

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-140
HOUSE BILL 1065**

AN ACT REGARDING WATER RATES IN BUNCOMBE COUNTY.

Whereas, the North Carolina General Assembly previously adopted Chapter 399 of the 1933 Public-Local Laws (known as the "Sullivan Act") to address the particular circumstances of the supplying of water to certain residents of Buncombe County by the City of Asheville and the charges therefor; and

Whereas, from the adoption of the Sullivan Act until the present, the City of Asheville, directly or through the Asheville/Buncombe Water Authority, has continued to supply water to certain consumers of water in Buncombe County outside the corporate limits of the City of Asheville in those areas of the County where water has been supplied by the City of Asheville, all at a rate no higher than that charged by the City of Asheville to similarly situated water consumers residing within the corporate limits of said city; and

Whereas, from and after 1981, the City of Asheville and the County of Buncombe have discharged various of their obligations relating to the provision of water to certain citizens of Buncombe County residing inside and outside the corporate limits of the City of Asheville and the maintenance and upkeep of their respective water facilities pursuant to an Agreement between the City of Asheville and the County of Buncombe establishing the Asheville/Buncombe Water Authority dated 29 October 1981 and certain supplements and amendments thereto (hereinafter "Water Agreement"); and

Whereas, practically all, if not all, of the cost of the waterlines serving Buncombe County (outside of the corporate limits of the City of Asheville) has been paid by the County of Buncombe, the various water and sewer districts of the County of Buncombe, by the Asheville/Buncombe Water Authority pursuant to its duties to Buncombe County, and by private developers and landowners, desiring water service in such areas and not paid by the City of Asheville; and

Whereas, during the term of the Water Agreement, the County of Buncombe has paid directly to the City of Asheville in excess of \$37,000,000 pursuant to that Agreement; and

Whereas, at the time of the adoption of the Water Agreement, certain public recreational facilities were transferred to the County of Buncombe by the City of Asheville, and during the term of the Water Agreement, the costs related to those facilities have been borne by the County of Buncombe; and

Whereas, during the term of the Water Agreement, the County of Buncombe has expended \$9,025,715 on capital expenditures for the public recreational facilities referenced above; and

Whereas, the City of Asheville has given notice to terminate the Water Agreement as of 30 June 2005; and

Whereas, the City of Asheville is entitled to a fair return on its capital investment; and

Whereas, upon the termination of the Water Agreement as noticed by the City of Asheville for 30 June 2005, the ownership of the public recreational facilities shall revert to the City of Asheville; and

Whereas, upon the termination of the Water Agreement as noticed by the City of Asheville for 30 June 2005, the ownership of all water system facilities conveyed to the City of Asheville pursuant to the Water Agreement shall revert to the County of Buncombe and its water districts; and

Whereas, the citizens of Buncombe County outside the corporate limits of the City of Asheville now, or in the future to be, supplied water from lines connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto, are entitled to obtain water at a fair rate from the water system for which they have paid, through taxes, through payments for water, and through direct payments by the County of Buncombe and its water and sewer districts; and

Whereas, the population of Buncombe County is projected to grow by more than thirty-eight percent over the next twenty-five years, and more than two-thirds of that growth is projected to occur outside the current city limits of the City of Asheville; and

Whereas, the Asheville/Buncombe Water Authority has developed substantial excess capacity in anticipation of the growth of population in Buncombe County and of supplying water to the additional population from facilities the cost of which has been, and in the future will be, paid out of water system revenues; and

Whereas, the excess capacity in the water system maintained by the Asheville/Buncombe Water Authority is such that the system has a current capacity in excess of 41 million gallons per day and a current average usage of 22 million gallons per day; and

Whereas, the Mills River water treatment plant of the Asheville/Buncombe Water Authority was constructed at a location and in a manner that substantial additional capacity can be added to the water system now served by the Asheville/Buncombe Water Authority in the future without the construction of an additional water treatment plant; and

Whereas, the complicated pattern of dealings between the City of Asheville and the County of Buncombe regarding the provision of water to water consumers in Buncombe County connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto has now given rise to the issue of the rate that the City of Asheville may charge the water consumers in Buncombe County connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto to whom it provides water even though the Sullivan Act remains in full force and effect; and

Whereas, it is the exclusive right of the State to regulate the provision of and rates charged for public utilities to the citizens of the State; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. From and after the effective date of this act, it shall be unlawful for the City of Asheville, or any of the governing authorities, agents, or employees thereof, to charge, exact, or collect from any water consumer in Buncombe County currently or hereafter connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto a rate for water consumed higher than the rate charged for the same classification of water consumer residing or located within the corporate limits of the City of Asheville. Classification of water consumer as referred to herein means the type of facility to which the water is provided (e.g., single-family residence, multiple-family residence, retail, commercial, industrial) without regard to geographic location within Buncombe County.

SECTION 2. The City of Asheville may, through its officers, agents, and employees, cause any user of water who shall fail to pay promptly his water rent for any month to be cut off and his right to further use of water from the city system to be discontinued until payment of any water rent arrearages, all consistent with G.S. 160A-314(b).

SECTION 3. It shall be the duty of the Board of Commissioners of Buncombe County and/or the trustees of the different water districts operating outside of the corporate limits of the City of Asheville in Buncombe County to maintain the waterlines owned by the County of Buncombe and such water districts in proper repair in order that there may not be a waste of water by leakage.

SECTION 4. To the extent that the Sullivan Act (Chapter 399 of the Public-Local Laws of 1933) does not conflict with this act, it continues to apply.

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

In the General Assembly read three times and ratified this the 29th day of June, 2005.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives