

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

2

HOUSE BILL 488
Committee Substitute Favorable 4/9/13

Short Title: Regionalization of Public Utilities.

(Public)

Sponsors:

Referred to:

April 2, 2013

A BILL TO BE ENTITLED

1 AN ACT TO PROMOTE THE PROVISION OF REGIONAL WATER AND SEWER
2 SERVICES BY TRANSFERRING OWNERSHIP AND OPERATION OF CERTAIN
3 PUBLIC WATER AND SEWER SYSTEMS THAT DO NOT FUNCTION AS JOINT OR
4 REGIONAL WATER OR SEWER SYSTEMS TO A METROPOLITAN WATER AND
5 SEWERAGE DISTRICT.
6

7 Whereas, regional water and sewer systems provide reliable, cost-effective,
8 high-quality water and sewer services to a wide range of residential and institutional customers;
9 and

10 Whereas, in an effort to ensure that the citizens and businesses of North Carolina are
11 provided with the highest quality services, the State recognizes the value of regional solutions
12 for public water and sewer for large public systems; Now, therefore,
13 The General Assembly of North Carolina enacts:

14 **SECTION 1.(a)** All assets, real and personal, tangible and intangible, and all
15 outstanding debts of any public water system operated by a subdivision of the State and body
16 politic that serves a population greater than one hundred twenty thousand (120,000) people,
17 according to data submitted pursuant to G.S. 143-355(l) for the year 2011, that is not operated
18 as either a joint or regional public water system, shall be transferred to the metropolitan
19 sewerage district in the county in which the public water system is located, to be operated as a
20 Metropolitan Water and Sewerage District.

21 **SECTION 1.(b)** All assets, real and personal, tangible and intangible, and all
22 outstanding debts of any public sewer system operated by a subdivision of the State and body
23 politic that is interconnected with the metropolitan sewerage district receiving assets pursuant
24 to Section 1.(a) of this act, that is not operated as either a joint or regional public sewer system,
25 shall be transferred to that metropolitan sewerage district to be operated as a Metropolitan
26 Water and Sewerage District.

27 **SECTION 1.(c)** All assets, real and personal, tangible and intangible, and all
28 outstanding debts of any public sewer system operated by the metropolitan sewerage district
29 receiving assets pursuant to Sections 1.(a) and 1.(b) of this act, shall be transferred to, and be
30 operated as, a Metropolitan Water and Sewerage District, as established pursuant to this act.

31 **SECTION 1.(d)** Until appointments are made to the Metropolitan Water and
32 Sewerage District established pursuant to this act, the district board of the metropolitan
33 sewerage district in the county in which the public water system, the assets of which are
34 transferred pursuant to Section 1.(a) of this act, is located shall function as the district board of
35 the Metropolitan Water and Sewerage District.



- 1 (a) Appointment. – The district board shall consist of no more than 15 members
2 appointed as follows:
- 3 (1) Two individuals by the governing body of each county served, wholly or in
4 part, by the district.
- 5 (2) One individual by the governing body of each municipality served by the
6 district located in any county served by the district with a population greater
7 than 200,000.
- 8 (3) Two individuals by the governing body of any municipality served by the
9 district with a population greater than 75,000, in addition to any
10 appointments under subdivision (2) of this subsection.
- 11 (4) One individual by the governing body of any county served by the district
12 with a population greater than 200,000, in addition to any appointments
13 under subdivision (1) of this subsection.
- 14 (5) One individual by the governing body of a county in which a watershed
15 servicing the district board is located in a municipality not served by the
16 district, upon recommendation of that municipality. The municipality shall
17 provide to the governing body of the county a list of three names within 30
18 days of written request by the county, from which the county must select an
19 appointee if the names are provided within 30 days of written request.
- 20 (6) One individual by the governing body of any elected water and sewer district
21 wholly contained within the boundaries of the district.
- 22 (b) Terms; Reappointment. – Terms shall be for three years. A member shall serve until
23 a successor has been duly appointed and qualified.
- 24 (c) Vacancies; Removal. – If a vacancy shall occur on a district board, the governing
25 body which appointed the vacating member shall appoint a new member who shall serve for
26 the remainder of the unexpired term. Any member of a district board may be removed by the
27 governing board that appointed that member.
- 28 (d) Oath of Office. – Each member of the district board, before entering upon the
29 duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of
30 the United States and of this State and to discharge faithfully the duties of the office. A record
31 of each such oath shall be filed with the clerk or clerks of the governing boards appointing the
32 members.
- 33 (e) Chair; Officers. – The district board shall elect one of its members as chairman and
34 another as vice-chairman. The district board shall appoint a secretary and a treasurer who may,
35 but need not, be members of the district board. The offices of secretary and treasurer may be
36 combined. The district board may also appoint an assistant secretary and an assistant treasurer
37 or, if the office is combined, an assistant secretary-treasurer who may, but need not, be
38 members of the district board. The terms of office of the chairman, vice-chairman, secretary,
39 treasurer, assistant secretary, and assistant treasurer shall be as provided in the bylaws of the
40 district board.
- 41 (f) Meetings; Quorum. – The district board shall meet regularly at such places and
42 dates as are determined by the district board. All meetings shall comply with Article 33C of
43 Chapter 143 of the General Statutes. A majority of the members of the district board shall
44 constitute a quorum, and the affirmative vote of a majority of the members of the district board
45 present at any meeting thereof shall be necessary for any action taken by the district board. No
46 vacancy in the membership of the district board shall impair the right of a quorum to exercise
47 all the rights and perform all the duties of the district board. Each member, including the
48 chairman, shall be entitled to vote on any question.
- 49 (g) Compensation. – The members of the district board may receive compensation in an
50 amount to be determined by the district board but not to exceed that compensation paid to
51 members of Occupational Licensing Boards as provided in G.S. 93B-5(a) for each meeting of

1 the district board attended and for attendance at each regularly scheduled committee meeting of
2 the district board. The members of the district board may also be reimbursed the amount of
3 actual expenses incurred by that member in the performance of that member's duties.

4 **"§ 162A-85.5. Powers generally.**

5 (a) Each district shall be deemed to be a public body and body politic and corporate
6 exercising public and essential governmental functions to provide for the preservation and
7 promotion of the public health and welfare, and each district is hereby authorized and
8 empowered to do all of the following:

9 (1) To exercise any power of a Metropolitan Water District under Article 4 of
10 this Chapter.

11 (2) To exercise any power of a Metropolitan Sewerage District under Article 5
12 of this Chapter.

13 (3) To do all acts and things necessary or convenient to carry out the powers
14 granted by this Article.

15 (b) Each district shall keep its accounts on the basis of a fiscal year commencing on the
16 first day of July and ending on the thirtieth day of June of the following year.

17 **"§ 162A-85.7. Bonds and notes authorized.**

18 A metropolitan water and sewerage district shall have power from time to time to issue
19 bonds and notes under the Local Government Finance Act.

20 **"§ 162A-85.9. Determination of tax rate by district board; levy, collection, and remittance**
21 **of tax.**

22 (a) After each assessment for taxes following the creation of the district, the board or
23 boards of commissioners shall file with the district board the valuation of assessable property
24 within the district. The district board shall then determine the amount of funds to be raised by
25 taxation for the ensuing year in excess of available funds to provide for the payment of interest
26 on and the principal of all outstanding general obligation bonds as the same shall become due
27 and payable, to pay the cost of maintaining, repairing, and operating any water system and any
28 sewerage system or systems, and to pay all obligations incurred by the district in the
29 performance of its lawful undertakings and functions.

30 (b) The district board shall determine the number of cents per one hundred dollars
31 (\$100.00) necessary to raise said amount and certify such rate to the board or boards of
32 commissioners.

33 (c) The board or boards of commissioners shall include the number of cents per one
34 hundred dollars (\$100.00) certified by the district board in its next annual levy against all
35 taxable property within the district, which tax shall be collected as other county taxes are
36 collected, and every month the amount of tax so collected shall be remitted to the district board
37 and deposited by the district board in a separate account in a bank in the State of North
38 Carolina. Such levy may include an amount for reimbursing the county for the additional cost
39 to the county of levying and collecting such taxes, pursuant to such formula as may be agreed
40 upon by the district board and the board or boards of commissioners, to be deducted from the
41 collections and stated with each remittance to the district board.

42 (d) The officer or officers having charge or custody of the funds of the district shall
43 require said bank to furnish security for protection of such deposits as provided in G.S. 159-28
44 and G.S. 159-31.

45 **"§ 162A-85.13. Rates and charges for services.**

46 (a) The district board may fix, and may revise from time to time, rents, rates, fees, and
47 other charges for the use of and for the services furnished or to be furnished by any water
48 system or sewerage system. Such rents, rates, fees, and charges may not apply differing
49 treatment within and outside the corporate limits of any city or county within the jurisdiction of
50 the district board. Such rents, rates, fees, and charges shall not be subject to supervision or

1 regulation by any bureau, board, commission, or other agency of the State or of any political
2 subdivision.

3 (b) Any such rents, rates, fees, and charges pledged to the payment of revenue bonds of
4 the district shall be fixed and revised so that the revenues of the water system or sewerage
5 system, together with any other available funds, shall be sufficient at all times to pay the cost of
6 maintaining, repairing, and operating the sewerage system, the revenues of which are pledged
7 to the payment of such revenue bonds, including reserves for such purposes, and to pay the
8 interest on and the principal of such revenue bonds as the same shall become due and payable
9 and to provide reserves therefor. If any such rents, rates, fees, and charges are pledged to the
10 payment of any general obligation bonds issued under this Article, such rents, rates, fees, and
11 charges shall be fixed and revised so as to comply with the requirements of such pledge.

12 (c) The district board may provide methods for collection of such rents, rates, fees, and
13 charges and measures for enforcement of collection thereof, including penalties and the denial
14 or discontinuance of service.

15 **"§ 162A-85.17. Rights-of-way and easements.**

16 A right-of-way or easement in, along, or across any State highway system, road, or street,
17 and along or across any city or town street within a district is hereby granted to a district in case
18 such right-of-way is found by the district board to be necessary or convenient for carrying out
19 any of the work of the district. Any work done in, along, or across any State highway system,
20 road, street, or property shall be done in accordance with the rules and regulations and any
21 reasonable requirements of the Department of Transportation, and any work done in, along, or
22 across any municipal street or property shall be done in accordance with any reasonable
23 requirements of the municipal governing body.

24 **"§ 162A-85.19. Authority of governing bodies of political subdivisions.**

25 (a) The governing body of any political subdivision is hereby authorized and
26 empowered to do any of the following:

27 (1) Subject to the approval of the Local Government Commission, to transfer
28 jurisdiction over and to lease, lend, sell, grant, or convey to a district, upon
29 such terms and conditions as the governing body of such political
30 subdivision may agree upon with the district board, the whole or any part of
31 any existing water system or systems or sewerage system or systems or such
32 real or personal property as may be necessary or useful in connection with
33 the acquisition, construction, reconstruction, improvement, extension,
34 enlargement, equipment, repair, maintenance, or operation of any water
35 system or sewerage system by the district, including public roads and other
36 property already devoted to public use.

37 (2) To make and enter into contracts or agreements with a district, upon such
38 terms and conditions and for such periods as such governing body and the
39 district board may determine for any of the following:

40 a. For the collection, treatment, or disposal of sewage.

41 b. For the supply of raw or treated water on a regular retail or wholesale
42 basis.

43 c. For the supply of raw or treated water on a standby wholesale basis.

44 d. For the construction of jointly financed facilities whose title shall be
45 vested in the district.

46 e. For the collecting by such political subdivision or by the district of
47 rents, rates, fees, or charges for the services and facilities provided to
48 or for such political subdivision or its inhabitants by any water
49 system or sewerage system and for the enforcement of collection of
50 such rents, rates, fees, and charges.

1 f. For the imposition of penalties, including the shutting off of the
2 supply of water furnished by any water system owned or operated by
3 such political subdivision, in the event that the owner, tenant, or
4 occupant of any premises utilizing such water shall fail to pay any
5 such rents, rates, fees, or charges.

6 (3) To fix and revise from time to time, rents, rates, fees, and other charges for
7 the services furnished or to be furnished by a water system or sewerage
8 system under any contract between the district and such political subdivision
9 and to pledge all or any part of the proceeds of such rents, rates, fees, and
10 charges to the payment of any obligation of such political subdivision to the
11 district under such contract.

12 (4) To pay any obligation of such political subdivision to the district under such
13 contract from any available funds of the political subdivision and to levy and
14 collect a tax ad valorem for the making of any such payment.

15 (5) In its discretion or if required by law, to submit to its qualified electors under
16 the election laws applicable to such political subdivision any contract or
17 agreement which such governing body is authorized to make and enter into
18 with the district under the provisions of this Article.

19 (b) Any such election upon a contract or agreement called under subsection (a) of this
20 section may, at the discretion of the governing body, be called and held under the election laws
21 applicable to the issuance of bonds by such political subdivision.

22 **"§ 162A-85.21. Submission of preliminary plans to planning groups; cooperation with**
23 **planning agencies.**

24 (a) Prior to the time final plans are made for the location and construction of any water
25 system or sewerage system, the district board shall present preliminary plans for such
26 improvement to the county or municipal governing board for their consideration if such facility
27 is to be located within the jurisdiction of any such county or municipality. The district board
28 shall make every effort to cooperate with the county or municipality in the location and
29 construction of a proposed facility authorized under this Article.

30 (b) Any district board created under the authority of this Article is hereby directed,
31 wherever possible, to coordinate its plans for the construction of water system or sewerage
32 system improvements with the overall plans for the development of the planning area if such
33 district is located wholly or in part within a county or municipal planning area.

34 (c) The approval of any such plan of the district shall be required from the governing
35 body of the county or municipality prior to the start of construction.

36 **"§ 162A-85.25. Adoption and enforcement of ordinances.**

37 (a) A district shall have the same power as a city under G.S. 160A-175 to assess civil
38 finances and penalties for violation of its ordinances and may secure injunctions to further ensure
39 compliance with its ordinances as provided by this section.

40 (b) An ordinance may provide that its violation shall subject the offender to a civil
41 penalty of not more than one thousand dollars (\$1,000) to be recovered by the district in a civil
42 action in the nature of debt if the offender does not pay the penalty within a prescribed period
43 of time after he has been cited for violation of the ordinance. Any person assessed a civil
44 penalty by the district shall be notified of the assessment by registered or certified mail, and the
45 notice shall specify the reasons for the assessment. If the person assessed fails to pay the
46 amount of the assessment to the district within 30 days after receipt of notice, or such longer
47 period, not to exceed 180 days, as the district may specify, the district may institute a civil
48 action in the General Court of Justice of the county in which the violation occurred or, in the
49 discretion of the district, in the General Court of Justice of the county in which the person
50 assessed has his or its principal place of business, to recover the amount of the assessment. The
51 validity of the district's action may be appealed directly to General Court of Justice in the

1 county in which the violation occurred or may be raised at any time in the action to recover the
2 assessment. Neither failure to contest the district's action directly nor failure to raise the issue of
3 validity in the action to recover an assessment precludes the other.

4 (c) An ordinance may provide that it may be enforced by an appropriate equitable
5 remedy issuing from court of competent jurisdiction. In such case, the General Court of Justice
6 shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense
7 to the application of the district for equitable relief that there is an adequate remedy at law.

8 (d) Subject to the express terms of an ordinance, a district ordinance may be enforced
9 by any one, all, or a combination of the remedies authorized and prescribed by this section.

10 (e) An ordinance may provide, when appropriate, that each day's continuing violation
11 shall be a separate and distinct offense.

12 **"§ 162A-85.29. No privatization.**

13 The district board may not in any way privatize the provision of water or sewer to the
14 customers of the district unless related to administrative matters only."

15 **SECTION 3.** G.S. 159-44(4) reads as rewritten:

16 "(4) "Unit," "unit of local government," or "local government" means counties;
17 cities, towns, and incorporated villages; consolidated city-counties, as
18 defined by G.S. 160B-2(1); sanitary districts; mosquito control districts;
19 hospital districts; merged school administrative units described in
20 G.S. 115C-513; metropolitan sewerage districts; metropolitan water districts;
21 metropolitan water and sewerage districts; county water and sewer districts;
22 regional public transportation authorities; and special airport districts."

23 **SECTION 4.** G.S. 159-48(e) reads as rewritten:

24 "(e) Each sanitary district, mosquito control district, hospital district, merged school
25 administrative unit described in G.S. 115C-513; metropolitan sewerage district, metropolitan
26 water district, metropolitan water and sewerage district, county water and sewer district,
27 regional public transportation authority and special airport district is authorized to borrow
28 money and issue its bonds under this Article in evidence thereof for the purpose of paying any
29 capital costs of any one or more of the purposes for which it is authorized, by general laws
30 uniformly applicable throughout the State, to raise or appropriate money, except for current
31 expenses."

32 **SECTION 5.** G.S. 159-81(1) reads as rewritten:

33 "(1) "Municipality" means a county, city, town, incorporated village, sanitary
34 district, metropolitan sewerage district, metropolitan water district,
35 metropolitan water and sewerage district, county water and sewer district,
36 water and sewer authority, hospital authority, hospital district, parking
37 authority, special airport district, special district created under Article 43 of
38 Chapter 105 of the General Statutes, regional public transportation authority,
39 regional transportation authority, regional natural gas district, regional sports
40 authority, airport authority, joint agency created pursuant to Part 1 of Article
41 20 of Chapter 160A of the General Statutes, a joint agency authorized by
42 agreement between two cities to operate an airport pursuant to G.S. 63-56,
43 and the North Carolina Turnpike Authority described in Article 6H of
44 Chapter 136 of the General Statutes and transferred to the Department of
45 Transportation pursuant to G.S. 136-89.182(b), but not any other forms of
46 State or local government."

47 **SECTION 6.** This act is effective May 15, 2013.