975, especially during the Holshouser years. When reminded of his own contributions to environmental reform, Holshouser said: "*Bob Scott did the heavy lifting.*"<sup>118</sup> While this statement was a fair characterization of the Scott environmental proposals, in today's more partisan political society it is a notably generous comment.

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112. Coastal Area Management Act of 1974, ch. 1284, 1973 N.C. Sess. Laws (2d Sess.) 463, 463-89 (codified as amended at N.C. GEN. STAT. §§ 113A-100 to -134.3 (2005)).

113. Land Policy Act of 1974, ch. 1306, 1973 N.C. Sess. Laws (2d Sess.) 597, 597-606 (codified as amended at N.C. GEN. STAT. §§ 113A-150 to -159 (2005)). The Land Policy Act directed state land-use agencies to develop appropriate land-use planning and management arrangements for the Piedmont region. N.C. GEN. STAT. § 113A-153 (2005). These plans were forestalled when opponents of the program persuaded the legislature to abolish the Land Policy Agency in 1981. See Act of July 8, 1981, ch. 881, 1981 N.C. Sess. Laws 1310. If CAMA, MAMA, and the Land Policy Act had all been implemented, North Carolina would have had a comprehensive set of environmental land management arrangements from the mountains to the coast.

114. Act of June 17, 1975, ch. 647, 1975 N.C. Sess. Laws 766, 766 (codified as amended at N.C. GEN. STAT. §§ 113A-51 to -52, -57 (2005)); Act of Apr. 13, 1974, ch. 1417, 1973 N.C. Sess. Laws (2d Sess.) 794, 794-95 (codified as amended at N.C. GEN. STAT. §§ 113A-52, -54, -55, -57 (2005)).

115. Oil Pollution Control Act of 1973, ch. 534, 1973 N.C. Sess. Laws 816, 816-25 (current version at N.C. GEN. STAT. §§ 143-215.75 to -215.94 (2005)).

116. Ground Absorption Sewage Disposal System Act of 1973, ch. 452, 1973 N.C. Sess. Laws 534, 534-37 (current version at N.C. GEN. STAT. §§ 130A-333 to -343.1 (2005)).

117. Act of May 23, 1973, ch. 698, 1973 N.C. Sess. Laws 1039, 1039-48 (codified as amended in scattered sections of N.C. GEN. STAT. ch. 143, art. 21 (2005)).

118. Conversation in the University of North Carolina School of Government parking lot between the author (Heath) and Governor Holshouser, Chapel Hill, N.C. (Nov., 2005).

Bipartisan cooperation helped Democratic legislative leaders like Representative Willis Whichard and Senator William Staton to work closely with the Holshouser administration on the details of the CAMA proposal and other environmental legislation. For example, on one critical day of house floor debate (April 5, 1974), house Republican votes enabled the CAMA bill to survive a series of tactical motions that would have killed the bill without those Republican votes: a motion to table, a motion to postpone, and a motion to adjourn.<sup>119</sup> On April 8 and 9, 1974, again, the bill would not have passed second and third readings without Republican votes.<sup>120</sup>

Cooperation within the ranks of Democratic proponents and opponents also helped to facilitate the enactment of CAMA and other environmental legislation. For example, the afternoon before the April 5, 1974 house floor debate on the CAMA bill, Representative Chris Barker (a New Bern Democrat and opponent of CAMA) generously helped CAMA floor leader Whichard cope with fifty-one floor amendments<sup>121</sup> adverse to the bill by supplying him with copies of the about-to-be proposed amendments. This enabled Whichard to make overnight preparations to address the impending deluge of proposals that collectively would have gutted the bill.

See Tables 5 and 6 in the Appendix for lists of laws enacted in the Holshouser years.

### III. LEGISLATOR SUPPORT

A nucleus of legislator allies embraced the environmental programs of Governors Moore, Scott, and Holshouser, sponsored the implementing bills, and developed the necessary alliances in both

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119. A motion to table failed seventy-six to thirty-five, with twenty-seven Republicans against. Without the Republican votes the motion passes. A motion to postpone failed sixty-one to fifty-one, with twenty-four Republicans against. Without the Republican votes the motion passes. A motion to adjourn failed sixty-seven to thirty-two, with twenty-four Republicans against. Without the Republican votes the motion passes. 1973 NORTH CAROLINA HOUSE JOURNAL (2d Sess.) 1827-29.

120. The bill passed the second reading by sixty-seven to thirty-eight on April 8, 1974 with twenty-five Republicans "for." Without the Republican votes the bill fails. The bill passed the third reading by seventy-four to thirty-three on April 9, 1974 with twenty-four Republicans "for." Without the Republican votes the bill fails. 1973 NORTH CAROLINA HOUSE JOURNAL (2d Sess.) 1843, 1856-57.

121. Representative Whichard gave the author (Heath) the proposed amendments at 4:00 p.m. on April 4, 1974. The author worked through the night without a pause until 4:00 a.m. preparing brief notes on each of the fifty-one proposed amendments, so that Representative Whichard would have something to refer to when the amendments were offered on April 5. See Heath, *supra* note 37, at 367.

houses to steer the bills through committee and floor consideration. When the timing was not right for passage of an environmental bill during the year it was introduced, these legislators held hearings to address the issues that had been raised, or simply marked time awaiting the next legislative session. They also made the legislative process into a remarkably productive public education forum on environmental protection. They became masters of legislative tactics and strategy, who matched the creative genius of Governors Moore, Scott, and Holshouser with successful legislative leadership that produced a golden age of environmental lawmaking in North Carolina. In short, legislative leadership, as in the examples discussed below, played a large role in the enactment of much of our fundamental environmental legislation.

Nineteen sixty-seven was an exceptionally productive year for freshmen legislators, who typically do not assume leadership in sponsoring major legislation.<sup>122</sup> Three first-term legislators surprised their senior colleagues by leading the effort to enact the 1967 water legislation: Senator John Burney, and Representatives Norwood Bryan and James Exum (later Chief Justice Exum). They were aided and encouraged by the steady support of leaders like House Speaker David Britt (later Justice Britt). Representative Bryan in particular went on to become a consistent leader in support of much of the early 1970s environmental legislation, including the Coastal Area Management Act, the Environmental Policy Act, and an overhaul of water pollution control legislation. Representative Willis Whichard and Senator William Staton were instrumental in securing CAMA's enactment, after devoting much of their energies to this end for two legislative sessions and the interim between those sessions.<sup>123</sup> At crucial junctures they received vital aid from Democratic colleagues such as Senators Thomas White, Kenneth Royall, Hargrove "Skipper" Bowles, and Gordon Allen, and Representatives William Roberson, Roberts Jernigan, John Stevens, Carl Stewart, Elton Edwards and Norwood Bryan. CAMA's legislative history has been recounted in detail in the pages of this law review.<sup>124</sup>

Senator White, a three-time Appropriations Committee Chair, was an instrumental leader in the early stages of generating coastal protection legislation. Representative Stevens was a consistent supporter of the Scott and Holshouser programs throughout the early

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122. See Bryan, *supra* note 68, at 23–25.

123. See Heath, *supra* note 37, at 357–67.

124. See *id.* at 345–89.

1970s, and he led the unsuccessful effort in 1975 to obtain mountain area management legislation.<sup>125</sup> Senator Royall (long-time Senate Ways and Means Committee Chair) found the funds in the state budget that were essential to support CAMA and other environmental legislation. Senator Allen, as president pro tempore of the 1973-74 senates, was a vital ally of the supporters of CAMA and other environmental bills.

Representatives Jernigan and Roberson consistently provided crucial eastern North Carolina support for the enactment of CAMA. Representative Stewart was a creative proponent of water resources legislation throughout the 1970s. He served as chair of the House Water and Air Resources Committee during the early 1970s<sup>126</sup> and as house speaker in 1977<sup>127</sup> and 1979.<sup>128</sup> Senator Edwards, who especially enjoyed the stimulus of new challenges on diverse subjects, assumed leadership of the legislative study commission on pesticides<sup>129</sup> and the floor fight for North Carolina's first comprehensive pesticide law.<sup>130</sup> His most notable previous victory was in achieving enactment of a complex law addressing the administration of nursing home regulation. Senator Bowles piloted the Environmental Bill of Rights constitutional amendment<sup>131</sup> through the General Assembly and the approval by the voters.<sup>132</sup>

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125. Heath & Reid, *supra* note 111, at 123.

126. NORTH CAROLINA GENERAL ASSEMBLY, HOUSE OF REPRESENTATIVES, RULES—DIRECTORY OF MEMBERS, COMMITTEES, AND HOUSE OFFICERS 22 (1975).

127. NORTH CAROLINA GENERAL ASSEMBLY, SENATE AND HOUSE RULES—DIRECTORY 55 (1977).

128. NORTH CAROLINA GENERAL ASSEMBLY, HOUSE OF REPRESENTATIVES, RULES—DIRECTORY OF MEMBERS, COMMITTEES, AND HOUSE OFFICERS 70 (1979).

129. LEGISLATIVE RESEARCH COMM'N, PESTICIDES, *supra* note 23, at i.

130. North Carolina Pesticide Law of 1971, ch. 832, 1971 N.C. Sess. Laws 1199, 1199-1225 (codified as amended at N.C. GEN. STAT. §§ 143-434 to -470 (2005)).

131. Act of June 21, 1971, ch. 630, 1971 N.C. Sess. Laws 586, 586-87 (codified as amended at N.C. CONST. art. XIV, § 5). Senator Bowles was the principal sponsor of the Environmental Bill of Rights proposal in the 1971 General Assembly. See INST. OF GOV'T DAILY BULLETIN, Feb. 2, 1971, at 97; INST. OF GOV'T LEG. SERV., WEEKLY LEGIS. SUMMARY, Apr. 23, 1971. Having secured the enactment of S. 96 in the general assembly, Bowles campaigned for its approval by the voters. The author (Heath) consulted with Senator Bowles and the drafter of S. 96, Professor Thomas Schoenbaum of the University of North Carolina School of Law. During Bowles' campaign for governor, he invited the author to serve as his legislative liaison in his anticipated administration—and then came the election of Governor Holshouser. See *supra* note 106.

132. For the evolution of North Carolina's environmental legislation in the years 1967-83, see the following articles: Michael Crowell & Milton S. Heath, Jr., *Overview: The 1973 General Assembly*, POPULAR GOV'T, May 1973, at 7, 7-8; Milton S. Heath, Jr. & William A. Campbell, *Natural Resources and the Environment*, in NORTH CAROLINA LEGISLATION 1985, at 155 (Robert P. Joyce ed., 1985); Milton S. Heath, Jr., *The North Carolina Mountain Ridge Protection Act*, 63 N.C. L. REV. 183, 183-89, 195-96 (1984)

Especially during the Holshouser administration, the environmental cause was aided not only by Democratic legislators but also by Republican lawmakers, such as Senator Hamilton Horton and Senator George Rountree, and Representative (later Congressman) Charles Taylor. Senator Horton was a consistent supporter of environmental legislation and played an especially crucial role in the shaping and enactment of the Sedimentation Pollution Control Act.<sup>133</sup> Representative Taylor and Senator Rountree were key allies of Governor Holshouser in the General Assembly.<sup>134</sup>

#### IV. THE HUNT ADMINISTRATION<sup>135</sup>

The successful collaboration of these legislators and the three governors from 1967 through 1975 made environmental legislation so politically attractive that it paved the way for another decade of environmental lawmaking by their successors, with consistent executive support by Governor James Hunt during his first two gubernatorial terms.

Representative Bruce Etheridge was a leader in the enactment of much of the late 1970s and early 1980s environmental legislation, especially the modernization of septic tank legislation. Representative David Diamont became a favorite of environmental organizations for his vigorous support of bottle bills and other recycling legislation.<sup>136</sup> Representative Paul Pulley of Durham and several coastal legislators, including Representatives Richard Wright

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[hereinafter Heath, *Mountain Ridge*]; Milton S. Heath, Jr., *Natural Resources and the Environment*, in NORTH CAROLINA LEGISLATION 1983, at 169 (Ann L. Sawyer ed., 1983) [hereinafter Heath, *Natural Resources*, 1983]; Milton S. Heath, Jr. & Christopher Mason, *Natural Resources and the Environment*, in NORTH CAROLINA LEGISLATION 1981, at 170 (Ann L. Sawyer ed., 1981); Milton S. Heath, Jr. & Sandi Postel, *Natural and Economic Resources and the Environment*, in NORTH CAROLINA LEGISLATION 1979, at 169 (Joan G. Brannon & Ann L. Sawyer eds., 1979); Milton S. Heath, Jr. & Jeff McConnaughey, *Natural Resources and the Environment*, in NORTH CAROLINA LEGISLATION 1977, at 192 (Joan G. Brannon ed., 1977); Heath & Reid, *supra* note 111, at 107; Heath, *supra* note 37, at 345-49; Milton S. Heath, Jr., *The 1969 North Carolina General Assembly*, POPULAR GOV'T, Sept. 1969, at 1, 2-3; Heath & Wicker, *supra* note 34, at 39.

133. For a summary of the Sedimentation Pollution Control Act, see Table 9 in the Appendix.

134. See *Biographical Sketches*, in NORTH CAROLINA MANUAL 1973, at 602 (John L. Cheney, Jr. ed., 1973).

135. For lists of laws enacted during the Hunt years, 1977-83, see Table 7 in the Appendix.

136. See 1979 N.C. HOUSE JOURNAL 326 (noting that Diamont was the chief sponsor of H.B. 857, the Act to Reduce Litter and Solid Waste Attributable to Beverage Containers); *id.* at 428 (noting that Diamont was the co-sponsor of H.B. 1012, the Act to Make the Finding of Identifying Material in Unlawfully Disposed Litter Prima Facie Evidence of Ownership).



and Charles Evans and Senator R.C. Soles, assumed key leadership roles in the enactment of coastal submerged lands legislation.<sup>137</sup>

Several mountain area legislators made indispensable contributions to the enactment of the Mountain Ridge Protection Act of 1983, notably Representatives Margaret Hayden and Martin Nesbitt and Senators R.P. Thomas and Dennis Winner. Representative Hayden was the principal introducer of the house bill that was ultimately enacted, and Senator Thomas the principal introducer of the senate bill. Representative Nesbitt and Senator Winner played leading roles in complex negotiations that finally produced the legislation. Speaker Liston Ramsey brokered and ultimately supported the mountain ridge law in ways that were vital to its enactment. The origins and history of the law have been explored in detail in the pages of this law review.<sup>138</sup> A decade earlier, another "Speaker Ramsey" of Person County, Representative James Ramsey, had made similar contributions to CAMA's enactment.<sup>139</sup>

Altogether, these late 1970s and early 1980s legislators, with the consistent support of Governor James Hunt, successfully built on the foundations of environmental legislation during the years 1967 to 1975. Their efforts rounded out North Carolina's environmental system by adding such significant legislation as our solid and

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137. A Legislative Research Commission study committee made recommendations in 1982 that led to the introduction of a package of fourteen bills in 1983, making the first revisions to the Coastal Area Management Act. Coastal Area Management Act of 1974, ch. 1284, 1973 N.C. Sess. Laws (2d Sess.) 463, 463-89 (codified as amended at N.C. GEN. STAT. §§ 113A-100 to -134.3 (2005)). Evans was co-chair of that committee and he was the chief sponsor of thirteen of the bills (House Bills 220-32) and the sole sponsor of the fourteenth (House Bill 979). Ethridge was a co-sponsor of all but H.B. 979. See 1983 N.C. HOUSE JOURNAL 96-98, 457; Heath, *Natural Resources*, 1983, *supra* note 132, at 173-76. The package of bills (House Bills 111-15) that led to the Coastal Submerged Land Laws of 1985 was the result of another Legislative Research Commission study committee of which Evans was a member. Pulley was the chief sponsor of each of the bills and Evans was a co-sponsor. See Heath & Campbell, *supra* note 132, at 156-58; LEGISLATIVE RESEARCH COMM'N, COASTAL SUBMERGED LANDS: REPORT TO THE 1985 GENERAL ASSEMBLY OF NORTH CAROLINA (1984); 1985 N.C. HOUSE JOURNAL 58-59.

138. See Heath, *Mountain Ridge*, *supra* note 132, at 183-96.

139. Heath, *supra* note 37, at 361-62. Speaker James Ramsey was no advocate of the Coastal Area Management Act, nor was Speaker Liston Ramsey an advocate of the Mountain Ridge Law. Both speakers gave opponents ample opportunities to raise objections to the bills. Balancing these actions, however, both speakers contributed to the enactment of these controversial measures. Speaker Liston Ramsey allowed mountain legislators to craft amendments and eventually to support the amended bill. Speaker James Ramsey gave Representative Whichard and the author a timely opportunity to develop amendments that responded to the three major objections to CAMA that concerned Ramsey. These amendments then helped Representative Whichard and Senator Staton to persuade their house and senate colleagues to accept the CAMA proposal.

hazardous waste management laws, endangered species and submerged lands legislation, a modern septic tank law, and the Mountain Ridge Protection Act.<sup>140</sup>

Governor Hunt and his administration effectively supported all of this legislation. Hunt devoted special efforts to toxic waste and hazardous substances legislation, including his innovative Pollution Prevention Pays program.<sup>141</sup> In his first administration, he successfully championed legislation creating the public staff<sup>142</sup> of the North Carolina Utilities Commission.<sup>143</sup> Throughout his first two terms in office, he campaigned vigorously for environmental protection, treating it, along with education and economic development, as the centerpiece of his administration.<sup>144</sup>

See Table 7 in the Appendix for lists of laws enacted during the Hunt Years, 1977–83.

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140. Mountain Ridge Protection Act of 1983, ch. 676, 1983 N.C. Sess. Laws 645, 645–50 (codified as amended at N.C. GEN. STAT. §§ 113A-205 to -214, 153A-448, 160A-458.2 (2005)).

141. Act of May 30, 1989, ch. 168, § 7, 1989 N.C. Sess. Laws 320, 348–49 (codified as amended at N.C. GEN. STAT. § 113-8.01 (2005)).

142. Act of June 3, 1977, ch. 468, 1977 N.C. Sess. Laws 488 (codified as amended at N.C. GEN. STAT. §§ 62-10 to -327 (2005)).

143. The public staff process enabled the Utilities Commission to consistently arrive at better-informed decisions. It also gave public interest advocates, including environmentalists, a new and accessible forum in which to voice their views. See John Murawski, *Tar Heel of the Week: Valuing Substance over Show: Utilities Rate Hikes Face Gruber First*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 23, 2005, at B1.

144. See James Baxter Hunt, Jr., National Wildlife Federation (Mar. 17, 1984), in 2 ADDRESSES AND PUBLIC PAPERS OF JAMES BAXTER HUNT, JR., GOVERNOR OF NORTH CAROLINA, 1977–1981, at 459 (Jan-Michael Poff ed., 1987) [hereinafter 2 ADDRESSES AND PUBLIC PAPERS] (concerning the environment, economic development, energy, and the Pollution Prevention Pays program); James Baxter Hunt, Jr., Citizens Conference on Acid Rain (Mar. 23, 1984), in 2 ADDRESSES AND PUBLIC PAPERS, *supra*, at 464 (concerning the environment, economic development, and energy); James Baxter Hunt, Jr., Statement on Hazardous-Waste Landfills (Dec. 2, 1982), in 2 ADDRESSES AND PUBLIC PAPERS, *supra*, at 321 (concerning the Pollution Prevention Pays program); James Baxter Hunt, Jr., Statement Before the House Committee on Interstate and Foreign Commerce, Subcommittee on Health and the Environment (May 19, 1980), in 1 ADDRESSES AND PUBLIC PAPERS OF JAMES BAXTER HUNT, JR., GOVERNOR OF NORTH CAROLINA, 1977–1981, at 729 (Memory F. Mitchell ed., 1982) [hereinafter 1 ADDRESSES AND PUBLIC PAPERS] (concerning the Safe Drinking Water Act); James Baxter Hunt, Jr., New River Dedication Ceremony (May 17, 1980), in 1 ADDRESSES AND PUBLIC PAPERS, *supra*, at 727; James Baxter Hunt, Jr., Statement on Appointment of Public Staff Director (Sept. 13, 1979), in 1 ADDRESSES AND PUBLIC PAPERS, *supra*, at 596; James Baxter Hunt, Jr., Energy Policy Seminar (July 12, 1979), in 1 ADDRESSES AND PUBLIC PAPERS, *supra*, at 560; James Baxter Hunt, Jr., Closing Remarks at the Chowan River Meeting (Mar. 9, 1979), in 1 ADDRESSES AND PUBLIC PAPERS, *supra*, at 479; Gary Pearce, *Biographical Sketch*, in 1 ADDRESSES AND PUBLIC PAPERS, *supra*, at xxx (concerning the public staff of the Utilities Commission).

## CONCLUSION: THE PROMISE OF STATE INNOVATION

This essay opened on a theme of intergovernmental relations in environmental law. It is fitting, then, in conclusion, to return to this theme by identifying those parts of North Carolina's environmental legislation enacted in the years 1967 to 1983 that were uniquely North Carolina creations and those parts that can be more aptly termed incidental to the significant federal environmental legislation of this period.

The uniquely North Carolina creations included, at least:

- All of the water resources management legislation of the Moore administration.
- Significant parts of the Scott-Holshouser environmental program, including the Pesticide Law (which preceded modern federal pesticide legislation by several years), the Mining Act and Mining Registration Act, the Sedimentation Pollution Control Act, the ground absorption law (for septic tanks), the Regional Water Supply Planning Act, the Oil Pollution Control Act, the Local Air Pollution Control Programs Enabling Act, the funding of major state parks expansion, the Environmental Bill of Rights, the nature and historic preservation laws, and the Appalachian and Carolina trails laws.
- Significant parts of the legislation enacted during the Hunt Administration, including the Mountain Ridge Protection Act, coastal submerged lands legislation, the Ground Absorption Act of 1981, and parts of the solid and hazardous wastes legislation, such as the Pollution Prevention Pays program.

North Carolina's environmental land-use legislation is something of a special case. Although there is a federal Coastal Zone Management Law, the origins of North Carolina's Coastal Area Management Act were largely indigenous. The Land Policy Act was a purely North Carolina creation, as would have been the Mountain Area Management Bill, had it become law.

Much of the remaining North Carolina environmental legislation of the period—including the North Carolina Environmental Policy Act, the reform of water and air pollution control laws, the drinking water and endangered species laws, the Natural and Scenic Rivers Act, and the right-to-know law—owed its inspiration in large measure to parallel federal legislation. Federal funding, especially of the basic

water and air pollution control, drinking water legislation, and hazardous waste legislation, was vital to these programs. However, North Carolina did take action relating to these federal mandates independently. North Carolina augmented federal funding by its own clean water bond acts. Federal planning and management grants helped significantly to initiate the North Carolina coastal management program, and the absence of federal funding contributed to the failure of the mountain area management bill.

In short, although this array of environmental legislation in some ways reminds one of the classic “marble cake” theory of federalism,<sup>145</sup> there is sufficient evidence in North Carolina of independent, substantive state innovation to nourish hopes for a state government that can continue to mount and sustain major environmental initiatives.

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145. See, e.g., DEIL S. WRIGHT, UNDERSTANDING INTERGOVERNMENTAL RELATIONS 72 (3d ed. 1988) (describing the origins of the theory and its use to describe the shared functions of the U.S. system of governance). The label “marble cake” is a creation of political scientists that virtually speaks for itself. It originated in a period (the 1960s and 1970s) when loosely interwoven threads of national and state government and policy often blended harmoniously together, as in a well-fashioned marble cake.

In the year 2006, at a sufficient distance, today’s federal system may appear to be a smoothly blended marble cake. Up close and personal, however, the twenty-first century political scene is no marble cake. Instead, the viewer sees a collection of jagged, warring parts.

In the political climate of the twenty-first century, environmentalists have reason to rejoice at visible signs of strong and durable state government support for environmental initiatives—not to mention the support of nonprofit organizations, of the green movement generally, and (spasmodically) of the national government.

APPENDIX: ENVIRONMENTAL LEGISLATION 1967–1983  
THE FIRST DECADE OF NORTH CAROLINA ENVIRONMENTAL  
LEGISLATION

Table 1

*1967: The Year of Water Law (Governor Dan Moore)*

- Water Use Act of 1967<sup>146</sup>
- North Carolina Well Construction Act<sup>147</sup>
- Dam Safety Law of 1967<sup>148</sup>
- Flood Plain Management Program Act<sup>149</sup>
- State Cooperation—Federal Reservoirs<sup>150</sup>
- Water Use Reporting Law<sup>151</sup>
- North Carolina Water and Air Resources Act<sup>152</sup>

Table 2

*1969: Coastal/Estuarine Beginnings, plus . . .*

- Estuarine Dredge and Fill Law<sup>153</sup>
- Long-Range Study of Coastal and Estuarine Resources<sup>154</sup>
- Mining Registration Act of 1969<sup>155</sup>
- Local Air Pollution Control Programs Enabling Act<sup>156</sup>
- Federal Water Resources Development Law of 1969<sup>157</sup>

146. Water Use Act of 1967, ch. 933, 1967 N.C. Sess. Laws 1236 (codified as amended at N.C. GEN. STAT. §§ 143-215.11 to -215.22B (2005)).

147. North Carolina Well Construction Act, ch. 1157, 1967 N.C. Sess. Laws 1784 (codified as amended at N.C. GEN. STAT. §§ 87-83 to -96 (2005)).

148. Dam Safety Law of 1967, ch. 1068, 1967 N.C. Sess. Laws 1580 (codified as amended at N.C. GEN. STAT. §§ 143-215.23 to -215.37 (2005)).

149. Act of July 3, 1967, ch. 1070, 1967 N.C. Sess. Laws 1586 (current version at N.C. GEN. STAT. §§ 143-355(b)(15) to -355(b)(1) (2005)).

150. Act of July 3, 1967, ch. 1071, 1967 N.C. Sess. Laws 1587 (codified as amended at N.C. GEN. STAT. §§ 143-354(a)(1), (10)–(11) and -355(b)(1), (7) (2005)).

151. Act of July 4, 1967, ch. 1117, 1967 N.C. Sess. Laws 1742 (codified as amended at N.C. GEN. STAT. § 143-355(k) (2005)).

152. North Carolina Water and Air Resources Act, ch. 892, 1967 N.C. Sess. Laws 1144 (codified as amended at N.C. GEN. STAT. §§ 143-211 to -215.9 (2005)).

153. Act of June 11, 1969, ch. 791, 1969 N.C. Sess. Laws 824 (codified as amended at N.C. GEN. STAT. § 113-229 (2005)).

154. Act of June 30, 1969, ch. 1164, §§ 1–4, 7, 1969 N.C. Sess. Laws 1343.

155. Mining Registration Act of 1969, ch. 1204, 1969 N.C. Sess. Laws 1394, *repealed by* Act of June 23, 1977, ch. 712, 1977 N.C. Sess. Laws 901.

156. Act of May 19, 1969, ch. 538, 1969 N.C. Sess. Laws 457 (current version at N.C. GEN. STAT. §§ 143-215.112(c)(1) to -215.112(d2)(1) (2005)).

157. Federal Water Resources Development Law of 1969, ch. 968, 1969 N.C. Sess. Laws 1114 (codified as amended at N.C. GEN. STAT. §§ 143-215.38 to -215.43 (2005)); *id.* ch. 724, 1969 N.C. Sess. Laws 726 (codified as amended at N.C. GEN. STAT. §§ 143-215.38 to -215.43 (2005)).

Table 3

*1971: Governor Robert Scott's Program and Study Commission Products*

- Environmental Bill of Rights, North Carolina Constitution, Article XIV<sup>158</sup>
- North Carolina Environmental Policy Act of 1971<sup>159</sup>
- North Carolina Pesticide Law of 1971<sup>160</sup>
- Stored Water Act<sup>161</sup>
- Natural and Scenic Rivers Act of 1971<sup>162</sup>
- Coastal Wetlands Law<sup>163</sup>
- Regional Water Supply Planning Act of 1971<sup>164</sup>
- Water Supply Standards<sup>165</sup>
- Mining Act of 1971<sup>166</sup>
- Interstate Environmental Compact Act of 1971<sup>167</sup>
- North Carolina Clean Water Bond Act of 1971<sup>168</sup>

Table 4

*1973: The Scott Program (continued)*

- Sedimentation Pollution Control Act of 1973<sup>169</sup>

158. Act of June 21, 1971, ch. 630, 1971 N.C. Sess. Laws 586 (codified as amended at N.C. CONST. art. XIV, § 5).

159. North Carolina Environmental Policy Act of 1971, ch. 1203, 1971 N.C. Sess. Laws 1763 (codified as amended at N.C. GEN. STAT. §§ 113A-1 to -13 (2005)).

160. North Carolina Pesticide Law of 1971, ch. 832, 1971 N.C. Sess. Laws 1199 (codified as amended at N.C. GEN. STAT. §§ 143-434 to -470.1 (2005)).

161. Act of Mar. 24, 1971, ch. 111, 1971 N.C. Sess. Laws 81 (codified as amended at N.C. GEN. STAT. §§ 143-215.44 to -215.50 (2005)) (detailing the right of withdrawal of impounded water).

162. Natural and Scenic Rivers Act of 1971, ch. 1167, § 2, 1971 N.C. Sess. Laws 1718, 1718-21 (codified as amended at N.C. GEN. STAT. §§ 113A-30 to -44 (2005)).

163. Act of July 21, 1971, ch. 1159, § 7, 1971 N.C. Sess. Laws 1707, 1711-12 (codified as amended at N.C. GEN. STAT. § 113-230 (2005)).

164. Act of July 20, 1971, ch. 1024, 1971 N.C. Sess. Laws 1598; Regional Water Supply Planning Act of 1971, ch. 892, 1971 N.C. Sess. Laws 1413 (codified as amended at N.C. GEN. STAT. §§ 162A-20 to -25 (2005)).

165. Act of May 10, 1971, ch. 343, 1971 N.C. Sess. Laws 277, *repealed by* North Carolina Drinking Water Act, ch. 788, 1979 N.C. Sess. Laws 908 (current version at N.C. GEN. STAT. §§ 130A-311 to -328 (2005)).

166. Mining Act of 1971, ch. 545, 1971 N.C. Sess. Laws 466 (codified as amended at N.C. GEN. STAT. §§ 74-46 to -68 (2005)).

167. Interstate Environmental Compact Act of 1971, ch. 805, 1971 N.C. Sess. Laws 1066 (codified as amended at N.C. GEN. STAT. §§ 113A-21 to -23 (2005)).

168. North Carolina Clean Water Bond Act of 1971, ch. 909, 1971 N.C. Sess. Laws 1426.

- Oil Pollution Control Act of 1973<sup>170</sup>
- Modern Water and Air Pollution Control Laws<sup>171</sup>
- Occupational Safety and Health Act of North Carolina<sup>172</sup>
- Reorganization of the Department of Environment and Natural Resources into the Department of Natural and Economic Resources (“DNER”)<sup>173</sup>
- State Nature and Historic Preserve Dedication Act<sup>174</sup>
- North Carolina Trails System Act<sup>175</sup> and North Carolina Appalachian Trails System Act<sup>176</sup>
- Floodway Designation Law<sup>177</sup>
- Funding of Major State Parks Acquisition<sup>178</sup>
- Ground Absorption Sewage Disposal System Act of 1973<sup>179</sup>

### Table 5

#### *1974: Finally, CAMA and Land Policy (Governor James Holshouser)*

- Coastal Area Management Act of 1974 (“CAMA”)<sup>180</sup>
- Land Policy Act of 1974<sup>181</sup>
- More State Parks Funding<sup>182</sup>

169. Sedimentation Pollution Control Act of 1973, ch. 392, 1973 N.C. Sess. Laws 476 (codified as amended at N.C. GEN. STAT. §§ 113A-50 to -67 (2005)).

170. Oil Pollution Control Act of 1973, ch. 534, 1973 N.C. Sess. Laws 816 (current version at N.C. GEN. STAT. §§ 143-215.75 to -215.94 (2005)).

171. Act of May 23, 1973, ch. 698, 1973 N.C. Sess. Laws 1039 (codified as amended in scattered sections of N.C. GEN. STAT. ch. 143, art. 21 (2005)).

172. Occupational Safety and Health Act of North Carolina, ch. 295, 1973 N.C. Sess. Laws 305 (codified as amended at N.C. GEN. STAT. §§ 95-126 to -155 (2005)).

173. Act of Apr. 11, 1974, ch. 1262, § 11-86, 1973 N.C. Sess. Laws (2d Sess.) 373, 377-417 (current version at N.C. GEN. STAT. §§ 143B-279.1 to -344.23 (2005)).

174. State Nature and Historic Preserve Dedication Act, ch. 443, 1973 N.C. Sess. Laws 527 (codified as amended at N.C. GEN. STAT. §§ 143-260.6 to -260.10G (2005)).

175. North Carolina Trails System Act, ch. 670, 1973 N.C. Sess. Laws 995 (codified as amended at N.C. GEN. STAT. §§ 113A-83 to -95 (2005)).

176. North Carolina Appalachian Trails System Act, ch. 545, 1973 N.C. Sess. Laws 858 (codified as amended at N.C. GEN. STAT. §§ 113A-72 to -77 (2005)).

177. Act of May 18, 1973, ch. 621, §§ 5-7, 1973 N.C. Sess. Laws 929, 930-31 (codified as amended at N.C. GEN. STAT. §§ 143-215.51 to -215.56 (2005)).

178. Act of May 16, 1973, ch. 533, § 2, 1973 N.C. Sess. Laws 801, 801-06.

179. Ground Absorption Sewage Disposal System Act of 1973, ch. 452, 1973 N.C. Sess. Laws 534 (current version at N.C. GEN. STAT. §§ 130A-333 to -343.1 (2005)).

180. Coastal Area Management Act of 1974, ch. 1284, 1973 N.C. Sess. Laws (2d Sess.) 463 (codified as amended at N.C. GEN. STAT. §§ 113A-100 to -134.3 (2005)).

181. Land Policy Act of 1974, ch. 1306, 1973 N.C. Sess. Laws (2d Sess.) 597 (codified as amended at N.C. GEN. STAT. §§ 113A-150 to -159 (2005)).

182. Act of Apr. 8, 1974, ch. 1190, § 2, 1973 N.C. Sess. Laws (2d Sess.) 294, 295-99.

- Sedimentation Control Revisions<sup>183</sup>

## Table 6

*1975: Filling Some Gaps*

- Water Quality Law Changes to Qualify North Carolina for NPDES Permitting<sup>184</sup>
- Scenic River Addition and Designation (New and Linville Rivers)<sup>185</sup>
- Oil Refinery Permit Law<sup>186</sup>
- Forestry Open Burning<sup>187</sup>
- Sedimentation Control Revisions<sup>188</sup>

## Table 7

*The Hunt Years: 1976–84**1977: Back to Normal*

- Reorganization of DNER into Department of Natural Resources and Community Development (“NRCD”)<sup>189</sup>
- North Carolina Clean Water Bond Act of 1977<sup>190</sup>

*1978: Solid Waste Law Rewrite*

- Comprehensive Revision of the Solid Waste Management Law<sup>191</sup>

183. Act of Apr. 13, 1974, ch. 1417, 1973 N.C. Sess. Laws (2d Sess.) 794 (codified as amended at N.C. GEN. STAT. §§ 113A-52, -54 to -57 (2005)).

184. Act of June 13, 1975, ch. 583, 1975 N.C. Sess. Laws 661 (codified as amended at N.C. GEN. STAT. §§ 143-214.1, -215, -215.1, -215.3, -215.6 (2005)); Act of June 10, 1975, ch. 512, 1975 N.C. Sess. Laws 530 (codified as amended at N.C. GEN. STAT. §§ 143B-282, 5 (2005)). NPDES is the acronym for the National Pollution Discharge Elimination System.

185. Act of June 23, 1975, ch. 698, 1975 N.C. Sess. Laws 927 (codified as amended at N.C. GEN. STAT. § 113A-35.2 (2005)); Act of May 26, 1975, ch. 404, 1975 N.C. Sess. Laws 380 (codified as amended at N.C. GEN. STAT. § 113A-35.1 (2005)).

186. Act of June 10, 1975, ch. 521, 1975 N.C. Sess. Laws 542 (codified as amended at N.C. GEN. STAT. §§ 143-215.100 to -102 (2005)).

187. Act of June 9, 1975, ch. 493, N.C. Sess. Laws 515, *repealed by* Act of Oct. 10, 1981, ch. 1100, 1981 N.C. Sess. Laws 1603 (codified as amended at N.C. GEN. STAT. §§ 130-60.21 to -60.31 (2005)).

188. Act of June 17, 1975, ch. 647, 1975 N.C. Sess. Laws 766 (codified as amended at N.C. GEN. STAT. §§ 113A-51 to -52, -57 (2005)).

189. Act of June 28, 1977, ch. 771, 1977 N.C. Sess. Laws 1008 (current version at N.C. GEN. STAT. §§ 143B-279.1 to -344.23 (2005)).

190. North Carolina Clean Water Bond Act of 1977, ch. 677, 1977 N.C. Sess. Laws 789.

191. Act of June 16, 1978, ch. 1216, 1977 N.C. Sess. Laws (2d Sess.) 146 (current version at N.C. GEN. STAT. §§ 130A-290 to -310.58 (2005)).



*1979: Toxics, Plants, and Drinking Water*

- North Carolina Drinking Water Act<sup>192</sup>
- North Carolina Toxic Substance Act (responding to PCB spills)<sup>193</sup>
- Plant Protection and Conservation Act (“Endangered Species Act”)<sup>194</sup>
- Agricultural Nuisance Act (“Right-to-Farm” Law)<sup>195</sup>

*1981: Hazardous Waste, etc.*

- Waste Management Act of 1981<sup>196</sup>
- Archaeological Resources Protection Act<sup>197</sup>
- Ground Absorption Sewage Treatment and Disposal Act of 1981<sup>198</sup>

*1983: Mountain Ridge Law, etc.*

- Mountain Ridge Protection Act of 1983<sup>199</sup>
- Southeast Interstate Low-Level Radioactive Waste Management Compact<sup>200</sup>

## Table 8

*1985: Right-to-Know and Nature*

- Hazardous Chemicals Right-to-Know Act<sup>201</sup>

192. North Carolina Drinking Water Act, ch. 788, 1979 N.C. Sess. Laws 908 (current version at N.C. GEN. STAT. §§ 130A-311 to -328 (2005)).

193. Act of June 8, 1979, ch. 981, § 1, 1979 N.C. Sess. Laws 1318, 1318-19, *repealed by* Act of June 25, 1980, ch. 1310, § 3, 1979 N.C. Sess. Laws (2d Sess.) 224, 225 (codified as amended at N.C. GEN. STAT. § 143B-476 (2005)); Act of June 8, 1979, ch. 981, §§ 2-8, 1979 N.C. Sess. Laws 1318, 1319-20 (codified as amended at N.C. GEN. STAT. §§ 14-284.2, 143-215.77 (2005)); Act of Apr. 26, 1979, ch. 464, 1979 N.C. Sess. Laws 453 (codified as amended at N.C. GEN. STAT. §§ 130A-290(a)(8) and 130A-294(c)(1) (2005)).

194. Plant Protection and Conservation Act, ch. 964, 1979 N.C. Sess. Laws 1297 (current version at N.C. GEN. STAT. §§ 106-202.12 to -202.22 (2005)).

195. Act of Mar. 26, 1979, ch. 202, 1979 N.C. Sess. Laws 140 (codified as amended at N.C. GEN. STAT. §§ 106-700 to -701 (2005)).

196. Waste Management Act of 1981, ch. 704, 1981 N.C. Sess. Laws 1010 (current version at N.C. GEN. STAT. §§ 130A-291 to -309, 104E-1 to -29 (2005)).

197. Archaeological Resources Protection Act, ch. 904, 1981 N.C. Sess. Laws 1339 (current version at N.C. GEN. STAT. §§ 70-10 to -20 (2005)).

198. Ground Absorption Sewage Treatment and Disposal Act of 1981, ch. 949, 1981 N.C. Sess. Laws 1450 (current version at N.C. GEN. STAT. §§ 130A-333 to -343.1 (2005)).

199. Mountain Ridge Protection Act of 1983, ch. 676, 1983 N.C. Sess. Laws 645 (codified as amended at N.C. GEN. STAT. §§ 113A-205 to -214, 153A-448, 160A-458.2 (2005)).

200. Act of July 11, 1983, ch. 714, 1983 N.C. Sess. Laws 723, *repealed by* Act of July 20, 1999, ch. 357, § 2, 1999 N.C. Sess. Laws 1338.

- Designation of Potential Scenic Rivers<sup>202</sup>
- Nature Preserves Act<sup>203</sup>
- Coastal Submerged Lands Laws<sup>204</sup>

Table 9

*Selected State Water-Related Environmental Statutes*

*The Capacity Use Areas Act (or Water Use Act of 1967)* was enacted in 1967 as a direct response to ground water problems in southeastern North Carolina. Those problems resulted from the discovery and development of commercially significant phosphate deposits in Beaufort County by the Texas Gulf Sulphur Company. The continuous pumping of large quantities of underground water in order to keep the mining pit dry lowered artesian pressure for miles around the pit in a rich ground water aquifer. This adversely affected many small wells and caused concern about potential salt-water contamination in the aquifer from brackish water in the nearby Pamlico Sound. These were the concerns that prompted Governor Moore to appoint the blue ribbon panel that provided the technical background essential to support the Capacity Use Areas Act.<sup>205</sup> Modeled after an earlier New Jersey statute, the Capacity Use Areas Act empowered the Board of Water and Air Resources (now the Environmental Management Commission) to declare a capacity use area when it finds, after study and hearings, that the withdrawal of water or the discharge of water pollutants is having an unreasonable adverse effect upon such waters.<sup>206</sup> After a capacity use area is declared and implemented by rulemaking, water users must obtain permits to withdraw over 100,000 gallons per day within the area.<sup>207</sup>

201. Hazardous Chemicals Right to Know Act, ch. 775, 1985 N.C. Sess. Laws 1135 (codified as amended at N.C. GEN. STAT. §§ 95-173 to -218 (2005)).

202. Act of Apr. 26, 1985, ch. 129, 1985 N.C. Sess. Laws 111 (codified as amended at N.C. GEN. STAT. §§ 113A-36(c1), -44 (2005)).

203. Nature Preserves Act, ch. 216, 1985 N.C. Sess. Laws 182 (codified as amended at N.C. GEN. STAT. §§ 113A-164.1 to -164.11 (2005)).

204. Act of May 30, 1985, ch. 279, 1985 N.C. Sess. Laws 228 (codified as amended at N.C. GEN. STAT. § 113-206 (2005)); Act of May 30, 1985, ch. 278, 1985 N.C. Sess. Laws 227 (codified as amended at N.C. GEN. STAT. § 146-20.1 (2005)); Act of May 30, 1985, ch. 277, 1985 N.C. Sess. Laws 227 (codified as amended at N.C. GEN. STAT. § 1-45.1 (2005)); Act of May 30, 1985, ch. 276, 1985 N.C. Sess. Laws 226 (codified as amended at N.C. GEN. STAT. § 146-6 (2005)).

205. See *supra* note 77 and accompanying text.

206. N.C. GEN. STAT. § 143-215.13(d) (2005). An alternative basis for declaring a capacity use area is that aggregate withdrawals require coordination and regulation or exceed renewal or replenishment of such waters. § 143-215.13(b).

207. § 143-215.15(a).

The initial capacity use area proceeding addressed the Texas Gulf Sulphur mining area. In more recent years, the process has been applied to a much broader region in southeastern North Carolina to cope with ground and surface water demands that place a heavy burden on available water resources. In the intervening years, the commission considered, but did not adopt, a capacity use area in the Yadkin River Basin in response to plans of the Duke Power Company to withdraw cooling water for a projected nuclear power plant, the Perkins Plant.<sup>208</sup>

*The Well Construction Act* empowers the Environmental Management Commission to adopt rules concerning well location, construction, repair, and abandonment for wells of over 100,000 gallons per day capacity.<sup>209</sup> It requires permits for wells with a design capacity of at least 100,000 gallons per day, and for any wells found by the commission to be located in a geographical area where such permission is necessary for the protection of ground water resources.<sup>210</sup> It also requires commission approval for recharge of disposal wells.<sup>211</sup> The act does not apply to a well constructed by an "individual on land owned or leased by him, appurtenant to a single family dwelling and intended for domestic use."<sup>212</sup> It does apply to wells constructed for individuals by contractors.

Taken together, the Well Construction Act and the Capacity Use Areas Act give the Environmental Management Commission a combination of general authority over wells and the ability to develop water management tools for problem areas that meet the criteria for capacity use areas. The commission has adopted lengthy and complex rules that implement the Well Construction Act.

*The Dam Safety Act* was the third major water regulatory statute adopted by the 1967 general assembly. It combined two principal features: first, a state law regulating the safety of dams that preceded federal legislation on this subject by a number of years and second, a statute that addressed the water quality impact of dams.<sup>213</sup>

*The North Carolina Drinking Water Act* is a combination of longstanding state water supply laws and the state's response to the federal Safe Drinking Water Act for further protection of drinking

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208. See *High Rock Lake Ass'n v. Envtl. Mgmt. Comm'n*, 51 N.C. App. 275, 275-84, 276 S.E.2d 472, 472-78 (1981).

209. N.C. GEN. STAT. § 87-87 (2005).

210. *Id.* § 87-88(a).

211. *Id.* § 87-88(j).

212. *Id.* § 87-85(13).

213. *Id.* §§ 143-215.23 to -215.37.

water supplies.<sup>214</sup> It relies on the concept of “maximum contaminant limits” for surface water or ground water delivered to users of public water supplies.<sup>215</sup> It incorporates from the federal program a number of detailed definitions and exclusions.<sup>216</sup> One continuing benefit to the state of the federal program is that it ordinarily carries with it annual federal grants that make a significant contribution to the state and its water supply systems.

*North Carolina’s Interbasin Transfer Legislation* has evolved an increasingly stringent set of restrictions on interbasin transfers of water in excess of two million gallons per day from one major river basin to another under the general oversight of the Environmental Management Commission.<sup>217</sup> Two *Popular Government* articles have traced the evolution of these laws in detail.<sup>218</sup>

*The Sedimentation Pollution Control Act* was North Carolina’s earliest environmental statute regulating non-point source pollution, preceding the state’s agricultural cost share and stormwater management programs. A proposed sediment control act was developed by late-1960s studies that examined early programs of states like Maryland and was sponsored in the 1971 legislature by the Legislative Research Commission. It was enacted in 1973 with broad support, notably from Piedmont legislators like Senator Hamilton Horton of Forsyth. The Act created the Sedimentation Pollution Control Commission within DENR to administer a combination of statutory and rulemaking standards that require land developers to obtain permits implementing these standards.<sup>219</sup> The Act did not apply to forestry or agriculture, but forestry was covered by later amendments, and agriculture was addressed by separate legislation, such as the agricultural cost share laws.<sup>220</sup>

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214. *Id.* § 130A-311 to -328.

215. *Id.* § 130A-313(7).

216. *Id.* § 130A-313(10).

217. *Id.* §§ 143-215.22A to -215.22I.

218. Milton S. Heath, Jr., *Interbasin Transfers Back in the News*, POPULAR GOV’T, Fall 1994, at 21, 21–29; Milton S. Heath, Jr., *Interbasin Transfers and Other Diversions: Legal Issues Involved in Diverting Water*, POPULAR GOV’T, Fall 1989, at 34, 34–44.

219. Sedimentation Pollution Control Act of 1973, ch. 392, 1973 N.C. Sess. Laws 476, 476–85 (codified as amended at N.C. GEN. STAT. §§ 113A-50 to -66 (2005)).

220. Act of July 17, 1994, ch. 776, §§ 1–13, 1993 N.C. Sess. Laws (Reg. Sess. 1994) 980, 980–88 (codified as amended in scattered sections of N.C. GEN. STAT. § 113A, art. 4 (2005)). Act of July 15, 1986, ch. 1014, § 149(a), 1985 N.C. Sess. Laws (Reg. Sess. 1986) 418, 552–53 (codified as amended at N.C. GEN. STAT. §§ 143-215.74 to -215.74B (2005)).