

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1628\*

Short Title: Sewer District Amendments.

(Public)

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Sponsors: Representatives Kuczmariski, G. Miller, Flaherty; Cummings, Hensley, Fussell, and B. Miller.

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Referred to: Judiciary III.

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May 25, 1994

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE AN EXPEDITED PROCEDURE FOR CREATION OF  
2 COUNTY WATER AND SEWER DISTRICTS AFTER FAILURE OF LOW-  
3 PRESSURE PIPE SEWER SYSTEMS, TO CLARIFY THE POWERS OF  
4 COUNTY WATER AND SEWER DISTRICTS, AND CONCERNING THE  
5 APPLICATION DATES FOR CLEAN WATER BOND LOANS AND GRANTS,  
6 AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW  
7 COMMITTEE.  
8

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 162A-86 is amended by adding a new subsection to read:

11 "(b1) Before creating such a district, the board of commissioners shall hold a public  
12 hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its  
13 subject and shall set forth a description of the territory to be included within the  
14 proposed district. The notice shall be published once in a newspaper that circulates in  
15 the proposed district and in addition shall be posted in at least three public places in the  
16 district. The notice shall be posted and published not more than 30 nor less than 14 days  
17 before the hearing. The newspaper notice and the public hearing may cover more than  
18 one district covered by this subsection.

19 This subsection applies only when the local Health Director or the State Health  
20 Director has certified that there is a present or imminent serious public health hazard  
21 caused by the failure of a low-pressure pipe sewer system within the area of the  
22 proposed district, and in such case the board of commissioners may proceed either  
23 under subsection (a) of this section or under this subsection."

1 Sec. 2. G.S. 162A-87(b) reads as rewritten:

2 "(b) Upon adoption of a resolution creating a county water and sewer district, the  
3 board of commissioners shall cause the resolution to be published once in each of two  
4 successive weeks in the newspaper in which the notices of the hearing were published.  
5 In addition, the commissioners shall cause to be published with the resolution a notice  
6 in substantially the following form:

7 'The foregoing resolution was adopted by the ... .. County Board of  
8 Commissioners on ... .. and was first published on .....

9 Any action or proceeding questioning the validity of this resolution or the creation of  
10 the ... .. Water and Sewer District of ... .. County or the inclusion in the  
11 district of any of the territory described in the resolution must be commenced within 30  
12 days after the first publication of the resolution.

13 .....  
14 Clerk,.....County  
15 Board of Commissioners'

16 Any action or proceeding in any court to set aside a resolution creating a county  
17 water and sewer district, or questioning the validity of such a resolution, the creation of  
18 such a district, or the inclusion in such a district of any of the territory described in the  
19 resolution creating the district must be commenced within 30 days after the first  
20 publication of the resolution and notice. After the expiration of this period of limitation,  
21 no right of action or defense founded upon the invalidity of the resolution, the creation  
22 of the district, or the inclusion of any territory in the district may be asserted, nor may  
23 the validity of the resolution, the creation of the district, or the inclusion of the territory  
24 be open to question in any court upon any ground whatever, except in an action or  
25 proceeding commenced within that period.

26 Notwithstanding any other provision of this section, in the case of any county water  
27 and sewer districts created under G.S. 162A-86(b1):

- 28 (1) A resolution may cover the creation of more than one district;
- 29 (2) The board of commissioners shall cause the resolution to be published  
30 once in the newspaper in which the notices of the hearing were  
31 published; and
- 32 (3) References in this subsection to '30 days' are instead '21 days'."

33 Sec. 3. Article 6 of Chapter 162A of the General Statutes is amended by  
34 adding a new section to read:

35 "**§ 162A-87.1. Initial boundaries of district.**

36 (a) The initial boundaries of a district may exclude areas contained solely within  
37 the external boundaries of the district.

38 (b) The initial boundaries of a district may include noncontiguous portions, as  
39 long as the closest distance from a noncontiguous piece to the part of the district  
40 containing the greatest area does not exceed one mile.

41 (c) This section does not invalidate any district created prior to the effective date  
42 of this section."

43 Sec. 4. G.S. 162A-87.2 reads as rewritten:

44 "**§ 162A-87.2. Abolition of water and sewer districts.**

1 (a) Upon finding that there is no longer a need for a water and sewer district and  
2 that there are no outstanding bonds or notes issued to finance projects in the district, the  
3 board of commissioners may, by resolution, abolish that district. The board of  
4 commissioners shall hold a public hearing before adopting a resolution abolishing a  
5 district. Notice of the hearing shall state the date, hour, and place of the hearing and its  
6 subject, and shall be published at least once not less than one week before the date of  
7 the hearing. The abolition of any water and sewer district shall take effect at the end of a  
8 fiscal year following passage of the resolution, as determined by the board of  
9 commissioners.

10 (b) If the:

11 (1) Terms of any contract between a county water and sewer district and a  
12 city provide that upon certain conditions, all the property of the district  
13 is conveyed to that city; and

14 (2) District has at the time of abolition no existing bonds or notes issued  
15 as authorized by G.S. 162A-90 to finance projects in the district,

16 then such contract may also provide that no earlier than such conveyance the district  
17 may be abolished by action of the governing board of the city. If the district has any  
18 other indebtedness, a contract providing for conveyance of all of the assets of a district  
19 to a city must provide for assumption of such other indebtedness by the city. If the  
20 district is owed any assessments, then the right to collect such assessments becomes that  
21 of the city. The governing board of the city shall hold a public hearing before adopting  
22 a resolution abolishing a district. Notice of the hearing shall state the date, hour, and  
23 place of the hearing and its subject, and shall be published at least once not less than one  
24 week before the date of the hearing. The abolition of any water and sewer district shall  
25 take effect at the end of a fiscal year of the district following passage of the resolution,  
26 as determined by the governing board. This subsection applies only to a county water  
27 and sewer district created under G.S. 162A-86(b1).

28 (c) If the:

29 (1) Terms of any contract between a county water and sewer district and a  
30 private person provide that upon certain conditions, all the property of  
31 the district is conveyed to that private person; and

32 (2) District has at the time of abolition no existing bonds or notes issued  
33 as authorized by G.S. 162A-90 to finance projects in the district,

34 such contract may also provide that no earlier than such conveyance the district may be  
35 abolished by action of the Utilities Commission. If the district has any other  
36 indebtedness, a contract providing for conveyance of all of the assets of a district to a  
37 private person must provide for assumption of such other indebtedness by the private  
38 person. If the district is owed any assessments, then the private person may collect the  
39 assessment under the same procedures as if it was the district. The Utilities  
40 Commission shall hold a public hearing before adopting a resolution abolishing a  
41 district. Notice of the hearing shall state the date, hour, and place of the hearing and its  
42 subject, and shall be published at least once not less than one week before the date of  
43 the hearing. The abolition of any water and sewer district shall take effect at the end of a  
44 fiscal year of the district following passage of the resolution, as determined by the

1 Utilities Commission. This subsection applies only to a county water and sewer district  
2 created under G.S. 162A-86(b1).

3 (d) Any resolution of abolition adopted under this section on or after the effective  
4 date of this section shall be filed with the Secretary of State."

5 Sec. 5. Article 6 of Chapter 162A of the General Statutes is amended by  
6 adding a new section to read:

7 **"§ 162A-88.1. Contracts with private entities.**

8 A county water and sewer district may contract with and appropriate money to any  
9 person, association, or corporation, in order to carry out any public purpose that the  
10 county water and sewer district is authorized by law to engage in."

11 Sec. 6. G.S. 160A-36 reads as rewritten:

12 **"§ 160A-36. Character of area to be annexed.**

13 (a) A municipal governing board may extend the municipal corporate limits to  
14 include any area which meets the general standards of subsection (b), and which meets  
15 the requirements of subsection (c).

16 (b) The total area to be annexed must meet the following standards:

17 (1) It must be adjacent or contiguous to the municipality's boundaries at  
18 the time the annexation proceeding is ~~begun~~-begun, except if the entire  
19 territory of a county water and sewer district created under G.S. 162A-  
20 86(b1) is being annexed, the annexation shall also include any  
21 noncontiguous pieces of the district as long as the part of the district  
22 with the greatest land area is adjacent or contiguous to the  
23 municipality's boundaries at the time the annexation proceeding is  
24 begun.

25 (2) At least one eighth of the aggregate external boundaries of the area  
26 must coincide with the municipal boundary.

27 (3) No part of the area shall be included within the boundary of another  
28 incorporated municipality.

29 (c) The area to be annexed must be developed for urban purposes. An area  
30 developed for urban purposes is defined as any area which is so developed that at least  
31 sixty percent (60%) of the total number of lots and tracts in the area at the time of  
32 annexation are used for residential, commercial, industrial, institutional or governmental  
33 purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of  
34 the total acreage, not counting the acreage used at the time of annexation for  
35 commercial, industrial, governmental or institutional purposes, consists of lots and  
36 tracts five acres or less in size. An area developed for urban purposes is also the entire  
37 area of any county water and sewer district created under G.S. 162A-86(b1), but this  
38 sentence only applies to annexation by a municipality if that:

39 (1) Municipality has provided in a contract with that district that the area  
40 is developed for urban purposes; and

41 (2) Contract provides for the municipality to operate the sewer system of  
42 that county water and sewer district;

1 provided that the special categorization provided by this sentence only applies if the  
2 municipality is annexing in one proceeding the entire territory of the district not already  
3 within the corporate limits of a municipality.

4 (d) In fixing new municipal boundaries, a municipal governing board shall,  
5 wherever practical, use natural topographic features such as ridge lines and streams and  
6 creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries  
7 of a county water and sewer district may also be used when the entire district not  
8 already within the corporate limits of a municipality is being annexed.

9 (e) The area of an abolished water and sewer district shall be considered to be a  
10 water and sewer district for the purpose of this section even after its abolition under  
11 G.S. 162A-87.2(b)."

12 Sec. 7. G.S. 160A-48 reads as rewritten:

13 **"§ 160A-48. Character of area to be annexed.**

14 (a) A municipal governing board may extend the municipal corporate limits to  
15 include any area

16 (1) Which meets the general standards of subsection (b), and

17 (2) Every part of which meets the requirements of either subsection (c) or  
18 subsection (d).

19 (b) The total area to be annexed must meet the following standards:

20 (1) It must be adjacent or contiguous to the municipality's boundaries at  
21 the time the annexation proceeding is ~~begun~~ begun, except if the entire  
22 territory of a county water and sewer district created under G.S. 162A-  
23 86(b1) is being annexed, the annexation shall also include any  
24 noncontiguous pieces of the district as long as the part of the district  
25 with the greatest land area is adjacent or contiguous to the  
26 municipality's boundaries at the time the annexation proceeding is  
27 begun.

28 (2) At least one eighth of the aggregate external boundaries of the area  
29 must coincide with the municipal boundary.

30 (3) No part of the area shall be included within the boundary of another  
31 incorporated municipality.

32 (c) Part or all of the area to be annexed must be developed for urban purposes.  
33 An area developed for urban purposes is defined as any area which meets any one of the  
34 following standards:

35 (1) Has a total resident population equal to at least two persons for each  
36 acre of land included within its boundaries; or

37 (2) Has a total resident population equal to at least one person for each  
38 acre of land included within its boundaries, and is subdivided into lots  
39 and tracts such that at least sixty percent (60%) of the total acreage  
40 consists of lots and tracts five acres or less in size and such that at least  
41 sixty-five percent (65%) of the total number of lots and tracts are one  
42 acre or less in size; or

43 (3) Is so developed that at least sixty percent (60%) of the total number of  
44 lots and tracts in the area at the time of annexation are used for

1 residential, commercial, industrial, institutional or governmental  
2 purposes, and is subdivided into lots and tracts such that at least sixty  
3 percent (60%) of the total acreage, not counting the acreage used at the  
4 time of annexation for commercial, industrial, governmental or  
5 institutional purposes, consists of lots and tracts five acres or less in  
6 ~~size-size~~; or

7 (4) Is the entire area of any county water and sewer district created under  
8 G.S. 162A-86(b1), but this subdivision only applies to annexation by a  
9 municipality if that:

10 a. Municipality has provided in a contract with that district that  
11 the area is developed for urban purposes; and

12 b. Contract provides for the municipality to operate the sewer  
13 system of that county water and sewer district;

14 provided that the special categorization provided by this subdivision  
15 only applies if the municipality is annexing in one proceeding the  
16 entire territory of the district not already within the corporate limits of  
17 a municipality.

18 (d) In addition to areas developed for urban purposes, a governing board may  
19 include in the area to be annexed any area which does not meet the requirements of  
20 subsection (c) if such area either:

21 (1) Lies between the municipal boundary and an area developed for urban  
22 purposes so that the area developed for urban purposes is either not  
23 adjacent to the municipal boundary or cannot be served by the  
24 municipality without extending services and/or water and/or sewer  
25 lines through such sparsely developed area; or

26 (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to  
27 any combination of the municipal boundary and the boundary of an  
28 area or areas developed for urban purposes as defined in subsection  
29 (c).

30 The purpose of this subsection is to permit municipal governing boards to extend  
31 corporate limits to include all nearby areas developed for urban purposes and where  
32 necessary to include areas which at the time of annexation are not yet developed for  
33 urban purposes but which constitute necessary land connections between the  
34 municipality and areas developed for urban purposes or between two or more areas  
35 developed for urban purposes.

36 (e) In fixing new municipal boundaries, a municipal governing board shall,  
37 wherever practical, use natural topographic features such as ridge lines and streams and  
38 creeks as boundaries, and may use streets as boundaries. Some or all of the boundaries  
39 of a county water and sewer district may also be used when the entire district not  
40 already within the corporate limits of a municipality is being annexed.

41 (f) The area of an abolished water and sewer district shall be considered to be a  
42 water and sewer district for the purpose of this section even after its abolition under  
43 G.S. 162A-87.2(b)."

44 Sec. 8. G.S. 159G-10 is amended by adding a new subsection to read:

1        "(a1) When the State Health Director has certified that there is a present or  
2 imminent serious public health hazard on account of a failure of a low-pressure pipe  
3 sewer system, and funds are applied for by a county water and sewer district from any  
4 or all of the High-Unit Cost Wastewater Account, the General Wastewater Revolving  
5 Loan and Grant Account, or the Emergency Wastewater Revolving Loan Account, the  
6 Environmental Management Commission may establish a special period for  
7 consideration of such applications outside the semiannual period provided by subsection  
8 (a) of this section. In such case:

- 9            (1) The certification of the State Health Director provided for by this  
10 subsection satisfies the requirements of G.S. 150B-21.1(a)(1) for  
11 adoption of temporary rules;  
12            (2) The Environmental Management Commission need not adopt  
13 permanent rules;  
14            (3) The Environmental Management Commission, notwithstanding G.S.  
15 150B-21.1(d) may provide that the temporary rules become effective  
16 upon adoption;  
17            (4) The Environmental Management Commission may establish priorities  
18 for such loans or grants, or both, notwithstanding G.S. 159G-10; and  
19            (5) The provisions of G.S. 159G-8(b) do not apply, unless the project is a  
20 major project in accordance with the minimum criteria rule as defined  
21 in G.S. 113A-9(6), although nothing in this subsection limits the  
22 ability of the Environmental Management Commission by temporary  
23 rule to require such environmental information as it deems appropriate.

24        Any temporary rules allowed by this subsection may be adopted prior to the receipt  
25 of the application for the grant or loan."

26        Sec. 9. This act is effective upon ratification, and Section 8 of this act is only  
27 effective with respect to applications for grants and loans received on or before  
28 December 31, 1994.