

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1999**

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**SENATE BILL 1463**

State and Local Government Committee Substitute Adopted 6/14/00

Finance Committee Substitute No. 2 Adopted 6/22/00

Short Title: Dare Utility Undergrounding Amendments.

(Local)

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Sponsors:

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Referred to:

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May 25, 2000

**A BILL TO BE ENTITLED**

**AN ACT TO ALLOW DARE COUNTY TO CREATE SPECIAL DISTRICTS TO UNDERGROUND LINES.**

The General Assembly of North Carolina enacts:

Section 1. Authorization to Create Utility District. A county board of commissioners may create one or more Utility Districts for the purpose of raising and expending funds to underground electric and telephone utility lines in the district.

Section 2.(a) Procedure. A county board of commissioners may by resolution signify its determination to create a Utility District under the provisions of this act. The resolution shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the boundaries of the district, and shall state the time and place of the public hearing. No other publication of the resolution is required under the provisions of any other law.

Section 2.(b) The resolution shall include articles of incorporation which shall set forth:

- (1) The name of the district;

1 (2) A statement that the district is organized under this act; and

2 (3) A description of the boundaries, which may include any territory  
3 designated by the county board of commissioners that is not in the  
4 corporate limits of any municipality.

5 Section 2.(c) No territory may be in more than one district.

6 Section 2.(d) All territory of a district shall be within the county.

7 Section 2.(e) A certified copy of the resolution signifying the determination to  
8 organize a district under the provisions of this act shall be filed with the Secretary of  
9 State, together with proof of publication of the notice of hearing on the resolution. If the  
10 Secretary of State finds that the resolution, including the articles of incorporation,  
11 conforms to the provisions of this act and that the notice of hearing was properly  
12 published, the Secretary of State shall file the resolution and proof of publication in the  
13 records of that office, shall issue a certificate of incorporation under the seal of the State,  
14 and shall record the same in an appropriate book of record. The issuance of the  
15 certificate of incorporation by the Secretary of State shall constitute the district, a public  
16 body and body politic and corporate of the State of North Carolina. This certificate of  
17 incorporation shall be conclusive evidence of the fact that the district has been duly  
18 created and established under the provisions of this act.

19 Section 2.(f) When the district has been duly organized and its officers  
20 appointed as provided by this act, the secretary or clerk of the district shall certify to the  
21 Secretary of State the names and addresses of the officers as well as the address of the  
22 principal office of the district.

23 Section 3.(a) Annexation to District. By adoption of a resolution, and with the  
24 approval of the board of commissioners of a county by resolution, any municipality  
25 located wholly within that county may annex the entirety of that municipality to any  
26 Utility District created by this act, but no municipality may be in more than one district.  
27 The resolution shall be adopted by the municipal governing board after a public hearing  
28 thereon, notice of which hearing shall be given by publication at least once, not less than  
29 10 days prior to the date fixed for the hearing, in a newspaper having a general  
30 circulation in the county. The notice shall contain a brief statement of the substance of the  
31 proposed resolution and shall state the time and place of the public hearing. No other  
32 publication of the resolution is required under the provisions of any other law.

33 Section 3.(b) By adoption of a resolution, the board of commissioners of a  
34 county may annex any area within that county but not within the corporate limits of any  
35 municipality to a Utility District, but no area may be in more than one district. The  
36 resolution shall be adopted by the county board of commissioners after a public hearing  
37 thereon, notice of which hearing shall be given by publication at least once, not less than  
38 10 days prior to the date fixed for the hearing, in a newspaper having a general  
39 circulation in the county. The notice shall contain a brief statement of the substance of the  
40 proposed resolution, the boundaries of the proposed annexation, and shall state the time  
41 and place of the public hearing. No other publication of the resolution is required under  
42 the provisions of any other law.

1 Section 3.(c) If any area in a Utility District is annexed to the corporate limits  
2 of any municipality, it shall remain in the same Utility District notwithstanding any other  
3 provision of this act.

4 Section 4.(a) Governing Board. Each Utility District shall be governed by a  
5 special commission consisting of one person appointed by the board of commissioners of  
6 that county, one nonvoting member appointed by the board of commissioners of the  
7 county who has been recommended by each local telephone exchange carrier licensed to  
8 do business in North Carolina and providing service in that county, one nonvoting  
9 member appointed by the board of commissioners of the county who has been  
10 recommended by each electric utility provider in the county, one nonvoting member  
11 appointed by the board of commissioners of the county who has been recommended by  
12 each cable television provider in the county, and one person appointed by the governing  
13 board of each municipality that has annexed its territory to the district under Section 3(a)  
14 of this act.

15 Section 4.(b) In the case of Dare County, one person shall also be appointed to  
16 the Special Commission by the Roanoke Island Commission established by Part 27A of  
17 Article 2 of Chapter 143B of the General Statutes. Appointments shall be for two-year  
18 terms.

19 Section 5.(a) Powers. By resolution the board of commissioners of the county,  
20 acting ex officio on behalf of the Utility District, may levy an assessment of up to:

- 21 (1) One dollar (\$1.00) per month on each residential electric power  
22 customer bill for service within the district, and up to five dollars  
23 (\$5.00) per month on each commercial or industrial electric power  
24 customer bill within the district.
- 25 (2) One dollar (\$1.00) per month on each residential telephone customer  
26 bill for service within the district and up to five dollars (\$5.00) per  
27 month on each commercial or industrial telephone customer bill within  
28 the district.

29 Section 5.(b) The Utility District may receive contributions from the State of  
30 North Carolina, local governments, and the private sector for corporate purposes  
31 authorized by this act.

32 Section 5.(c) The commission may contract with the State of North Carolina,  
33 another local government, or a private entity for carrying out the projects authorized by  
34 this act. Any State, local government, or other entity which carries out projects  
35 authorized by this act, or otherwise takes action affecting any company whose lines are  
36 effected pursuant to the terms of this act shall remain fully liable for any damages to  
37 company property. Any private sector entity with which the district wishes to contract to  
38 carry out projects authorized by this act must be approved in writing in advance by each  
39 company whose facilities will be affected and must carry sufficient insurance to cover  
40 any damages caused.

41 Section 5.(d) The board of commissioners may exempt from payment of the  
42 assessment on an electric bill any person for whom the payment would work an  
43 unreasonable financial hardship in accordance with criteria established by the board of

1 commissioners. The board of commissioners shall exempt from payment of the  
2 assessment on a telephone bill those low-income residential telephone customers who  
3 pay reduced rates for local telephone service pursuant to an order of the North Carolina  
4 Utilities Commission.

5 Section 5.(e) The commission may order any cable television lines (or other  
6 lines other than electric or telephone) to be undergrounded when any electric or telephone  
7 line on the same pole is undergrounded.

8 Section 6. Use of Funds. The assessments levied under this act, after being  
9 expended for the necessary administrative expenses of the utility district, shall be used  
10 only for undergrounding of electric and telephone utility lines within the district. The  
11 budget for the Utility District shall be adopted by the special commission for that district.  
12 The budget shall include funding to pay for the installation of conduit for underground  
13 telephone cable, where required.

14 Section 7. Corporate Existence. A Utility District created under this act shall  
15 have the power granted by this act, and may do all acts reasonably necessary to fulfill this  
16 purpose. A simple majority of the governing board constitutes a quorum, and approval  
17 by a majority of those present is sufficient to determine any matter before the governing  
18 body, if a quorum is present.

19 Section 8. Fiscal Control. The Utility District is a special district under G.S.  
20 159-7 and is covered by the applicable provisions of Chapter 159 of the General Statutes.

21 Section 9.(a) Levy. An assessment authorized by this act may be levied only by  
22 resolution, after not less than 10 days' public notice and after a public hearing held  
23 pursuant thereto. An assessment authorized by this act shall become effective on the date  
24 specified in the resolution levying the assessment. That date must be the first day of a  
25 calendar month, however, and may not be earlier than the first day of the third month  
26 after the date the resolution is adopted. In establishing the effective date, the board of  
27 commissioners shall consult with any utility that will be collecting the assessment to  
28 determine any administrative lead times that might be desirable.

29 Section 9.(b) Collection. Every utility subject to an assessment authorized by  
30 this act shall, on and after the effective date of the levy of the assessment, collect it. The  
31 assessment shall be collected as part of the charge for furnishing service. The assessment  
32 shall be stated and charged separately and shall be paid by the purchaser to the utility as  
33 trustee for and on account of the Utility District. The assessment shall be passed on to  
34 the purchaser instead of being borne by the utility. The Utility District shall design, print,  
35 and furnish to all appropriate utilities in the district the necessary forms for filing returns  
36 and instructions to ensure the full collection of the assessment. A utility who collects an  
37 assessment authorized by this act may deduct from the amount remitted to the Utility  
38 District a discount equal to the discount the State allows the utility for State sales and use  
39 tax. For the purpose of this act, a utility includes a government entity providing service,  
40 a cooperative, and any other utility. A utility shall have the same right to suspend or  
41 terminate service for nonpayment of the assessment that it has to suspend or terminate  
42 service for payment of any other part of the utility bill. A utility has no obligation to take  
43 any legal action to enforce the collection of assessments under this act. The county or the

1 district may initiate a collection action in its name and reasonable costs and attorneys'  
2 fees may be awarded to the plaintiff.

3 Section 9.(c) Administration. The Utility District shall administer an assessment  
4 it levies under this act. An assessment authorized by this act is due and payable to the  
5 district finance officer in monthly installments on or before the last day of the month  
6 following the month in which the assessment accrues. Every person, firm, corporation,  
7 or association liable for the assessment shall, on or before the 15th day of each month,  
8 prepare and render a return on a form prescribed by the Utility District. The return shall  
9 state the total gross receipts derived in the preceding month upon which the assessment is  
10 levied. A return filed with the district finance officer is not a public record and may not  
11 be disclosed except in accordance with G.S. 153A-148.1 as if the Utility District were a  
12 county. The Utility District may adopt a payment schedule keyed to the billing cycle of  
13 the utility collecting the assessment rather than the calendar month, as long as there are at  
14 least 12 billing cycles per year.

15 Section 9.(d) Penalties. A person, firm, corporation, or association who fails or  
16 refuses to file an assessment return or pay an assessment authorized by this act as  
17 required by law is subject to the civil and criminal penalties set by G.S. 105-236 for  
18 failure to pay or file a return for State sales and use taxes. The governing board of the  
19 Utility District has the same authority to waive the penalties for an assessment authorized  
20 by this act that the Secretary of Revenue has to waive the penalties for State sales and use  
21 taxes.

22 Section 9.(e) Increase, Repeal, or Reduction. An assessment levied by a  
23 district under this act may be increased not in excess of the maximum allowed by this act,  
24 repealed or reduced by a resolution adopted by the board of commissioners of the county,  
25 acting ex officio on behalf of the Utility District. Repeal or reduction of an assessment  
26 authorized by this act shall become effective on the first day of a month and may not be  
27 earlier than the first day of the third month after the date the resolution is adopted.  
28 Repeal or reduction of an assessment authorized by this act does not affect a liability for  
29 an assessment that was attached before the effective date of the repeal or reduction, nor  
30 does it affect a right to a refund of an assessment that accrued before the effective date of  
31 the repeal or reduction. In establishing the effective date, the board of commissioners  
32 shall consult with any utility that will be collecting the assessment to determine any  
33 administrative lead times that might be desirable. Once the lines have been  
34 undergrounded and the costs have been paid, the board of commissioners shall terminate  
35 the assessment.

36 Section 10. Interlocal Agreements. By interlocal agreement adopted under  
37 Chapter 160A of the General Statutes, a Utility District created under this act may  
38 contract with a municipality or county to handle assessment collections and fiscal control.

39 Section 11.(a) The district shall coordinate with affected utilities,  
40 municipalities, and the North Carolina Department of Transportation to facilitate  
41 acquisition of rights-of-way for burial of cable.

1           Section 11.(b) The undergrounding required by this act shall be a coordinated  
2 effort between the utility district and the affected electric, telephone, and cable television  
3 companies.

4           Section 12. The State Auditor may perform audits pursuant to Article 5A of  
5 Chapter 147 of the General Statutes to ensure that funds collected by or paid to the Utility  
6 District are being managed in accordance with the provisions of this act, and shall  
7 perform an audit at least every two years. The costs of the audit shall be reimbursed to  
8 the State Auditor by the Utility District.

9           Section 13. This act applies to Dare County only.

10          Section 14. Sections 1.1 through 11 of S.L. 1999-127 are repealed.

11          Section 15. This act is effective when it becomes law.