

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 847
Committee Substitute Favorable 5/12/97
Senate Finance Committee Substitute Adopted 7/22/97
Fourth Edition Engrossed 7/29/97

Short Title: Addit. Powers/Certain Water Auth.

(Public)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CERTAIN WATER AND SEWER AUTHORITIES TO
3 ENTER INTO CERTAIN AGREEMENTS AND TO AUTHORIZE A WATER AND
4 SEWER AUTHORITY HOLDING A CERTIFICATE UNDER G.S. 162A-7 TO
5 EXERCISE THE POWER OF EMINENT DOMAIN FOR SPECIFIED PURPOSES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 162A-6 reads as rewritten:
8 "**§ 162A-6. Powers of authority generally.**
9 (a) Each authority created hereunder shall be deemed to be a public
10 instrumentality exercising public and essential governmental functions to provide for the
11 public health and welfare, and each ~~such authority is, subject to the provisions of G.S. 162A-~~
12 ~~7, hereby is~~ authorized and empowered:
13 (1) To adopt bylaws for the regulation of its affairs and the conduct of its
14 business;
15 (2) To adopt an official seal and alter the same at pleasure;
16 (3) To maintain an office at such place or places as it may designate;
17 (4) To sue and be sued in its own name, plead and be impleaded;

- 1 (5) To acquire, lease as lessee or lessor, construct, reconstruct, improve,
2 extend, enlarge, equip, repair, maintain and operate any water system or
3 part thereof or any sewer system or part thereof or any combination
4 thereof within or without the participating political subdivisions or any
5 thereof;
- 6 (6) To issue revenue bonds of the authority as hereinafter provided to pay
7 the cost of such acquisition, construction, reconstruction, improvement,
8 extension, enlargement or equipment;
- 9 (7) To issue revenue refunding bonds of the authority as hereinafter
10 provided;
- 11 (8) To combine any water system and any sewer system as a single system
12 for the purpose of operation and financing;
- 13 (9) To fix and revise from time to time and to collect rates, fees and other
14 charges for the use of or for the services and facilities furnished by any
15 system operated by the authority;
- 16 (10) To acquire in the name of the authority by gift, grant, purchase, devise,
17 exchange, lease, acceptance of offers of dedication by plat, or any other
18 lawful method, to the same extent and in the same manner as provided
19 for cities and towns under the provisions of G.S. 160A-240.1 and G.S.
20 160A-374, or the exercise of the right of eminent domain in accordance
21 with the General Statutes of North Carolina which may be applicable to
22 the exercise of such powers by municipalities or counties, any lands or
23 rights in land or water rights in connection therewith, and to acquire
24 such personal property, as it may deem necessary in connection with the
25 acquisition, construction, reconstruction, improvement, extension,
26 enlargement or operation of any water system or sewer system, and to
27 hold and dispose of all real and personal property under its control;
28 provided, that the taking of water from any stream or reservoir by any
29 authority created under the provisions of this Article shall not vest in the
30 taker any rights by prescription; provided, further, that nothing in this
31 section shall affect rights by prescription, if any, now held by any
32 municipality and which may be later transferred to any authority of
33 which such municipality may become a member;
- 34 (11) To make and enter into all contracts and agreements necessary or
35 incidental to the performance of its duties and the execution of its
36 powers under this Article, including a trust agreement or trust
37 agreements securing any revenue bonds issued hereunder, and to
38 employ such consulting and other engineers, superintendents, managers,
39 construction and financial experts, accountants and attorneys, and such
40 employees and agents as may, in the judgment of the authority be
41 deemed necessary, and to fix their compensation; provided, however,
42 that all such expenses shall be payable solely from funds made available
43 under the provisions of this Article;

- 1 (12) To enter into contracts with the government of the United States or any
2 agency or instrumentality thereof, or with any political subdivision,
3 private corporation, copartnership, association or individual providing
4 for the acquisition, construction, reconstruction, improvement,
5 extension, enlargement, operation or maintenance of any water system
6 or sewer system or providing for or relating to the treatment and
7 disposal of sewage or providing for or relating to any water system or
8 the purchase or sale of water;
- 9 (13) To receive and accept from any federal, State or other public agency and
10 any private agency, person or other entity, donations, loans, grants, aid
11 or contributions of any money, property, labor or other things of value
12 for any sewer system or water system, and to agree to apply and use the
13 same in accordance with the terms and conditions under which the same
14 are provided;
- 15 (14) To enter into contract with any political subdivision by which the
16 authority shall assume the payment of the principal of and interest on
17 indebtedness of such subdivision; and
- 18 (14a) To make special assessments against benefited property within the area
19 served or to be served by the authority for the purpose of constructing,
20 reconstructing, extending, or otherwise improving water systems or
21 sanitary collection, treatment, and sewage disposal systems, in the same
22 manner that a county may make special assessments under authority of
23 Chapter 153A, Article 9, except that the language appearing in G.S.
24 153A-185 reading as follows: "A county may not assess property within
25 a city pursuant to subdivision (1) or (2) of this section unless the
26 governing board of the city has by resolution approved the project," shall
27 not apply to assessments levied by Water and Sewer Authorities
28 established pursuant to Chapter 162A, Article 1, of the General Statutes.
29 For the purposes of this paragraph, references in Chapter 153A, Article
30 9, to the "county," the "board of county commissioners," "the board" or a
31 specific county official or employee are deemed to refer, respectively, to
32 the authority and to the official or employee of the authority who
33 performs most nearly the same duties performed by the specified county
34 official or employee.
- 35 Assessment rolls after being confirmed shall be filed for registration
36 in the office of the Register of Deeds of the county in which the
37 property being assessed is located, and the term "county tax
38 collector" wherever used in G.S. 153A-195 and G.S. 153A-196, shall
39 mean the Executive Director or other administrative officer designated
40 by the authority to perform the functions described in said sections of
41 the statute.
- 42 (14b) To provide for the defense of civil and criminal actions and payment of
43 civil judgments against employees and officers or former employees and

1 officers and members or former members of the governing body as
2 authorized by G.S. 160A-167, as amended.

3 (14c) To adopt ordinances to regulate and control the discharge of sewage or
4 stormwater into any sewerage system owned or operated by the
5 authority and to adopt ordinances to regulate and control structural and
6 natural stormwater and drainage systems of all types. Prior to the
7 adoption of any such ordinance or any amendment to any such
8 ordinance, the authority shall first pass a declaration of intent to adopt
9 such ordinance or amendment. The declaration of intent shall describe
10 the ordinance which it is proposed that the authority adopt. The
11 declaration of intent shall be submitted to each governing body for
12 review and comment. The authority shall consider any comment or
13 suggestions offered by any governing body with respect to the proposed
14 ordinance or amendment. Thereafter, the authority shall be authorized to
15 adopt such ordinance or amendment to it at any time after 60 days
16 following the submission of the declaration of intent to each governing
17 body.

18 (14d) To require the owners of developed property on which there are situated
19 one or more residential dwelling units or commercial establishments
20 located within the jurisdiction of the authority and within a reasonable
21 distance of any waterline or sewer collection line owned, leased as
22 lessee, or operated by the authority to connect the property with the
23 waterline, sewer connection line, or both and fix charges for the
24 connections. The power granted by this subdivision may be exercised by
25 an authority only to the extent that the service, whether water, sewer, or
26 a combination thereof, to be provided by the authority is not then being
27 provided to the improved property by any other political subdivision or
28 by a public utility regulated by the North Carolina Utilities Commission
29 pursuant to Chapter 62 of the General Statutes. In the case of improved
30 property that would qualify for the issuance of a building permit for the
31 construction of one or more residential dwelling units or commercial
32 establishments and where the authority has installed water or sewer
33 lines or a combination thereof directly available to the property, the
34 authority may require payment of a periodic availability charge, not to
35 exceed the minimum periodic service charge for properties that are
36 connected. This subdivision applies only to a water and sewer authority
37 whose membership includes part or all of a county that has a population
38 of at least 40,000 according to the most recent annual population
39 estimates certified by the State Planning Officer.

40 (15) To do all acts and things necessary or convenient to carry out the
41 powers granted by this Article.

42 (16) To purchase real or personal property as provided by G.S. 160A-20, in
43 addition to any other method allowed under this Article.

1 (b) In addition to the powers given under subsection (a) of this section, an
2 authority created under G.S. 162A-3.1 and its participating political subdivisions may
3 enter into agreements obligating these subdivisions to make payments to the authority for
4 treated water delivered or made available or expected to be delivered or made available
5 by the authority, regardless of whether treated water is actually delivered or made
6 available. Such payments may be designed to cover the authority's operating costs
7 (including debt service and related amounts) by allocating those costs among the
8 participating political subdivisions and by requiring these subdivisions to pay additional
9 amounts to make up for the nonpayment of defaulting subdivisions. The participating
10 political subdivisions may agree to budget for and appropriate such payments. Such
11 payment obligations may be made absolute, unconditional, and irrevocable and required
12 to be performed strictly in accordance with the terms of such agreements and without
13 abatement or reduction under all circumstances whatsoever, including whether or not any
14 facility of the authority is completed, operable or operating and, notwithstanding the
15 suspension, interruption, interference, reduction or curtailment of the output of any such
16 facility or the treated water contracted for, and such obligations may be made subject to
17 no reduction, whether by offset or otherwise, and not conditioned upon the performance
18 or nonperformance of the authority or any participating political subdivision under any
19 agreement. Such payment obligations are in consideration of any output or capacity that
20 may at any time be available from facilities of the authority. The participating political
21 subdivisions may agree to make such payments from limited or specified sources. To the
22 extent such payments relate to debt service of the authority and related amounts, they
23 may not be made from any moneys derived from exercise by the participating political
24 subdivisions of their taxing power, and such payment obligations shall not constitute a
25 pledge of such taxing power. The participating political subdivisions may agree (i) not to
26 pledge or encumber any source of payment and (ii) to operate (including fixing rates and
27 charges) in a manner that enables them to make such payments from such sources. The
28 participating political subdivisions may also secure such payment obligations with a
29 pledge of or lien upon any such sources of payment. Notwithstanding the provisions of
30 G.S. 162A-9 or any other law to the contrary, an authority entering into any such
31 agreement need not fix rates, fees and other charges for its services except as provided
32 herein, and such rates, fees and charges need not be uniform through the authority's
33 service areas. Notwithstanding the provisions of G.S. 160A-322 or any other law to the
34 contrary, agreements described herein may have a term not exceeding 50 years.
35 Notwithstanding any law to the contrary, the execution and effectiveness of any
36 agreement authorized hereby shall not be subject to any authorizations or approvals by
37 any entity except the parties thereto. Each authority and its participating political
38 subdivisions shall have the power to do all acts and things necessary or convenient to
39 carry out the powers granted by this subsection.

40 (c) In addition to the powers given under subsection (a) of this section, an
41 authority that holds a certificate issued after December 1, 1991, by the Environmental
42 Management Commission under G.S. 162A-7 (repealed) may acquire property by the

- 1 power of eminent domain or by gift, purchase, grant, exchange, lease, or any other lawful
2 method for one or more of the following purposes:
- 3 (1) To relocate a road or to construct a road necessitated by construction of
4 water supply project.
- 5 (2) To establish, extend, enlarge, or improve storm sewer and drainage
6 systems and works, or sewer and septic tank lines and systems.
- 7 (3) To establish drainage programs and programs to prevent obstructions to
8 the natural flow of streams, creeks and natural water channels or to
9 improve drainage facilities. The authority contained in this subdivision
10 is in addition to any authority contained in Chapter 156 of the General
11 Statutes.
- 12 (4) To acquire property for wetlands mitigation."
- 13 Section 2. This act is effective when it becomes law.