

**GENERAL ASSEMBLY OF NORTH CAROLINA
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**HOUSE BILL 488
Committee Substitute Favorable 4/9/13
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Short Title: Regionalization of Public Utilities.

(Public)

Sponsors:

Referred to:

April 2, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE THE PROVISION OF REGIONAL WATER AND SEWER
3 SERVICES BY TRANSFERRING OWNERSHIP AND OPERATION OF CERTAIN
4 PUBLIC WATER AND SEWER SYSTEMS TO A METROPOLITAN WATER AND
5 SEWERAGE DISTRICT.

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

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

13 **SECTION 1.(a)** All assets, real and personal, tangible and intangible, and all
14 outstanding debts of any public water system meeting all of the following criteria are by
15 operation of law transferred to the metropolitan sewerage district operating in the county where
16 the public water system is located, to be operated as a Metropolitan Water and Sewerage
17 District:

- 18 (1) The public water system is owned and operated by a municipality located in
19 a county where a metropolitan sewerage district is operating.
20 (2) The public water system has not been issued a certificate for an interbasin
21 transfer.
22 (3) The public water system serves a population greater than one hundred
23 twenty thousand (120,000) people, according to data submitted pursuant to
24 G.S. 143-355(l).

25 **SECTION 1.(b)** All assets, real and personal, tangible and intangible, and all
26 outstanding debts of any public sewer system operated by a subdivision of the State and body
27 politic that is interconnected with the metropolitan sewerage district receiving assets pursuant
28 to Section 1.(a) of this act are by operation of law transferred to that metropolitan sewerage
29 district to be operated as a Metropolitan Water and Sewerage District.

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



1 (16) "Water distribution system." – As defined in G.S. 162A-32.

2 (17) "Water system." – As defined in G.S. 162A-32.

3 (18) "Water treatment or purification plant." – As defined in G.S. 162A-32.

4 (b) Description of Boundaries. – Whenever this Article requires the boundaries of an
5 area be described, it shall be sufficient if the boundaries are described in a manner which
6 conveys an understanding of the location of the land and may be by any of the following:

7 (1) By reference to a clearly identified map recorded in the appropriate register
8 of deeds office.

9 (2) By metes and bounds.

10 (3) By general description referring to natural boundaries, boundaries of
11 political subdivisions, or boundaries of particular tracts or parcels of land.

12 (4) Any combination of the foregoing.

13 **"§ 162A-85.2. Creation.**

14 (a) Except as provided by operation of law, the governing bodies of two or more
15 political subdivisions may establish a metropolitan water and sewerage district if all of the
16 political subdivisions adopt a resolution setting forth all of the following:

17 (1) The names of the appointees to the district board.

18 (2) The date on which the district board shall be established.

19 (3) The boundaries of the district board.

20 (b) Prior to the adoption of a resolution under subsection (a) of this section, the
21 governing body shall hold at least two public hearings on the matter, held at least 30 days apart,
22 after publication of the notices of public hearing in a newspaper of general circulation,
23 published at least 10 days before each public hearing.

24 **"§ 162A-85.3. District board.**

25 (a) Appointment. – The district board shall consist of members appointed as follows:

26 (1) Two individuals by the governing body of each county served, wholly or in
27 part, by the district.

28 (2) One individual by the governing body of each municipality served by the
29 district located in any county served by the district with a population greater
30 than 200,000.

31 (3) Two individuals by the governing body of any municipality served by the
32 district with a population greater than 75,000, in addition to any
33 appointments under subdivision (2) of this subsection.

34 (4) One individual by the governing body of any county served by the district
35 with a population greater than 200,000, in addition to any appointments
36 under subdivision (1) of this subsection.

37 (5) One individual by the governing body of a county in which a watershed
38 -serving the district board is located in a municipality not served by the
39 district, upon recommendation of that municipality. The municipality shall
40 provide to the governing body of the county a list of three names within 30
41 days of written request by the county, from which the county must select an
42 appointee if the names are provided within 30 days of written request.

43 (6) One individual by the governing body of any elected water and sewer district
44 wholly contained within the boundaries of the district.

45 (b) Terms; Reappointment. – Terms shall be for three years. A member shall serve until
46 a successor has been duly appointed and qualified.

47 (c) Vacancies; Removal. – If a vacancy shall occur on a district board, the governing
48 body which appointed the vacating member shall appoint a new member who shall serve for
49 the remainder of the unexpired term. Any member of a district board may be removed by the
50 governing board that appointed that member.

1 (d) Oath of Office. – Each member of the district board, before entering upon the
2 duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of
3 the United States and of this State and to discharge faithfully the duties of the office. A record
4 of each such oath shall be filed with the clerk or clerks of the governing boards appointing the
5 members.

6 (e) Chair; Officers. – The district board shall elect one of its members as chairman and
7 another as vice-chairman. The district board shall appoint a secretary and a treasurer who may,
8 but need not, be members of the district board. The offices of secretary and treasurer may be
9 combined. The district board may also appoint an assistant secretary and an assistant treasurer
10 or, if the office is combined, an assistant secretary-treasurer who may, but need not, be
11 members of the district board. The terms of office of the chairman, vice-chairman, secretary,
12 treasurer, assistant secretary, and assistant treasurer shall be as provided in the bylaws of the
13 district board.

14 (f) Meetings; Quorum. – The district board shall meet regularly at such places and
15 dates as are determined by the district board. All meetings shall comply with Article 33C of
16 Chapter 143 of the General Statutes. A majority of the members of the district board shall
17 constitute a quorum, and the affirmative vote of a majority of the members of the district board
18 present at any meeting thereof shall be necessary for any action taken by the district board. No
19 vacancy in the membership of the district board shall impair the right of a quorum to exercise
20 all the rights and perform all the duties of the district board. Each member, including the
21 chairman, shall be entitled to vote on any question.

22 (g) Compensation. – The members of the district board may receive compensation in an
23 amount to be determined by the district board but not to exceed that compensation paid to
24 members of Occupational Licensing Boards as provided in G.S. 93B-5(a) for each meeting of
25 the district board attended and for attendance at each regularly scheduled committee meeting of
26 the district board. The members of the district board may also be reimbursed the amount of
27 actual expenses incurred by that member in the performance of that member's duties.

28 **"§ 162A-85.5. Powers generally.**

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

- 33 (1) To exercise any power of a Metropolitan Water District under Article 4 of
34 this Chapter.
- 35 (2) To exercise any power of a Metropolitan Sewerage District under Article 5
36 of this Chapter.
- 37 (3) To do all acts and things necessary or convenient to carry out the powers
38 granted by this Article.

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

41 **"§ 162A-85.7. Bonds and notes authorized.**

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

44 **"§ 162A-85.9. Determination of tax rate by district board; levy, collection, and remittance**
45 **of tax.**

46 (a) After each assessment for taxes following the creation of the district, the board or
47 boards of commissioners shall file with the district board the valuation of assessable property
48 within the district. The district board shall then determine the amount of funds to be raised by
49 taxation for the ensuing year in excess of available funds to provide for the payment of interest
50 on and the principal of all outstanding general obligation bonds as the same shall become due
51 and payable, to pay the cost of maintaining, repairing, and operating any water system and any

1 sewerage system or systems, and to pay all obligations incurred by the district in the
2 performance of its lawful undertakings and functions.

3 (b) The district board shall determine the number of cents per one hundred dollars
4 (\$100.00) necessary to raise said amount and certify such rate to the board or boards of
5 commissioners.

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

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

18 **"§ 162A-85.13. Rates and charges for services.**

19 (a) The district board may fix, and may revise from time to time, rents, rates, fees, and
20 other charges for the use of and for the services furnished or to be furnished by any water
21 system or sewerage system. Such rents, rates, fees, and charges may not apply differing
22 treatment within and outside the corporate limits of any city or county within the jurisdiction of
23 the district board. Such rents, rates, fees, and charges shall not be subject to supervision or
24 regulation by any bureau, board, commission, or other agency of the State or of any political
25 subdivision.

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

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

38 **"§ 162A-85.17. Rights-of-way and easements.**

39 A right-of-way or easement in, along, or across any State highway system, road, or street,
40 and along or across any city or town street within a district is hereby granted to a district in case
41 such right-of-way is found by the district board to be necessary or convenient for carrying out
42 any of the work of the district. Any work done in, along, or across any State highway system,
43 road, street, or property shall be done in accordance with the rules and regulations and any
44 reasonable requirements of the Department of Transportation, and any work done in, along, or
45 across any municipal street or property shall be done in accordance with any reasonable
46 requirements of the municipal governing body.

47 **"§ 162A-85.19. Authority of governing bodies of political subdivisions.**

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

- 50 (1) Subject to the approval of the Local Government Commission, to transfer
51 jurisdiction over and to lease, lend, sell, grant, or convey to a district, upon

1 such terms and conditions as the governing body of such political
2 subdivision may agree upon with the district board, the whole or any part of
3 any existing water system or systems or sewerage system or systems or such
4 real or personal property as may be necessary or useful in connection with
5 the acquisition, construction, reconstruction, improvement, extension,
6 enlargement, equipment, repair, maintenance, or operation of any water
7 system or sewerage system by the district, including public roads and other
8 property already devoted to public use.

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

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

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

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

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

18 e. For the collecting by such political subdivision or by the district of
19 rents, rates, fees, or charges for the services and facilities provided to
20 or for such political subdivision or its inhabitants by any water
21 system or sewerage system and for the enforcement of collection of
22 such rents, rates, fees, and charges.

23 f. For the imposition of penalties, including the shutting off of the
24 supply of water furnished by any water system owned or operated by
25 such political subdivision, in the event that the owner, tenant, or
26 occupant of any premises utilizing such water shall fail to pay any
27 such rents, rates, fees, or charges.

28 (3) To fix and revise from time to time, rents, rates, fees, and other charges for
29 the services furnished or to be furnished by a water system or sewerage
30 system under any contract between the district and such political subdivision
31 and to pledge all or any part of the proceeds of such rents, rates, fees, and
32 charges to the payment of any obligation of such political subdivision to the
33 district under such contract.

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

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

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

44 **§ 162A-85.21. Submission of preliminary plans to planning groups; cooperation with**
45 **planning agencies.**

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

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

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

7 **"§ 162A-85.25. Adoption and enforcement of ordinances.**

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

11 **(b)** An ordinance may provide that its violation shall subject the offender to a civil
12 penalty of not more than one thousand dollars (\$1,000) to be recovered by the district in a civil
13 action in the nature of debt if the offender does not pay the penalty within a prescribed period
14 of time after he has been cited for violation of the ordinance. Any person assessed a civil
15 penalty by the district shall be notified of the assessment by registered or certified mail, and the
16 notice shall specify the reasons for the assessment. If the person assessed fails to pay the
17 amount of the assessment to the district within 30 days after receipt of notice, or such longer
18 period, not to exceed 180 days, as the district may specify, the district may institute a civil
19 action in the General Court of Justice of the county in which the violation occurred or, in the
20 discretion of the district, in the General Court of Justice of the county in which the person
21 assessed has his or its principal place of business, to recover the amount of the assessment. The
22 validity of the district's action may be appealed directly to General Court of Justice in the
23 county in which the violation occurred or may be raised at any time in the action to recover the
24 assessment. Neither failure to contest the district's action directly nor failure to raise the issue of
25 validity in the action to recover an assessment precludes the other.

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

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

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

34 **"§ 162A-85.29. No privatization.**

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

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

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

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

46 "(e) Each sanitary district, mosquito control district, hospital district, merged school
47 administrative unit described in G.S. 115C-513; metropolitan sewerage district, metropolitan
48 water district, metropolitan water and sewerage district, county water and sewer district,
49 regional public transportation authority and special airport district is authorized to borrow
50 money and issue its bonds under this Article in evidence thereof for the purpose of paying any
51 capital costs of any one or more of the purposes for which it is authorized, by general laws

1 uniformly applicable throughout the State, to raise or appropriate money, except for current
2 expenses."

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

4 "(1) "Municipality" means a county, city, town, incorporated village, sanitary
5 district, metropolitan sewerage district, metropolitan water district,
6 metropolitan water and sewerage district, county water and sewer district,
7 water and sewer authority, hospital authority, hospital district, parking
8 authority, special airport district, special district created under Article 43 of
9 Chapter 105 of the General Statutes, regional public transportation authority,
10 regional transportation authority, regional natural gas district, regional sports
11 authority, airport authority, joint agency created pursuant to Part 1 of Article
12 20 of Chapter 160A of the General Statutes, a joint agency authorized by
13 agreement between two cities to operate an airport pursuant to G.S. 63-56,
14 and the North Carolina Turnpike Authority described in Article 6H of
15 Chapter 136 of the General Statutes and transferred to the Department of
16 Transportation pursuant to G.S. 136-89.182(b), but not any other forms of
17 State or local government."

18 **SECTION 6.** This act is effective May 15, 2013, and the Metropolitan Water and
19 Sewer District in Section 1 of this act shall be created by operation of law.