

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 718

Short Title: Rates and Transfers by Public Enterprises. (Public)

Sponsors: Representative McGrady.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Energy and Public Utilities

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT COUNTIES AND CITIES FROM ESTABLISHING DIFFERENTIAL RATES FOR PUBLIC ENTERPRISES BASED SOLELY ON WHETHER THE SERVICE IS PROVIDED INSIDE THE COUNTY OR CITY'S JURISDICTION WITHOUT APPROVAL OF THE LOCAL GOVERNMENT COMMISSION; TO REQUIRE A PUBLIC ENTERPRISE TO BE ACCOUNTED FOR IN A SEPARATE, SEGREGATED FUND WITH LIMITED TRANSFERS OUT OF THAT FUND; AND TO REQUIRE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE PROVISION OF WATER AND SEWER SERVICES BY PUBLIC ENTERPRISES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 160A-312 reads as rewritten:

"§ 160A-312. Authority to operate public enterprises.

(a) A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of any or all of the public enterprises as defined in this Article to furnish services to the city and its citizens. Subject to Part 2 of this Article, a city may acquire, construct, establish, enlarge, improve, maintain, own, and operate any public enterprise outside its corporate limits, within reasonable limitations, but in no case shall a city be held liable for damages to those outside the corporate limits for failure to furnish any public enterprise service.

(b) A city shall have full authority to protect and regulate any public enterprise system belonging to or operated by it by adequate and reasonable rules. The rules shall be adopted by ordinance, shall apply to the public enterprise system both within and outside the corporate limits of the city, and may be enforced with the remedies available under any provision of law.

(c) A city may operate that part of a gas system involving the purchase and/or lease of natural gas fields, natural gas reserves and natural gas supplies and the surveying, drilling or any other activities related to the exploration for natural gas, in a partnership or joint venture arrangement with natural gas utilities and private enterprise.

(d) A city shall account for a public enterprise in a separate fund and may not transfer any money from that separate fund to any other fund except as provided in this subsection or Article 3 of Chapter 159 of the General Statutes. Obligations of the public enterprise may be paid out of the separate fund. Permitted transfers out of the separate fund shall be as follows, if applicable:

(1) For a capital project fund established for the construction or replacement of assets for that public enterprise.



- 1 (2) To repay the city for any monies loaned to the public enterprise.
2 (3) To a fund within the city to cover the public enterprise's portion of any costs
3 shared across city funds, including salaries and benefits of shared personnel.
4 (4) For debt service related to the public enterprise.

5 (e) For purposes of this section, "outside the corporate limits" shall include any area
6 outside the principal municipal corporate limits without regard to the county."

7 **SECTION 1.(b)** G.S. 160A-314(a) reads as rewritten:

8 "(a) A city may establish and revise from time to time schedules of rents, rates, fees,
9 charges, and penalties for the use of or the services furnished by any public enterprise.
10 Schedules of rents, rates, fees, charges, and penalties may vary according to classes of ~~service,~~
11 ~~and different service.~~ Different schedules may be adopted for services provided outside the
12 corporate limits of the city only if approved by the Local Government Commission after a
13 public hearing. A city shall use revenue derived from rates, fees, charges, and penalties for the
14 purpose of paying the expenses of maintaining, operating, and expanding the public enterprise,
15 including debt payments and capital reserves."

16 **SECTION 2.(a)** G.S. 153A-275 reads as rewritten:

17 **"§ 153A-275. Authority to operate public enterprises.**

18 (a) A county may acquire, lease as lessor or lessee, construct, establish, enlarge,
19 improve, extend, maintain, own, operate, and contract for the operation of public enterprises in
20 order to furnish services to the county and its citizens. A county may acquire, construct,
21 establish, enlarge, improve, maintain, own, and operate outside its borders any public
22 enterprise.

23 (b) A county may adopt adequate and reasonable rules to protect and regulate a public
24 enterprise belonging to or operated by it. The rules shall be adopted by ordinance, shall apply to
25 the public enterprise system both within and outside the county, and may be enforced with the
26 remedies available under any provision of law.

27 (c) A county shall account for a public enterprise in a separate fund and may not
28 transfer any money from that separate fund to any other fund except as provided in this
29 subsection or Article 3 of Chapter 159 of the General Statutes. Obligations of the public
30 enterprise may be paid out of the separate fund. Permitted transfers out of the separate fund
31 shall be as follows, if applicable:

- 32 (1) For a capital project fund established for the construction or replacement of
33 assets for that public enterprise.
34 (2) To repay the county for any monies loaned to the public enterprise.
35 (3) To a fund within the county to cover the public enterprise's portion of any
36 costs shared across county funds, including salaries and benefits of shared
37 personnel.
38 (4) For debt service related to the public enterprise."

39 **SECTION 2.(b)** G.S. 153A-277(a) reads as rewritten:

40 "(a) A county may establish and revise from time to time schedules of rents, rates, fees,
41 charges, and penalties for the use of or the services furnished by a public enterprise. Schedules
42 of rents, rates, fees, charges, and penalties may vary for the same class of service in different
43 areas of the county and may vary according to classes of ~~service, and different service.~~
44 Different schedules may be adopted for services provided outside of the county, only if
45 approved by the Local Government Commission after a public hearing. A county may include a
46 fee relating to subsurface discharge wastewater management systems and services on the
47 property tax bill for the real property where the system for which the fee is imposed is located.
48 A county shall use revenue derived from rates, fees, charges, and penalties for the purpose of
49 paying the expenses of maintaining, operating, and expanding the public enterprise, including
50 debt payments and capital reserves."

51 **SECTION 3.** G.S. 159-13(b)(14) reads as rewritten:

1 "~~(14) No~~ Except as provided in G.S. 153A-277, G.S. 160A-312, or this
2 subdivision, no appropriation may be made from a utility or public service
3 enterprise fund to any other fund than the appropriate debt service fund
4 unless the total of all other appropriations in the fund equal or exceed the
5 amount that will be required during the fiscal year, as shown by the budget
6 ordinance, to meet operating expenses, capital outlay, and debt service on
7 outstanding utility or enterprise bonds or notes. fund. A county may, upon a
8 finding that a fund balance in a utility or public service enterprise fund used
9 for operation of a landfill exceeds the requirements for funding the operation
10 of that fund, including closure and post-closure expenditures, transfer excess
11 funds accruing due to imposition of a surcharge imposed on another local
12 government located within the State for use of the disposal facility, as
13 authorized by G.S. 153A-292(b), to support the other services supported by
14 the county's general fund."

15 **SECTION 4.(a)** The General Assembly finds that the ability of a city or county to
16 efficiently and effectively provide public enterprise services, particularly water and sewer
17 services, is challenged by that local government opting to use revenues of the public enterprise
18 for purposes other than:

- 19 (1) Paying the costs of operating the public enterprise.
- 20 (2) Making debt service payments.
- 21 (3) Investing in improvements to the infrastructure of that public enterprise.
- 22 (4) Reimbursing the unit of local government for actual direct services provided
23 to the public enterprise.

24 **SECTION 4.(b)** The General Assembly further finds that any excess net revenues
25 should be used to lower rates, advance fund debt service, and fund infrastructure improvements
26 of that public enterprise.

27 **SECTION 4.(c)** The Legislative Research Commission shall study the issues raised
28 in this section and make recommendations to the General Assembly on:

- 29 (1) Fee and charge setting by units of local government in the operation of a
30 water or sewer system, including collection rates of those fees and charges.
- 31 (2) Proper accounting controls to ensure transparency in budgeting and
32 accounting for expenditures and interfund transfers of public enterprise
33 services by units of local government.
- 34 (3) Legislation that may be necessary to ensure proper funding of infrastructure
35 maintenance and improvements for the provision of water and sewer
36 services, including whether regionalization could facilitate financially
37 healthy systems with lower fees and charges to customers.
- 38 (4) Legislation that may be necessary to ensure that units of local government
39 monitor aging water and sewer infrastructure to ensure proper maintenance
40 and repair, including how this responsibility impacts the financial health of
41 the public enterprise.

42 **SECTION 4.(d)** In making the study provided by this section, the Legislative
43 Research Commission shall consult with the Local Government Commission, the School of
44 Government, the Department of Environmental Quality, the North Carolina League of
45 Municipalities, the North Carolina County Commissioners Association, and others.

46 **SECTION 4.(e)** The Legislative Research Commission shall make an interim
47 report to the 2017 Regular Session of the General Assembly prior to its reconvening in 2018
48 and shall make a final report to the 2019 Regular Session of the General Assembly.

49 **SECTION 5.** This act becomes effective July 1, 2017.