

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 923
Apr 30, 2024
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10521-MHa-123

Short Title: Rights of Nature/Dan River. (Public)

Sponsors: Representative Harrison.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO RECOGNIZE AND PROTECT THE RIGHTS OF THE DAN RIVER
3 ECOSYSTEM AND TO RECOGNIZE AND PROTECT THE RIGHT OF THE PEOPLE
4 OF NORTH CAROLINA TO A HEALTHY DAN RIVER ECOSYSTEM.

5 Whereas, American Indians have inhabited areas along the many streams and rivers
6 of this State since prehistoric times, as evidenced by the portions of fish traps built within rock
7 formations that are still visible in some of our rivers and artifacts like arrowheads and pottery
8 shards that can still be found along the banks of streams and rivers; and

9 Whereas, American Indian tribes remained along the Dan River until the early 18th
10 century, as memorialized by historical markers noting the location of Upper and Lower Saura
11 Town, the last known settlements of the Saura tribe along the Dan River that were abandoned by
12 1710 due to the impacts of European colonization; and

13 Whereas, other tribes such as the Saponi are still present within the Dan and Lower
14 Roanoke River basins; and

15 Whereas, as early modernization reached the basin, the Dan presented many
16 opportunities and challenges for those wanting to navigate the waters, and wooden primitive
17 vessels known as bateaux were a common site on the river in those times, captained by free men
18 and slaves alike and carrying horses, livestock, and other goods up and downstream between
19 Virginia and North Carolina; and

20 Whereas, river trade and travel played a crucial role in the development of towns in
21 both North Carolina and Virginia such as South Boston, Danville, Madison, and Eden, and hand
22 dug channels and remnants of bateau landings are still present in and along these trade routes on
23 the Dan River; Now, therefore,

24 The General Assembly of North Carolina enacts:

25 **SECTION 1.** Chapter 77 of the General Statutes is amended by adding a new Article
26 to read:

27 "Article 11.

28 "Rights of the Dan River Ecosystem.

29 **"§ 77-145. Short title.**

30 This act shall be known and may be cited as the Rights of the Dan River Ecosystem Act.

31 **"§ 77-146. Purpose.**

32 This act recognizes and protects the rights of the Dan River ecosystem and the right of the
33 people of North Carolina to a healthy, thriving Dan River ecosystem.

34 **"§ 77-147. Definitions.**

35 The following definitions apply in this Article:



* D R H 1 0 5 2 1 - M H A - 1 2 3 *

(1) Dan River ecosystem. – The watershed of the Dan River, including both its mainstem and tributaries, and all species and ecosystems found in those areas or dependent on species and ecosystems found in the watershed.

(2) Natural resource management agencies. – The Department of Natural and Cultural Resources, the Department of Environmental Quality, and the Wildlife Resources Commission.

"§ 77-148. Rights of the Dan River ecosystem.

(a) Rights of the Dan River Ecosystem. – The Dan River ecosystem possesses rights, including, but not limited to, all of the following:

(1) The right to naturally exist, flourish, regenerate, and evolve.

(2) The right to full restoration, recovery, and preservation.

(3) The right to abundant, pure, clean, unpolluted water, including the right to natural surface water flow and recharge and groundwater recharge.

(4) The right to a healthy natural environment and natural biodiversity.

(5) The right to carry on all natural functions of the Dan River ecosystem.

(6) The right to be free of activities, practices, and any other man-made obstructions that interfere with or infringe upon the rights set forth in this section.

(b) No Conferral of Obligations. – The rights of the Dan River ecosystem protected in this Article shall not be interpreted to confer liabilities, duties, obligations, or responsibilities on the Dan River ecosystem except as expressly set forth herein.

"§ 77-149. Rights of the people of the State.

All residents of the State possess the right to a healthy, flourishing Dan River ecosystem.

"§ 77-150. Rights of indigenous people.

Nothing in this Article shall abrogate the collective or individual rights of indigenous people residing in the State, including, but not limited to, members of the tribes and bands identified in Chapter 71A of the General Statutes.

"§ 77-151. Implementation.

The State shall protect the rights secured in this act by providing that natural resource management agencies of the State take action to ensure these rights are guaranteed and upheld as specified in this section. This includes all of the following:

(1) Natural resource management agencies shall not conduct, authorize, license, permit, or fund any public or private activities, practices, or operations that are inconsistent with, or which will or may violate or infringe upon, the rights or provisions of this act.

(2) No later than June 30, 2025, natural resource management agencies shall:

a. Review their existing and proposed activities, practices, or operations, as well as all agency laws, policies, rules, or regulations, to identify any potential or ongoing violations of the rights or provisions of this Article.

b. Jointly conduct a complete baseline environmental assessment of the Dan River ecosystem, which shall include identification of areas within the ecosystem in need of restoration, and prioritization of those areas.

(3) No later than June 30, 2026, natural resource management agencies shall:

a. Remedy any potential or ongoing violation identified in subdivision (2) of this section to ensure all existing or proposed policies, rules, or regulations, or ongoing or proposed activities, practices, or operations, are made consistent with and protective of the rights and provisions of this Article.

- b. Develop recommendations for remedying any potential or ongoing violation of law identified in subdivision (2) of this section and submit a report of those recommendations to the General Assembly.
- (4) No later than June 30, 2029, complete full restoration of all areas of the Dan River ecosystem located within the State and identified through the assessment required by sub-subdivision (2)b. of this section.

"§ 77-152. Civil enforcement.

(a) Enforcement by the State. – The Attorney General is authorized to enforce and defend these rights by the filing of an action in the courts of this State to enjoin infringements of the rights set out in this Article and collect damages for impacts to natural resources within the Dan River ecosystem as described in subsection (h) of this section.

(b) Enforcement by the Dan River Ecosystem. – The Dan River ecosystem may enforce or defend the rights secured in this act through a legal action brought in the courts of this State, brought in the name of the Dan River ecosystem as the real party in interest. Remedies shall include injunctive relief to enjoin the activity or project which violates the rights set forth in this Article.

(c) Right of Intervention. – The Dan River ecosystem may also intervene in any litigation authorized by this section.

(d) Standing. – Any citizen of the State shall have standing to both file an action in the name of the ecosystem under subsection (b) of this section and to intervene in any litigation in the name of the ecosystem under subsection (c) of this section.

(e) Enforcement by Individuals. – Any North Carolina resident may enforce or defend the rights secured in this act through a legal action brought in any appropriate court. Any resident may also intervene in any litigation concerning this act in order to enforce or defend it. Remedies shall include injunctive relief to enjoin the activity or project which violates this act.

(f) Enforcement Actions and Burden of Proof. – Where probable violations of the rights protected in this act are shown to exist, lack of full scientific certainty shall not be used as a reason for denying or postponing enforcement or defense of these rights. The burden of proving the absence of a violation of rights shall lie with the persons responsible for the infringement of rights or impacts to natural resources alleged and not with the party or parties enforcing or defending the rights protected in this Article.

(g) Civil Penalties. – Any business or government entity that violates any provision of this Article shall be subject to a civil penalty of up to ten thousand dollars (\$10,000) for a single occurrence, or up to five hundred dollars (\$500.00) per day of a continuing occurrence, with each day constituting a separate offense under this Article. These penalties shall be trebled in cases where the violation is found to be willful.

(h) Damages. – Any business or government entity that violates any provision of this act shall be liable for any natural resource damages caused to the Dan River ecosystem as a result of the violation. The measure of damages shall be the cost of fully restoring the Dan River ecosystem to its state prior to the violation and shall be paid to the State to be used exclusively for the restoration of the ecosystem.

(i) Business and Governmental Entities. – Any business entity which is shown to have violated any provision of this Article shall be strictly liable and deemed not to possess any of the rights, privileges, powers, or protections which would interfere with the defense or enforcement of rights protected in this Article. Any defense of sovereign immunity is expressly waived with respect to any governmental entity shown to have violated any provision of this Article."

SECTION 2. There is appropriated from the General Fund to each of the natural resource management agencies identified in G.S. 77-147, as enacted by Section 1 of this act, the sum of one hundred thousand dollars (\$100,000) to carry out the reviews and assessments required by this act.

1 **SECTION 3.** If any provision of this act or its application to any person or
2 circumstance is held invalid, the invalidity does not affect other provisions or applications of this
3 act that can be given effect without the invalid provision or application and, to this end, the
4 provisions of this act are severable.

5 **SECTION 4.** This act is effective when it becomes law.