No. 391PA15 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

CITY OF ASHEVILLE, a Municipal Corporation, Plaintiff, v. STATE OF NORTH CAROLINA and the METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, Defendants.	)	From Wake County

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PLAINTIFF-APPELLANT'S NEW BRIEF

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PLAINTIFF-APPELLANT'S NEW BRIEF

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ISSUES PRESENTED

I. DID THE COURT OF APPEALS ERR BY HOLDING THAT A LAW THAT SHIFTS THE OWNERSHIP, GOVERNANCE, AND OPERATION OF A MAJOR WATER SYSTEM IS NOT RELATED TO HEALTH AND SANITATION?

II. DID THE COURT ERR BY HOLDING THAT A MUNICIPALITY HAS NO CONSTITUTIONAL PROTECTION FROM UNCOMPENSATED TAKINGS?

III. DID THE COURT ERR BY IMPLYING THAT AN APPEAL CAN EXTINGUISH AN APPELLEE'S UNADJUDICATED CLAIMS?

INTRODUCTION

This case involves an enactment that would compel the City of Asheville to turn over its water system to a district that has never operated such a system.

As recent events show, the safe operation of a water system vitally affects the public health. The act in question, moreover, applies to Asheville's water system alone. For these reasons, the act is a local law related to health and sanitation. Such a law violates article II, section 24(1)(a) of the North Carolina Constitution.

The act also violates article I, section 19 of our state constitution, because it takes a municipality's proprietary assets without compensation. The act confiscates assets worth hundreds of millions of dollars—assets in which Asheville residents have invested for over a century.

The trial court recognized these constitutional violations and enjoined the State from implementing the act.

The Court of Appeals, however, reversed the trial court's judgment. In that decision, the Court of Appeals made three critical errors:

- The court interpreted article II, section 24 in ways that depart from its text, its purpose, and its interpretation by this Court.

- The court erred further by ruling that municipalities have no constitutional protection against takings of their property. That categorical rule eliminates property rights that protect the investments of municipal taxpayers.

- Finally, the Court of Appeals erred by implying that the City—an appellee in that court—had waived claims that the trial court had not yet decided. Those waiver-related statements have no basis in North Carolina appellate procedure.

For these reasons, the City respectfully requests that this Court reverse the decision of the Court of Appeals and reinstate the trial court's judgment.

STATEMENT OF THE CASE

A. Trial Court Proceedings

In 2013, the General Assembly enacted a law that orders the City of Asheville to transfer its water system to a newly created entity. See Act of May 14, 2013, ch. 50, sec. 1(a)-(f), 2013 N.C. Sess. Laws 118, 118-19 [hereinafter the Act], amended by Act of Aug. 23, 2013, ch. 388, secs. 4-5, 2013 N.C. Sess. Laws 1605, 1618. The City filed this lawsuit to challenge the legality of the Act, primarily under the North Carolina Constitution. (R pp 2, 59-84)[1]

The City alleged that the Act violates article II, section 24 of the state constitution, which prohibits local laws relating to health or sanitation. N.C. Const. art. II, § 24(1)(a); R pp 71-72. The City also alleged that the Act violates article I, section 19, because the Act takes the City's property without just compensation. (R pp 79-80) Finally, the City alleged that the Act impairs the obligation of the City's

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[1] This lawsuit focuses on the Act's provisions that take away Asheville's water system. Most of those transfer provisions appear in section 1 of the Act. However, other parts of the Act magnify the effects of the transfer provisions. See, e.g., infra pp. 13-14 (discussing the Act's governance provisions). In the interest of concision, this brief generally refers to the Act as a whole.

contracts, violating the federal and state constitutions and a state statute. R pp 76-79; see also infra p. 20 n.3 (discussing additional claims).

The State moved to dismiss the complaint, arguing that the City lacked standing. (R pp 120-23) Both sides later moved for summary judgment. (R pp 143, 148) The trial court denied the State's motions, then granted summary judgment in favor of the City on most of its claims. (R pp 162-65) The court, however, did not decide the City's contract-impairment claims. (R p 165) In the end, the court enjoined the forced transfer of the City's water system. (R p 165)

B. Appellate Proceedings

The State appealed. The Court of Appeals (Dillon, J., joined by Calabria and Elmore, JJ.) affirmed the trial court's conclusion that the City had standing to pursue its claims. City of Asheville v. State (decision below), 777 S.E.2d 92, 95 (N.C. Ct. App. 2015), appeal retained and disc. rev. allowed, 781 S.E.2d 476 (N.C. 2016). The court, however, reversed the trial court's decision on the merits. Id. at 102.

The City filed a timely petition for rehearing. The Court of Appeals denied the petition the next day.

The City then filed a timely notice of appeal in this Court and an alternative petition for discretionary review. This Court retained the appeal and allowed the petition.

STATEMENT OF APPELLATE JURISDICTION

This Court has jurisdiction to hear appeals that involve substantial questions under the state or federal constitution. N.C. Gen. Stat. § 7A-30(1) (2015). The Court also has jurisdiction to conduct discretionary review of a decision of the Court of Appeals. Id. § 7A-31(c). In its January 28 order, the Court accepted this appeal on both of these jurisdictional grounds.

STATEMENT OF THE FACTS

A. Asheville's Water System

The City of Asheville operates a water system that provides clean, reliable drinking water to 124,000 customers. (R p 159; Doc. Ex. 400) The majority of these customers are City residents. (See, e.g., R pp 150, 159; Doc. Ex. 400-02) The City owns, manages, and operates its water system as a public enterprise under North Carolina law. See N.C. Gen. Stat. §§ 160A-311 to -329 (2015); Doc. Ex. 2.

The taxpayers of the City have invested in the water system's proprietary assets over a 130-year period. (Doc. Ex. 591, 597-600) These assets include:

- a 17,000-acre watershed of protected forest lands,
- three water treatment plants that can supply over forty million gallons of water per day,
- two large impoundment reservoirs,
- twenty-nine reservoirs for treated water,
- forty pumping stations,
- other equipment and facilities, and
- 1660 miles of distribution lines.

(R pp 63, 151, 159; Doc. Ex. 2, 402-03)

Safely operating the City's water system also requires a number of intangible assets, including:

- the expertise of 147 trained and certified employees,
- an experienced management team,
- the dozens of state and federal licenses and permits that a water system requires,

- a well-developed set of operating procedures and policies, and
- contracts that allow the City to buy goods and services for the water system on appropriate terms.

(R pp 62, 68-69, 132, 160; Doc. Ex. 3-4, 15-19, 25-29, 397-403, 405-11, 564-65)

Many of these intangible assets are specifically tied to the City or named employees. They cannot be transferred without the consent of third parties, if they can be transferred at all. (R pp 62, 160; Doc. Ex. 4, 398-99)

The City also has decades of experience in administering and complying with water regulations that protect the public health.

- For example, the trained operators of the water system administer regulations under the North Carolina Drinking Water Act, N.C. Gen. Stat. §§ 130A-311 to -329 (2015), and the federal Safe Drinking Water Act, 42 U.S.C. §§ 300g to 300g-9 (2012 & Supp. I 2013). (Doc. Ex. 396)
- A state agency has certified the City to use a permitting process to ensure that any alterations or additions to the

water system comply with state clean-water regulations. See N.C. Gen. Stat. § 130A-317(d); Doc. Ex. 396-97.

- North Carolina law also requires that water treatment plant operators be highly trained and certified. N.C. Gen. Stat. § 90A-29 (2015). Ninety-two City employees have these certifications. (Doc. Ex. 398)

B. The Act at Issue

In 2013, the General Assembly enacted a law that would seize the City's entire water system—"lock, stock, barrels, pipes, woodlands and mountain streams," as the trial court put it. R p 158; see Act sec. 1, 2013 N.C. Sess. Laws at 118-19.

The Act would transfer the water system to a new entity that has never operated a water system. (See R pp 65, 157-58) The predecessor of that new entity is the Metropolitan Sewerage District of Buncombe County, a defendant-appellee in this case. In population terms, that sewer district is less than half the size of Asheville's water system. (Doc. Ex. 488)

The Act does not refer to Asheville by name. However, no one denies that the Act's criteria for a forced transfer of a water system fit

Asheville alone. R p 158; Brief for State of N.C. at 8, City of Asheville v. State, 777 S.E.2d 92 (N.C. Ct. App. 2015) (No. COA14-1255) [hereinafter State's COA Br.].

The Act takes away Asheville's water system through several provisions, which the following subsections describe.

1. Mandatory-transfer provisions

The Act creates a new type of municipal entity: a metropolitan water and sewerage district. Act secs. 2-5, 2013 N.C. Sess. Laws at 119-25. (This brief calls this type of entity a "new district.") Under the Act, the creation of a new district is normally voluntary. Id. sec. 2, § 162A-85.2(a), 2013 N.C. Sess. Laws at 120.

In Asheville's case, however, the Act makes this procedure an involuntary one. If a water system meets certain detailed criteria in the Act, a new district is created—and the water system is transferred to that new district—"by operation of law." Id. sec. 1(a), 2013 N.C. Sess. Laws at 118; see id. sec. 1(a)-(f), 2013 N.C. Sess. Laws at 118-19. This lawsuit challenges these transfer provisions.

As originally enacted, the Act ordered a forced transfer of any water system that met the following criteria:

> (1) The public water system is owned and operated by a municipality located in a county where a metropolitan sewerage district is operating.
>
> (2) The public water system has not been issued a certificate for an interbasin transfer.
>
> (3) The public water system serves a population greater than 120,000 people . . . .

Act sec. 1(a)(1)-(3), 2013 N.C. Sess. Laws at 118-19.

North Carolina has only three metropolitan sewerage districts: one in Pitt County, one in Pamlico County, and one in Buncombe County. (Doc. Ex. 637) In those three counties as a group, however, there is only one public water system that serves more than 120,000 people—Asheville's water system. (See Doc. Ex. 400, 484-85)[2]

In contrast, Greenville's water system serves fewer than 120,000 people now, but it is estimated to have 120,000 customers by 2020. (Doc. Ex. 484-85) Three months after the original enactment of the Act, the General Assembly fine-tuned the Act to make sure that Greenville would never be forced to transfer its water system. See Act of Aug. 23,

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[2] The population criterion in the Act also ensures that other towns in Buncombe and Henderson Counties, unlike Asheville, will not be defeased of their water systems. (See R pp 66, 73, 152-53)

2013, ch. 388, sec. 5, 2013 N.C. Sess. Laws at 1618. The legislature amended the criteria in the Act by excluding municipalities like Greenville: ones that operate a water and sewer system and provide "other utility services." Id. Because of this amendment, the criteria for a forced transfer will continue to apply to Asheville alone.

One final provision ensures that the Act will always be limited to Asheville. Section 5.5 eliminates any chance that the forced-transfer provisions will apply if a new metropolitan sewerage district is created anywhere in the state. See Act sec. 5.5, § 162A-66.5, 2013 N.C. Sess. Laws at 125. For a new metropolitan sewerage district to be created (an event that could cause a forced transfer under the Act), every local government in every affected county must agree to create the district. See id.

As a result of this fine-tuning, the Act's criteria for a forced transfer apply to Asheville alone. Both courts below recognized this point, and the State does not dispute it. Decision below, 777 S.E.2d at 94; R p 158; State's COA Br. at 8; Doc. Ex. 623-24.

2. Governance provisions

The Act also takes the governance of the Asheville water system away from the City. Here again, the Act does this through complex—and targeted—provisions.

Under the Act, immediately after assets are transferred to the new district, the board for the preexisting sewer district in the area will govern the new district. Act sec. 1(d), 2013 N.C. Sess. Laws at 119. Asheville appoints only three out of the twelve board members on the Metropolitan Sewerage District of Buncombe County. See N.C. Gen. Stat. § 162A-67(a)(1), (4) (2015); About Us, Metropolitan Sewerage District of Buncombe County, http://www.msdbc.org/aboutus.php (last visited Mar. 2, 2016). Thus, if the Act were implemented, Asheville's voting control over its water system would immediately drop from 100% to 25%.

The Act also provides that the sewer district's board will eventually be replaced by a board for the new district itself. Act sec. 2, § 162A-85.3(a), 2013 N.C. Sess. Laws at 120-21. The City would have only about a quarter of the members on that board as well. See id.; Doc. Ex. 485-86. The City's membership would fall even lower if the new

board decided to add new members—something it can do without Asheville's consent. See Act sec. 2, § 162A-85.4, 2013 N.C. Sess. Laws at 121.

Under the Act, then, the City's taxpayers lose more than ownership of their water system and control over its operations. They also lose control over the governance of that system.

C. The Decisions Below

The trial court granted summary judgment in favor of the City. (R p 165)

The court concluded that the Act is a local act related to health and sanitation—that is, a law that violates article II, section 24(1)(a) of the North Carolina Constitution. (R p 162)

The court held that the Act was local. Specifically, the court found that the Act "was specifically drafted and amended to apply only to Asheville and the Asheville Water System." (R p 162)

The court also held that the Act relates to health and sanitation. It found that the Act concerns "the treatment and supply of water for drinking, cooking and cleaning purposes, and for the operation of sanitary disposal systems." (R p 162)

The trial court went on to hold that the Act violated the City's constitutional right to be free of uncompensated takings. (R pp 163-64 (citing N.C. Const. art. I, §§ 19, 35)) The court held that the City has this right because it operates its water system in a proprietary capacity. (R pp 163-64) It concluded that the taking ordered by the Act is impermissible because it serves no public purpose. (See R p 164) Even if the taking were permissible, moreover, the City would still be entitled to just compensation. (R p 164)

Because the trial court had already reached a judgment in the City's favor, it did not rule on two additional claims. Those claims alleged that the Act would impair the City's contract obligations. (See R pp 164-65)

The State appealed to the Court of Appeals. That court reversed the trial court on the merits. Decision below, 777 S.E.2d at 102.

The Court of Appeals reasoned that a statute falls within article II, section 24(1)(a) of the North Carolina Constitution—the provision that bans local laws "relating to" health or sanitation—only if the statutory text shows a purpose "to regulate" health or sanitation. Id. at

97-98 (quoting City of Asheville v. State (Asheville 2008), 192 N.C. App. 1, 33, 37, 665 S.E.2d 103, 126, 129 (2008)).

The Court of Appeals applied this test by "perus[ing]" the text of the Act. Id. at 98. It found that the Act's purpose is not to regulate health or sanitation, but to address "concerns regarding the governance over water and sewer systems and the quality of the services rendered." Id. The court did not address the Act's practical effects. See id.

In its discussion of article II, section 24, the court also reasoned that a statute regulates health or sanitation if it "prioritizes" those subjects. See id. Applying this variant of its "regulation" test, the court found "no provisions in the Act which 'contemplate[ ] . . . prioritizing the [Asheville Water System's] health or sanitary condition[.]" Id. (alterations in 2015 decision) (quoting Asheville 2008, 192 N.C. App. at 36-37, 665 S.E.2d at 128).

Based on this reasoning, the court held that the Act does not violate article II, section 24(1)(a). Because the court decided that the Act does not "regulate" health and sanitation, it did not decide whether the Act is a local law. Id. at 97.

The court also rejected the City's takings claims. It held that a city has no constitutional protection at all against uncompensated takings, as long as the city's property is given to another political subdivision for the same function. Id. at 101-02. To justify this categorical rule in favor of involuntary takings, the court relied on a 1903 case that upheld a voluntary transfer of a water system. Id. at 101 (citing Brockenbrough v. Bd. of Water Comm'rs, 134 N.C. 1, 19, 46 S.E. 28, 33 (1903)).

Finally, the court opined on the status of the City's impairment-of-contract claims. The trial court never reached these claims, so neither party briefed them during the State's appeal. The Court of Appeals wrote that "any argument by Asheville based on these claims for relief are [sic] waived." Id. at 103; accord id. at 95 n.2.

SUMMARY OF THE ARGUMENT

Under the Act's transfer provisions, the City and its residents lose control over the quality of their water. The Act puts them at the mercy of a newly created entity that has never operated a water system before. The new district, not the City, will decide where Asheville's water comes from, how the water is treated, how the water system is maintained, and other matters that affect the public health.

As these points show, the Act is related to health and sanitation. Because (as shown below) the Act is also a local act, it violates article II, section 24(1)(a) of the North Carolina Constitution. The trial court correctly recognized this constitutional violation.

The Court of Appeals erred by reversing the trial court's decision. It erred, most notably, by narrowing the "relating to" standard in the constitutional text. N.C. Const. art. II, § 24(1)(a). The court held that a statute violates article II, section 24 only if it "regulates" health or sanitation in literal terms. Decision below, 777 S.E.2d at 97-99. That reasoning departs from the plain meaning of "relating to," as well as this Court's teachings on constitutional interpretation. See infra pp. 24-36.

The intermediate court's reasoning also conflicts with this Court's decisions that enforce article II, section 24. In those decisions, this Court has recognized that water and sewer services inherently affect health and sanitation. It has also held that laws that shift the governance of health-related local services violate article II, section 24. Finally, the Court has held that violations of article II, section 24 turn on the practical effects of a statute, not just the statute's literal terms. The decision below violates all of these principles. See infra pp. 36-47.

In addition, the Act is a local law governed by article II, section 24. The Act's tortured criteria for an involuntary transfer apply only to Asheville. Those criteria are disconnected from the Act's stated goal: regionalizing water and sewer services throughout the state. See infra pp. 47-56.

The decision also eviscerates our state constitution's ban on takings without just compensation—a ban that this Court has found inherent in article I, section 19. The Court of Appeals held that as long as municipal taxpayers' property goes to another local government, no compensable taking occurs. That conclusion clashes with this Court's teachings. When, as here, a municipality operates an enterprise in a

proprietary capacity, this Court has held that the State cannot take the enterprise without paying compensation. See infra pp. 57-65.[3]

Lastly, the Court of Appeals erred in its statements on the City's impairment-of-contract claims. In the Court of Appeals, the City was the appellee. The North Carolina Rules of Appellate Procedure allow, but do not require, appellees to pursue alternative grounds for affirmance. See N.C. R. App. P. 10(c), 28(c) (using the word "may"). The Court of Appeals erred by converting this allowance into a requirement. If the court meant to say that this purported requirement extinguished two of the City's claims—claims that no court had yet decided—the court erred further still. See infra pp. 66-71.

For these reasons, the City respectfully requests that the Court reverse the Court of Appeals and reinstate the trial court's judgment.

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[3] The Court of Appeals also ruled on other issues and claims, but in the interest of judicial economy, the City is not further appealing those rulings. See Decision below, 777 S.E.2d at 98 (discussing claim that the Act relates to non-navigable streams); id. at 99-100 (discussing claim that the Act violates the rational-basis standard under article I, section 19); id. at 101 (discussing claim that the taking of the City's water system has no public purpose).

ARGUMENT

Standard of Review

This Court applies de novo review to decisions on constitutional issues. See, e.g., State v. Whittington, 367 N.C. 186, 190, 753 S.E.2d 320, 323 (2014). When interpreting a constitutional provision, this Court looks to the text of the provision, the historical context in which the provision was adopted, and this Court's precedents. See State ex rel. McCrory v. Berger, 781 S.E.2d 248, 252 (N.C. 2016).

The Court also reviews interpretations of the appellate rules de novo. See, e.g., State v. Hart, 361 N.C. 309, 311-15, 644 S.E.2d 201, 202-05 (2007).

Discussion of Law

If a legislature were free to ignore the fundamental law of the land, that outcome would jeopardize our very system of government. See Bayard v. Singleton, 1 N.C. 5, 6-7 (1787). As a result, this Court has long recognized that our state constitution limits the General Assembly's legislative power. Hart v. State, 368 N.C. 122, 131, 774 S.E.2d 281, 287 (2015). When a statute is plainly unconstitutional, the Court has the power and duty to declare the statute invalid. See, e.g.,

Williams v. Blue Cross Blue Shield of N.C., 357 N.C. 170, 183, 581 S.E.2d 415, 425 (2003).

As shown below, this case falls within that power and duty.

I. THE COURT OF APPEALS ERRED BY CONCLUDING THAT THE ACT DOES NOT RELATE TO HEALTH OR SANITATION.

Article II, section 24 of the North Carolina Constitution bars the legislature from enacting local laws on certain subjects. The prohibited enactments include local acts "[r]elating to health [or] sanitation." N.C. Const. art. II, § 24(1)(a). As the trial court correctly held, the Act violates this constitutional provision. (R p 162)

The Court of Appeals, in contrast, erred by upholding the Act. Decision below, 777 S.E.2d at 94, 98-99. The court reasoned that the text of the Act did not reveal a legislative purpose "to regulate" health or sanitation. Id. at 98. The court also opined that the Act did not "contemplate[ ] . . . prioritizing the [Asheville Water system's] health or sanitary condition." Id. (alterations in 2015 decision) (quoting Asheville 2008, 192 N.C. App. at 36-37, 665 S.E.2d at 128).

By replacing the constitutional phrase "relating to" with "regulating" and "prioritizing," the Court of Appeals strayed from the

constitutional text. It also strayed from the principles of constitutional interpretation that this Court has approved. See infra pp. 24-36.

In addition, the reasoning of the Court of Appeals clashes with three lines of this Court's decisions that apply the "relating to" standard in article II, section 24:

(1) decisions holding that water and sewer services are inherently related to health and sanitation (see infra pp. 36-43);

(2) decisions holding that the governance of health-related services affects health and sanitation (see infra pp. 43-44); and

(3) decisions holding that the practical effect of a statute, not its stated purpose, is the key consideration under article II, section 24 (see infra pp. 45-47).

Under all of these decisions, a law that shifts the ownership, governance, and operation of a water system—a major public-health asset—relates to health and sanitation.

A. The Court of Appeals Erred by Narrowing the "Relating to" Standard in Article II, Section 24.

Here, the Court of Appeals narrowed the subject-matter test in article II, section 24(1)(a). The court held that a statute "relates to" health and sanitation only if it "regulates" these subjects. Decision below, 777 S.E.2d at 98. That narrowing of article II, section 24 ignores the purposes of the provision, violates its plain meaning, and strays from this Court's precedents.

1. The decision below conflicts with the purposes of article II, section 24.

"Constitutional provisions should be construed in consonance with the objects and purposes in contemplation at the time of their adoption." State v. Webb, 358 N.C. 92, 94, 591 S.E.2d 505, 509 (2004) (quoting Perry v. Stancil, 237 N.C. 442, 444, 75 S.E.2d 512, 514 (1953)).

As shown below, the history of article II, section 24 reveals several important purposes: (1) to ensure that the legislature focuses on laws of statewide importance instead of parochial matters, (2) to promote uniformity in the law, (3) to strengthen local self-government, and (4) to bar the legislature from changing key policies through acts that receive inadequate scrutiny. See infra pp. 25-28. Here, the interpretation of

article II, section 24 by the Court of Appeals overlooks all of these purposes. See infra pp. 28-29.

When the people of North Carolina adopted article II, section 24 in 1917, local issues were bogging down the General Assembly. High Point Surplus Co. v. Pleasants, 264 N.C. 650, 656, 142 S.E.2d 697, 702 (1965); see Joseph S. Ferrell, Local Legislation in the North Carolina General Assembly, 45 N.C. L. Rev. 340, 347-51, 357-60 (1967). Those issues had become "a significant impediment to the effectiveness of the legislative process." Ferrell, supra, at 347.

Section 24[4] was intended "to free the General Assembly from the enormous amount of petty detail which had been occupying its attention [and] to enable it to devote more time and attention to general legislation of statewide interest and concern." High Point Surplus, 264 N.C. at 656, 142 S.E.2d at 702.

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[4] The ban on local acts originally appeared as article II, section 29 of the North Carolina Constitution. Revisions to the constitution in 1971 moved the provision to article II, section 24. See Smith v. Mecklenburg Cty., 280 N.C. 497, 506, 187 S.E.2d 67, 73 (1972). Pre-1971 decisions on the former article II, section 29 "apply equally to present Article II, Section 24." Id. This brief refers to the provision as article II, section 24 throughout.

Another goal of article II, section 24 is more uniform lawmaking. When the people adopted the constitutional provision, "the law of the State was frequently one thing in one locality, and quite different things in other localities." Idol v. Street, 233 N.C. 730, 732, 65 S.E.2d 313, 314 (1951). Section 24 was designed to put an end to this patchwork of laws on certain subjects. Those subjects, especially health and sanitation, "are so related to the welfare of the whole state as to demand uniform and coordinated action under general laws." Bd. of Health v. Bd. of Comm'rs, 220 N.C. 140, 143, 16 S.E.2d 677, 679 (1941).[5]

By prohibiting certain local acts, the people also sought "to strengthen local self-government." Williams, 357 N.C. at 188, 581 S.E.2d at 428 (quoting High Point Surplus, 264 N.C. at 656, 142 S.E.2d at 702). When Governor Kitchin, who initially proposed section 24,

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[5] Other constitutional provisions reinforce the people's mandate for general laws, rather than tinkering through local laws. For example, article XIV, section 3 states that when the constitution directs the General Assembly to enact general laws on a particular subject, "no special or local act shall be enacted concerning th[at] subject matter . . . , and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State." N.C. Const. art. XIV, § 3. Similarly, article II, section 24(2) forbids the General Assembly from enacting local laws "by the partial repeal of a general law." Id. art. II, § 24(2).

wrote to the legislature to urge it to adopt the provision, he explained that "local relief should be administered by the localities interested." Ferrell, supra p. 25, at 350 (quoting 1911 Biennial Message of Gov. W. W. Kitchin to the Gen. Assembly).

Finally, section 24 ensures that bills on important subjects get the careful scrutiny they deserve. See Board of Health, 220 N.C. at 143, 16 S.E.2d at 679. Local acts are notorious for receiving minimal vetting. Most legislators, after all, have no incentive to pay close attention to localized bills that do not affect their own constituencies. See Kornegay v. City of Goldsboro, 180 N.C. 441, 458, 105 S.E. 187, 195 (1920) (Clark, C.J., dissenting) (stating that it is "well known" that "special acts of local application receive no attention").

This Court has highlighted this concern in the context of health and sanitation. In Board of Health, the Court recognized that "the alleviation of suffering and disease [and] the eradication or reduction of communicable disease in its humanitarian, social, and economic aspect, is a state-wide problem." 220 N.C. at 143, 16 S.E.2d at 679. The Court therefore held that article II, section 24 requires the legislature to address health and sanitation through general laws. It rejected the

idea of addressing these statewide concerns through "local dilatory laws which are so frequently the outcome of local indifferency, or factional and political disagreements." Id.

In article II, section 24, the people of North Carolina put the above concerns into action. Section 24 enforces the people's will by stating in "emphatic and express terms" that any local act that violates the provision "shall be void." Idol, 233 N.C. at 732-33, 65 S.E.2d at 315; N.C. Const. art. II, § 24(3).

Because (as shown above) article II, section 24 has remedial purposes, this Court has held that "its application should not be denied on an unsubstantial distinction which would defeat its purpose." Board of Health, 220 N.C. at 143, 16 S.E.2d at 679.

Here, the decision of the Court of Appeals defeats the remedial purposes of article II, section 24(1)(a). It does so by narrowing the subject-matter test in that provision. It also creates a roadmap for evasion of the constitution through artful drafting.

Under the reasoning of the Court of Appeals, a statute "relat[es] to health [or] sanitation" only if it expressly shows a purpose to "regulate" those matters. Decision below, 777 S.E.2d at 97-98. That test narrows

the effect of article II, section 24(1)(a), because statutes that regulate a subject are a mere subset of statutes "relating to" that subject. See infra pp. 30-34. The broader "relating to" standard was the one enacted by the people.

According to the Court of Appeals, moreover, courts are to divine "regulation" from the text of a statute alone. See Decision below, 777 S.E.2d at 97-98. The court simply "peruse[d]" the statutory text for "provisions in the Act which 'contemplate[ ] . . . prioritizing the [Asheville Water System's] health or sanitary condition[.]'" Id. at 98 (alterations in 2015 decision) (emphasis added) (quoting Asheville 2008, 192 N.C. App. at 36-37, 665 S.E.2d at 128). Because the court found no "prioritizing" language in the Act, it found no "regulation" of health or sanitation, and thus no constitutional violation.

This literalism invites artful drafters to evade article II, section 24. It allows them to avoid violating the constitution as long as they avoid mentioning a purpose to regulate or prioritize a prohibited subject. If omitting magic words is all that article II, section 24 requires, the remedial purpose of that provision will become a "mere pious hope." Idol, 233 N.C. at 732, 65 S.E.2d at 315.

2. The Court of Appeals erred by ignoring the textual distinction between "relating to" and "regulating."

The test that the Court of Appeals applied here has a further flaw. That test ignores the distinction between two different constitutional phrases: "relating to" and "regulating." N.C. Const. art. II, § 24(1)(a), (j); see Decision below, 777 S.E.2d at 97-98.

As this Court has instructed, "[t]he best way to ascertain the meaning of a word or sentence in the Constitution is to read it contextually and to compare it with other words and sentences with which it stands connected." State ex rel. Martin v. Preston, 325 N.C. 438, 449, 385 S.E.2d 473, 478 (1989) (quoting State v. Emery, 224 N.C. 581, 583, 31 S.E.2d 858, 860 (1944)). The Court also consults standard dictionaries to verify the meaning of constitutional terms. Webb, 358 N.C. at 97, 591 S.E.2d at 511.

Here, the text and context of article II, section 24(1)(a) make clear that the provision does not require "regulation." Section 24(1)(a) bans local laws "[r]elating to health [or] sanitation." N.C. Const. art. II, § 24(1)(a) (emphasis added). In contrast, a different subsection of section 24(1) prohibits local laws "[r]egulating labor, trade, mining, or manufacturing." Id. § 24(1)(j) (emphasis added). This "difference of

phraseology in the same [section] . . . evinces a corresponding difference in the sense." State v. Crawford, 13 N.C. (2 Dev.) 425, 427 (1830). If the framers had intended the different subject-matter tests in article II, section 24 to mean the same thing, "they would have used the same words." Id.

To treat "relating to" and "regulating" as synonymous also violates the plain meanings of these two phrases. When the people of North Carolina adopted section 24 in the early 1900s, the verbs "relate" and "regulate" had different meanings:

- "Relate" meant "[t]o stand in some relation; to have bearing or concern; to pertain; to refer." Relate, Webster's International Dictionary of the English Language 1213 (1900).
- In contrast, "regulate" had a narrower meaning: "[t]o adjust by rule, method, or established mode; to direct by rule or restriction; to subject to governing principles or laws." Regulate, Webster's, supra, at 1211.[6]

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[6] The distinction between these two concepts persists today. The current edition of Black's Law Dictionary defines "related" as

Because the definition of "regulate" is narrower and more demanding than the definition of "relate," the laws that regulate a subject are only a subset of the laws that relate to that subject.

The decision of the Court of Appeals ignores this distinction. The court held that a law "is not deemed to be one 'relating to health [or] sanitation' unless . . . 'its purpose is to regulate'" one of those subjects. Decision below, 777 S.E.2d at 97 (alterations in 2015 decision) (emphasis changed) (quoting N.C. Const. art. II, § 24(1)(a) and Asheville 2008, 192 N.C. App. at 33, 665 S.E.2d at 126). The court went on to conclude that the Act does not violate this heightened "regulation" standard. See id. at 98. By changing the meaning of "relating to" in

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"[c]onnected in some way; having relationship to or with something else." Related, Black's Law Dictionary 1479 (10th ed. 2014). "Regulate," on the other hand, means "[t]o control (an activity or process) esp. through the implementation of rules." Regulate, Black's, supra, at 1475.

Modern case law reflects the same distinction. Compare Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-97 (1983) (concluding that a law "relates to" a subject "if it has a connection with or reference to" that subject), with Williams, 357 N.C. at 189, 581 S.E.2d at 429 (holding that "regulate" means "to govern or direct according to rule; . . . to bring under the control of law or constituted authority" (alteration in original) (quoting State v. Gulledge, 208 N.C. 204, 208, 179 S.E. 883, 886 (1935)).

this way, the court conflated two distinct constitutional phrases and overlooked their plain meanings.

The court erred further when it reasoned that a statute does not relate to health or sanitation unless it "prioritizes" those subjects. Id. "Relate," as discussed above, describes no more than a logical overlap between a law and a topic. "Prioritize," in contrast, means to treat a topic as more important than others. See Priority, Webster's, supra p. 31, at 1139 ("Precedence; superior rank.").[7] That narrower subject-matter test is not the one that the people adopted.

In addition, a prioritization standard is unworkable. Courts would find it difficult, if not impossible, to discern the priorities of a wide-ranging bill—the type of bill that the General Assembly often passes in the later stages of a session. Further, a prioritization standard would make no sense in the context of an act that devalues health concerns. Imagine, for example, a special provision in a state budget act that exempts the City of Raleigh from monitoring the lead content of its drinking water. This enactment would surely relate to

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[7] A modern dictionary defines "prioritiz[ing]" as "designat[ing] or treat[ing] (something) as more important than other things." Prioritize, New Oxford American Dictionary 1389 (3d ed. 2010).

health, but would it "prioritize" health? As this example shows, a prioritization standard is just as unfaithful to the text and purpose of article II, section 24(1)(a) as a "regulation" standard is.

3. A "regulation" standard depends on authority that this Court abandoned nearly a century ago.

The Court of Appeals derived its interpretation of article II, section 24 from one of its own earlier opinions. See Decision below, 777 S.E.2d at 97-98 (citing Asheville 2008, 192 N.C. App. at 33, 665 S.E.2d at 126). That 2008 opinion announced the "regulation" standard that the Court of Appeals applied here. See id.; Asheville 2008, 192 N.C. App. at 33, 665 S.E.2d at 126. As authority for the "regulation" standard, the 2008 opinion cited Reed v. Howerton Engineering Co., 188 N.C. 39, 123 S.E.2d 479 (1924). See Asheville 2008, 192 N.C. App. at 33, 665 S.E.2d at 126.

This Court, however, has abandoned this aspect of Reed. In Drysdale v. Prudden, the Court limited Reed to the conclusion that the statute in Reed was not a local act. See Drysdale v. Prudden, 195 N.C. 722, 727-28, 143 S.E. 530, 533 (1928). As an influential article explains,

the Drysdale Court treated Reed's statements on the "relating to" test as dicta. Ferrell, supra p. 25, at 367-68.[8]

Since Drysdale, then, Reed's interpretation of article II, section 24(1)(a) has not been good law. None of this Court's major opinions in this area rely on Reed. See, e.g., City of New Bern v. New Bern-Craven Cty. Bd. of Educ., 338 N.C. 430, 438-42, 450 S.E.2d 735, 740-42 (1994); Lamb v. Bd. of Educ., 235 N.C. 377, 379, 70 S.E.2d 201, 203 (1952); Idol, 233 N.C. at 733, 65 S.E.2d at 315; Board of Health, 220 N.C. at 142-44, 16 S.E.2d at 678-79; Sams v. Bd. of Comm'rs, 217 N.C. 284, 285, 7 S.E.2d 540, 541 (1940).

Far from using the term "regulating," this Court has used broad expressions to explain the relationship with health or sanitation that will invalidate a local act. For example, New Bern refers to laws that "affect" health and sanitation. 338 N.C. at 440-42, 450 S.E.2d at 741-42. Sams paraphrases the constitutional language as "pertaining to." 217 N.C. at 285, 7 S.E.2d at 541.

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[8] This Court has often cited Professor Ferrell's analysis of article II, section 24. See, e.g., Town of Emerald Isle v. State, 320 N.C. 640, 650, 360 S.E.2d 756, 762 (1987); Adams v. N.C. Dep't of Nat. & Econ. Res., 295 N.C. 683, 691, 249 S.E.2d 402, 407 (1978); Smith, 280 N.C. at 506, 187 S.E.2d at 73.

Thus, the 2015 and 2008 decisions of the Court of Appeals might be consistent with each other, but they are inconsistent with this Court's modern teachings.

In sum, the "regulation" test departs from the purpose and the text of article II, section 24. It also departs from this Court's own explanations of the constitution's "relating to" standard.

B. This Court's Decisions That Apply Article II, Section 24(1)(a) Confirm That the Act Here Relates to Health and Sanitation.

The decision here also clashes with this Court's decisions that apply article II, section 24. As shown below, three lines of this Court's decisions establish principles that are fatal to the Act.

1. This Court has held that water and sewer services are related to health and sanitation.

This Court has held many times that statutes that affect water and sewer services are inherently related to health and sanitation. Other sources of law on the relationship between water systems and public health reinforce the Court's analysis.

This Court first invalidated a local law on water service in Drysdale. The Court wrote that "pure water is nature's natural

beverage—life and health giving." 195 N.C. at 733, 143 S.E. at 535. Recognizing every person's daily need for clean water, the Court stressed that water service "involves the very life and health of a community" and "promot[es] the public health and welfare." Id. at 732-33, 143 S.E. at 535.

In Lamb, this Court reaffirmed these principles. It reaffirmed them when it held that article II, section 24 barred a statute that limited the expansion of water and sewer service to new schools. 235 N.C. at 379, 70 S.E.2d at 203. The Court recognized that by "prescrib[ing] provisions with respect to sewer and water service," the law unconstitutionally limited the power of a local government "to provide for sanitation and healthful conditions." Id.

New Bern, likewise, recognized the connection between water quality and the public health. See 338 N.C. at 440, 450 S.E.2d at 741. There, the Court held that regulations aimed at "the provision of 'adequate, safe and potable water' and 'adequate sanitary facilities'" demonstrate "an intent to protect the health of the general public." Id. (quoting the North Carolina Building Code).

This Court has also recognized the close relationship between the quality of water service and health and sanitation. In State ex rel. Utilities Commission v. Public Staff, the Court affirmed a decision that reduced a water utility's rate increase because of "poor water service." 317 N.C. 26, 29, 343 S.E.2d 898, 901 (1986). The Court used the term "poor water service" to refer mainly to poor water quality: discolored water, sediment in the water, improper chlorination, bacterial contamination, and noncompliance with state health regulations. Id. at 31-32, 343 S.E.2d at 902.

Here, when the Court of Appeals decided that the Act is not related to health and sanitation, it misread this Court's decisions in several ways.

First, the court erred when it reasoned that Drysdale never decided whether the statute in question was related to health. Decision below, 777 S.E.2d at 98-99. That statement contradicts Lamb, which treats Drysdale as a holding that water and sewer services are health-related. See Lamb, 235 N.C. at 379, 70 S.E.2d at 203. It also overlooks Sams, in which this Court stated that the act in Drysdale was a local law related to health and sanitation. Sams, 217 N.C. at 285, 7 S.E.2d at

541; see also Gaskill v. Costlow, 270 N.C. 686, 688, 155 S.E.2d 148, 149 (1967) (interpreting Drysdale the same way, but deciding the case on other grounds).

Second, the Court of Appeals misread Lamb as well. The Court of Appeals wrote that the statute in Lamb required a local government to provide water and sewer service. Decision below, 777 S.E.2d at 99. In actuality, the statute had the opposite effect: it barred the provision of these services without a popular referendum. Lamb, 235 N.C. at 379, 70 S.E.2d at 203. Because this statute affected the public health, the Court struck it down. Id.

Lamb also shows how the "prioritization" standard of the Court of Appeals departs from this Court's analysis. See Decision below, 777 S.E.2d at 98 (applying that standard); supra pp. 33-34 (discussing that standard). If article II, section 24 required "prioritizing" health and sanitation, the Lamb Court would not have struck down a statute that did the opposite—a statute that impeded efforts to protect health and sanitation.

Third, the Court of Appeals erred when it held that a minor provision in the Act that allows the new district to cut off water service

to nonpaying customers makes the Act unrelated to health. See Decision below, 777 S.E.2d at 98; Act sec. 2, § 162A-85.13(c), 2013 N.C. Sess. Laws at 122. This Court's decisions under article II, section 24(1)(a) are based on the overall health-promoting function of water service. See, e.g., Drysdale, 195 N.C. at 732-33, 143 S.E. at 534-35. Nothing about that health-promoting function requires water service to be free of charge.

Finally, the Court of Appeals erred when it held that "the quality of the service provided to the customers" of water and sewer systems is unrelated to health or sanitation. Decision below, 777 S.E.2d at 98. That reasoning draws a false distinction between water service and water quality—a distinction that overlooks Utilities Commission, in which this Court used the term "water service" to refer mainly to water quality. See 317 N.C. at 29-32, 343 S.E.2d at 901-02. The reasoning of the Court of Appeals also ignores the common-sense relationship between water service and water quality. A citizen who promptly and consistently receives dirty water would not say that she enjoys good water service.

The relationship between the quality of water service and the public health stands out even further when one considers the statutes and regulations that govern the City's water system. For example:

- The North Carolina Drinking Water Act "regulate[s] water systems within the State which supply drinking water that may affect the public health." N.C. Gen. Stat. § 130A-312 (2015) (emphasis added). The City complies with and administers regulations under this statute. (Doc. Ex. 3, 396)
- The City also administers a permitting process for any construction, alteration, and extension of its water system. (Doc. Ex. 396-97) This process ensures that any changes to the water system comply with the North Carolina Drinking Water Act. Doc. Ex. 397; see Asheville, N.C., Mun. Code ch. 21, art. III, §§ 4-6 (Supp. 2008).
- The City administers a state law that requires that its water treatment plant operators be highly trained and certified. N.C. Gen. Stat. §§ 90A-20 to -32 (2015). The purpose of this law, too, is "to protect the public health and to conserve and

protect the water resources of the State." Id. § 90A-20 (emphasis added).

- The City, like any supplier of public drinking water, must give its customers annual reports on the source and quality of their tap water. These reports must identify any risks to human health. See 40 C.F.R. §§ 141.151 to .155 (2015).

Finally, the ongoing crisis in Flint, Michigan, highlights the inherent relationship between the quality of water service and the public health. Because of mismanagement of Flint's water service, the people of Flint have been drinking contaminated water without their knowledge. Abby Goodnough et al., When the Water Turned Brown, N.Y. Times (Jan. 23, 2016) [App. pp. 50-58]. As a result, children are now experiencing lead poisoning. Id.

The prospect of this type of harm shows the people's wisdom in adopting article II, section 24. That provision does not require harm to the public health to run its course. Instead, it states a protective rule: a local law "shall be void" if it simply "[r]elat[es] to health [or] sanitation." N.C. Const. art. II, § 24(1)(a), (3) (emphasis added).

In sum, Drysdale, Lamb, New Bern, and other decisions recognize the inherent relationship between the quality of water service and the public health. Current events show that the Court is right to recognize this relationship.

2. Local laws on the governance of health-related services violate article II, section 24.

This Court has also recognized that the governance of health-related services affects health and sanitation.

In New Bern, for example, the Court held that multiple laws that shifted authority for building inspections were related to health and sanitation. 338 N.C. at 442, 450 S.E.2d at 742. The Court recognized that administration and enforcement of the building code "unquestionably affects health and sanitation." Id.

New Bern is part of a long line of decisions from this Court that invalidate local laws on the governance of health-related functions. Those decisions also include:

- Idol, in which the Court struck down a local law that consolidated the Winston-Salem and Forsyth County health departments. 233 N.C. at 733, 65 S.E.2d at 315.

- Board of Health, in which the Court invalidated a local law requiring that a county health officer be confirmed by the county commissioners. 220 N.C. at 143-44, 16 S.E.2d at 679.
- Sams, in which the Court invalidated a local law that created a county board of health and named its members. 217 N.C. at 285, 7 S.E.2d at 541.

Here, the Court of Appeals reasoned that because the Act addresses "governance over water and sewer systems," it does not relate to health. Decision below, 777 S.E.2d at 98. The above decisions require the opposite conclusion. In all of those cases, the statutes in question affected the governance of health-related agencies. That effect on governance was exactly what led the Court to hold that the statutes related to health and sanitation.

Much like the building-code regulations in New Bern, moreover, the water-quality statutes and regulations that the City administers show "an intent to protect the health of the general public." New Bern, 338 N.C. at 440, 450 S.E.2d at 741; supra pp. 41-43. Because the Act shifts responsibility for administering these health-related measures, the Act relates to health and sanitation.

3. This Court looks to a statute's practical effect, not just its stated purpose, to decide its relationship to a prohibited subject.

The Court of Appeals overlooked a third teaching from this Court as well: When courts apply article II, section 24, they must ask whether a statute has a practical effect on a prohibited subject.

For example, in New Bern, the stated purpose of the statutes was to change who controlled building-code inspections in a county. See 338 N.C. at 433-34, 450 S.E.2d at 737-38. This Court, however, focused on the practical effect of the statutes: shifting the administration and enforcement of rules that affect health and sanitation. See id. at 439-40, 450 S.E.2d at 740-41. Even though the statutes did not literally mention health or sanitation, the Court held that the statutes affected those subjects. Id. at 442, 450 S.E.2d at 742.

In Williams, the Court focused even more explicitly on the practical effect of a statute. The Court rejected an argument that a statute did not regulate labor or trade because its only stated purpose was to prevent discrimination. 357 N.C. at 189, 581 S.E.2d at 429. In a unanimous opinion by Justice Edmunds, the Court stressed that preventing discrimination "has the practical effect of regulating trade."

Id. at 190, 581 S.E.2d at 429. Because of that practical effect, the Court invalidated the statute under article II, section 24. Id. at 191, 581 S.E.2d at 430.

It bears noting, moreover, that Williams involved a subject-matter test—"regulating"—that is narrower than the test at issue here. N.C. Const. art. II, § 24(1)(j); see supra pp. 30-34. Because this case involves a broader subject-matter test—"relating to"—the Williams Court's analysis of practical effects applies here with even greater force. N.C. Const. art. II, § 24(1)(a).

Here, contrary to Williams, the Court of Appeals ignored the practical effects of the Act. See Decision below, 777 S.E.2d at 98. The Act shifts control over water service in Asheville—a service that is inherently related to health and sanitation. Act sec. 1(a)-(f), 2013 N.C. Sess. Laws at 118-19; see supra pp. 36-40. Likewise, the Act shifts the administration of water-quality statutes and regulations—measures that "unquestionably affect[ ] health and sanitation." New Bern, 338 N.C. at 442, 450 S.E.2d at 742; see Act sec. 2, §§ 162A-85.5, -85.21 & -85.25, 2013 Sess. Laws at 121-24; supra pp. 41-44.

Instead of analyzing these practical effects, the Court of Appeals focused only on the stated purpose of the Act. The court reasoned that the text of the Act "appear[s] to prioritize concerns regarding the governance over water and sewer systems and the quality of the services rendered." Decision below, 777 S.E.2d at 98. That reasoning flouts Williams, in which this Court wrote that article II, section 24 "is not dependent on the purpose for which the local law was passed." 357 N.C. at 190, 581 S.E.2d at 429.

In sum, the Act strips one of North Carolina's major cities of the ownership, operation, and governance of its water system. It transfers the system to a new entity that has never even operated a water system. This Court's decisions, as well as recent events, make clear that a transfer of this kind relates to health and sanitation.

C. The Act Is a Local Act.

The Act not only relates to one of the subjects listed in article II, section 24, but is also a local act governed by that provision. The trial court recognized that the Act is local. R p 162; see also Decision below, 777 S.E.2d at 97 (declining to review this conclusion). Two main points show that the trial court was correct.

First, out of the 360 municipalities that operate water systems in this state, only Asheville suffers a forced transfer of its water system under the Act. This singling out of Asheville was no accident. To the contrary, the General Assembly put unusually detailed criteria into the Act—and then fine-tuned those criteria three months later—to make sure that Asheville alone would face the seizure of its water system. See infra pp. 48-52.

Second, no reasonable basis justifies this disparate treatment of Asheville. The Act states that its purpose is to regionalize large water systems for the benefit of the entire state. Transferring a single water system to a new district has no rational connection with that stated purpose. See infra pp. 52-56.

1. The Act creates an unreasonable classification by singling out Asheville irrationally.

For a statute to qualify as a general act, any distinctions it draws among localities must be based on "manifest peculiarities clearly distinguishing" one class from another—distinctions so compelling that they "imperatively demand[ ] legislation for each class separately." McIntyre v. Clarkson, 254 N.C. 510, 518, 119 S.E.2d 888, 894 (1961). A

local act, in contrast, "unreasonably singles out a class for special legislative attention." Adams v. N.C. Dep't of Nat. & Econ. Res., 295 N.C. 683, 691, 249 S.E.2d 402, 407 (1978).

Here, in the Act, the General Assembly unreasonably singled out a class of one city. It did this by using targeted criteria to make sure that Asheville alone would be compelled to transfer its water system.

The original version of the Act used the following criteria to subject a water system to a forced transfer: (1) the water system is owned by a municipality in a county with an operating metropolitan sewerage district, (2) the water system has not been issued an interbasin transfer certificate, and (3) the water system serves more than 120,000 people. Act sec. 1(a), 2013 N.C. Sess. Laws at 118-19.

North Carolina has only three metropolitan sewerage districts. In the counties with these districts, only one water system serves more than 120,000 people: Asheville's. See supra p. 11.

In addition, the legislature took pains to ensure that Asheville remained the only water system that would have to be transferred. It did so by exempting any water system that had an interbasin transfer certificate. Act sec. 1(a)(2), 2013 N.C. Sess. Laws at 119. This criterion

saved the only other potentially affected water system—Greenville's—from being exposed to a forced transfer as its customer base grew. (See Doc. Ex. 485)

Although these features of the original Act initially created a class of one, later events in 2013 imperiled that outcome. Two different bills in the General Assembly proposed to eliminate the interbasin transfer exemption in the Act. That change would have exposed Greenville to the Act's forced-transfer provision. See, e.g., S.B. 341, Gen. Assembly, 2013 Sess., § 4 (N.C. 2013) (as reported by H. Comm. on Env't, July 15, 2013) [App. pp. 27, 41]; Doc. Ex. 365.[9]

An amendment to the Act solved this problem for Greenville. (Doc. Ex. 366) The product of this amendment, section 1(g) of the Act,

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[9] A news article from this period described how eliminating the interbasin transfer exemption would imperil Greenville's water system—and how Greenville's legislative delegation was mobilizing to prevent that result. See Michael Abramowitz, Bill Could Take Greenville's Water, Daily Reflector (Greenville, N.C.) (June 28, 2013) [App. pp. 45-47].

The article noted that "[t]he fate of Greenville's water system [was being] tied to legal complications over a water system on the other end of the state." Id. If the legislature eliminated the interbasin transfer criterion in the Act, "Asheville would cease to be the only municipality affected by the legislation." Id.; accord Editorial, Hands Off Water System, Daily Reflector (July 1, 2013) [App. p. 48].

provides that the Act does not require the transfer of a water system "that is operated simultaneously with a sewer system by the same public body, in conjunction with the provision of other utility services for its customers." Act of Aug. 23, 2013, ch. 388, sec. 5, 2013 N.C. Sess. Laws at 1618. Greenville, unlike Asheville, operates a sewer system along with "other utility services"—namely, electricity and natural gas. Id.; see Doc. Ex. 485. Thus, this amendment ensured that the Act's forced-transfer requirement would continue to apply to Asheville alone.

Finally, after creating and reinforcing a class of one, the Act closes the class to new members. Section 5.5 ensures that no future metropolitan sewerage district will be created anywhere in the state, except with consent of all local governments in the relevant county. See Act sec. 5.5, § 162A-66.5, 2013 N.C. Sess. Laws. at 125. Because the existence of a metropolitan sewerage district is a criterion for a forced transfer of a water system, see id. sec. 1(a)(1), 2013 N.C. Sess. Laws. at 118, the transfer provision in the Act will always apply solely to Asheville.

The State does not deny that the criteria in the Act fit Asheville alone. See, e.g., State's COA Br. at 8; Doc. Ex. 623-24.

These criteria do not address "manifest peculiarities" that "imperatively demand[ ] legislation" that singles out Asheville. McIntyre, 254 N.C. at 518, 119 S.E.2d at 894. To the contrary, the fact that the General Assembly quickly changed the criteria when the Act threatened to ensnare another city shows that the criteria were arbitrary from the beginning. Their only purpose was to create Asheville-specific legislation that did not seem Asheville-specific.

As these points show, the Act uses an unreasonable classification that impermissibly singles out Asheville.

2. Singling out Asheville bears no rational relationship to the purpose of the Act.

For a statute to avoid condemnation as a local act, the statute's classifications must also be "reasonably related to the purpose of the legislation." Williams, 357 N.C. at 184, 581 S.E.2d at 426 (quoting Adams, 295 N.C. at 691, 249 S.E.2d at 407).

Here, the tortured criteria for an involuntary transfer under the Act bear no relationship to the Act's stated purpose: to promote "regional solutions for public water and sewer for large public systems" for the benefit of "the citizens and businesses of North Carolina." Act,

first recital, 2013 N.C. Sess. Laws at 118. Serving this statewide purpose in any meaningful way would call for the regionalization of water systems across North Carolina. Here, however, the stylized criteria in the Act ensure that regionalization will be required in only one community in the state. Section 5.5, in particular, virtually eliminates the possibility that the transfer provision will ever apply to more than one community. See supra pp. 12, 51.

As these points show, the narrow criteria in the Act do not reasonably relate to the Act's stated purpose of regionalizing water and sewer services. Instead, these criteria merely show that the legislature did not want to impose regionalization on any community but Asheville.

The State has argued that it was reasonable for the Act to single out Asheville for a forced transfer because there have been disputes over the governance of Asheville's water system. See State's COA Br. at 23-24. Under this Court's precedent, however, that argument fails.

New Bern rejects the argument that a local dispute makes a targeted enactment something other than a local law. There, a statewide statute established criteria to decide which political subdivisions would conduct local building inspections. See New Bern,

338 N.C. at 437-38, 450 S.E.2d at 739-40. For New Bern and Craven County, however, the legislature enacted a separate set of criteria. Id. at 433-34, 450 S.E.2d at 737-38. The county argued that this disparate treatment was reasonable because the legislature needed to resolve a city/county dispute over who should conduct inspections. Id. at 437, 450 S.E.2d at 739. This Court held, however, that the mere presence of a dispute offered "no rational basis that justifies the separation of New Bern from all other cities in North Carolina for special legislative attention." Id. at 438, 450 S.E.2d at 740. For that reason, the Court held that the New Bern-specific enactment was a local law. Id.

The same conclusion applies here. The stated purpose of the Act is to promote regional water and sewer solutions. Act, first recital, 2013 N.C. Sess. Laws at 118. To serve this purpose, the legislature has created a statewide mechanism: voluntary creation and operation of new districts. See id. sec. 2, § 162A-85.2, 2013 N.C. Sess. Laws at 120. Because this statewide mechanism already exists, it is unreasonable for the legislature to create a separate process for Asheville—a forced transfer—to serve the same purpose. Alleged disputes between

Asheville and its neighboring counties cannot alter this conclusion. See New Bern, 338 N.C. at 437-38, 450 S.E.2d at 739-40.[10]

Finally, the local nature of the Act becomes especially clear when one compares the Act's narrow criteria with the criteria in North Carolina's public-enterprise statutes. For example, chapter 160A empowers cities to operate water systems. N.C. Gen. Stat. §§ 160A-311(2), -312. To define the local governments with this right, the chapter uses a simple, broad criterion: "a city." Id. § 160A-312. Likewise, when chapter 153A grants similar public-enterprise rights to counties, it uses equally broad and simple language: "a county." Id. § 153A-275. In short, safe water service is a statewide concern, so the public-enterprise statutes address it in statewide terms.

Regionalization of water service is ostensibly a statewide goal as well. See Act, first recital, 2013 N.C. Sess. Laws at 118. Despite the statewide nature of this goal, however, the Act's transfer provision addresses the goal in the most selective way possible. See id. sec.

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[10] Even the Court of Appeals agrees on this point. In Asheville 2008, the court held that disputes over Asheville's water system did not reveal "manifest peculiarities clearly distinguishing" Asheville from other municipalities. 192 N.C. App. at 29, 32, 665 S.E.2d at 124, 125.

1(a)(1)-(3), 2013 N.C. Sess. Laws at 118-19; Act of Aug. 23, 2013, ch. 388, sec. 5, 2013 N.C. Sess. Laws at 1618.

This contrast between the public-enterprise statutes and the Act confirms the poor fit between the Act's stated purpose and the Act's criteria for a forced transfer.

Because the Act uses classifications that are not "reasonably related to the purpose of the legislation," it is a local law. Williams, 357 N.C. at 184, 581 S.E.2d at 426. Because the Act also relates to health and sanitation, it is void under article II, section 24. See N.C. Const. art. II, § 24(3); supra pp. 36-47.

II. THE COURT OF APPEALS ERRED BY HOLDING THAT A MUNICIPALITY HAS NO PROTECTION AGAINST UNCOMPENSATED TAKINGS.

The Court of Appeals also erred in a second major respect: The court held, despite article I, section 19 of the North Carolina Constitution, that municipalities and their taxpayers have no constitutional protection against uncompensated takings.

This Court has recognized that article I, section 19 bars uncompensated takings of property. Finch v. City of Durham, 325 N.C. 352, 362-63, 384 S.E.2d 8, 14 (1989). This right to be free from uncompensated takings includes municipalities that carry out proprietary functions on behalf of their taxpayers. Asbury v. Town of Albemarle, 162 N.C. 247, 253-54, 78 S.E. 146, 149-50 (1913).

Here, the Court of Appeals purported to repeal this constitutional right. The court held that the General Assembly can, with impunity, "divest a city of its authority to operate a public water system and transfer the authority and assets thereof to a different political subdivision." Decision below, 777 S.E.2d at 101.

As shown below, this carte blanche reasoning is not the law, and it should not become the law.

A. Municipal Corporations Have a Right to Be Free from Uncompensated Takings When They Carry Out Proprietary Functions.

This Court has long recognized that municipalities have "a double character"—a public (governmental) aspect and a private (proprietary) aspect. Asbury, 162 N.C. at 253, 78 S.E. at 149.

In Asbury, the Court explained that when a municipality acts in a proprietary capacity, it acts not for the benefit of the state at large, but "for the private advantage of the compact community which is incorporated as a distinct legal personality or corporate individual." Id. Thus, when a municipality carries out proprietary functions, the General Assembly faces "the same constitutional restraints that are placed upon it in respect of private corporations."[11] Id.

More specifically, Asbury holds that the legislature may "shape . . . municipal organizations," but cannot control property that a

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[11] The Court continues to recognize the distinction between governmental and proprietary functions. See, e.g., Koontz v. City of Winston-Salem, 280 N.C. 513, 527, 186 S.E.2d 897, 906 (1972) (quoting Asbury); Candler v. City of Asheville, 247 N.C. 398, 405-06, 101 S.E.2d 470, 475-76 (1958) (same). For example, the Court has recognized that in proprietary settings, a municipality has no sovereign immunity from tort liability. See, e.g., Estate of Williams ex rel. Overton v. Pasquotank Cty. Parks & Recreation Dep't, 366 N.C. 195, 199-200, 732 S.E.2d 137, 141 (2012).

municipality "has acquired, or the rights in the nature of property which have been conferred upon it." Id. at 254, 78 S.E. at 150 (quoting People ex rel. Le Roy v. Hurlbut, 24 Mich. 44, 104 (1871)).

Under these principles, the legislature cannot take proprietary assets from a city's taxpayers and transfer those assets to another municipality, "giv[ing] something for nothing." Id. at 252, 78 S.E. at 149.

B. The Act Violates the Constitutional Protection Against Uncompensated Takings.

The assets protected by Asbury include Asheville's water system.

No one denies that the City has the legal authority to own and operate its water system. See N.C. Gen. Stat. §§ 160A-311(2), -312(a); Decision below, 777 S.E.2d at 94; R p 159; Doc. Ex. 400. Nor does anyone deny that when the City operates its water system, it carries out a proprietary function on behalf of its taxpayers. See, e.g., Fussell v. N.C. Farm Bureau Mut. Ins. Co., 364 N.C. 222, 225, 695 S.E.2d 437, 440 (2010); Mosseller v. City of Asheville, 267 N.C. 104, 107, 147 S.E.2d 558, 561 (1966); Decision below, 777 S.E.2d at 99-100.

Under Asbury, then, the General Assembly cannot take the City's property—the water system in which the taxpayers have invested—without paying just compensation. Asbury, 162 N.C. at 253-54, 78 S.E. at 149-50.

But that is exactly what the Act does.

First, the Act specifically defeases the City of the ownership of its water system. See Act sec. 1, 2013 N.C. Sess. Laws at 118-19; see also supra pp. 10-14 (describing the mechanisms of this taking). The Act orders a transfer that would divest the City of hundreds of millions of dollars in proprietary assets. R pp 79, 164; supra pp. 7-8. These assets include massive facilities that have taken the City over a century to build. R pp 63-64, 150, 159; Doc. Ex. 591, 597-600, 623; supra p. 7. The seized assets could also include thousands of acres of watershed land, reservoirs, and other real property. R pp 63, 150-51, 159; Doc. Ex. 2; supra p. 7.

Second, the Act also deprives the City and its taxpayers of the governance of the Asheville water system. As this Court has emphasized, ownership includes more than the right to use property in a prescribed way. Ownership also includes the right to decide how

property is used. Vance S. Harrington & Co. v. Renner, 236 N.C. 321, 324, 72 S.E.2d 838, 840 (1952).

The Act takes this control away from the City. Under the Act, board members for the new district would come from an area beyond Asheville. See, e.g., Act sec. 2, § 162A-85.3(a), 2013 N.C. Sess. Laws at 120-21. Under the new board structure, Asheville will have, at most, only 25% voting control over its water system—a system in which the City has invested for more than a century. See id. sec. 2, §§ 162A-85.3(a) & -85.4, 2013 N.C. Sess. Laws at 120-21; supra pp. 13-14.

Third, although the Act confiscates Asheville's proprietary assets, it provides no compensation for this taking. See Act sec. 1, 2013 N.C. Sess. Laws at 118-19.

As these points show, the Act causes exactly the kind of taking that this Court condemned in Asbury.

C. The Reasons That the Court of Appeals Gave for Upholding the Act Are Unsound.

The City cited Asbury in the Court of Appeals. In response, the court sought to explain away Asbury. See Decision below, 777 S.E.2d at 99-100. As shown below, the court's efforts were not successful.

First, the Court of Appeals read Asbury as barring only two things: (a) requiring a municipality to operate a water system and (b) controlling a municipality's discretion in operating the system. Id.

Asbury, however, does not limit its holding to these two scenarios. On the contrary, it states directly that the General Assembly cannot take away any of a municipality's proprietary assets. The Asbury Court expressly rejected the idea that "the legislative power is so transcendent that it may, at its will, take away the private property" of a municipality. Asbury, 162 N.C. at 254, 78 S.E. at 149-50 (quoting Trs. of Dartmouth Coll. v. Woodward, 17 U.S. (4 Wheat.) 518, 694 (1819)).

Second, instead of applying Asbury in its takings analysis, the court cited a pre-Asbury decision, Brockenbrough, for the proposition that the State may involuntarily transfer a city's water system. Decision below, 777 S.E.2d at 101 (citing Brockenbrough, 134 N.C. at 19, 46 S.E. at 33).

Brockenbrough did not authorize such an involuntary taking. Instead, it involved a voluntary transfer of a water system—a transfer "at the instance and with the approval and pursuant to a resolution of the board of aldermen." 134 N.C. at 6, 46 S.E. at 29. In addition, the

issue in the case was not the validity of this transfer, but the transferee's authority to issue bonds. See id. at 9-11, 46 S.E. at 30-31. As a result, Brockenbrough offers no authority for the outcome reached by the Court of Appeals.

Even if Brockenbrough applied here, moreover, it would still be limited by Asbury—the seminal decision, ten years later, that recognized the property rights of municipalities that act in a proprietary capacity.

Third, instead of applying Asbury, the Court of Appeals relied on out-of-state cases that interpret other constitutions. Decision below, 777 S.E.2d at 101-02. That reasoning misapprehended the law as well.

The out-of-state cases that the Court of Appeals cited do not address the City's rights under the North Carolina Constitution. Thus, they cannot take precedence over Asbury. See State v. Jones, 305 N.C. 520, 525, 290 S.E.2d 675, 678 (1982).

In addition, the court overlooked more recent out-of-state decisions that reinforce the Asbury rule. For example, the Supreme Court of Delaware, applying what the court recognized as the majority rule, has held that "property which is held in a proprietary capacity

cannot be taken by the State unless just compensation is paid." New Castle Cty. Sch. Dist. v. State, 424 A.2d 15, 17 (Del. 1980); accord A.S. Klein, Annotation, Power of Eminent Domain as Between State and Subdivision or Agency Thereof, or as Between Different Subdivisions or Agencies Themselves, 35 A.L.R.3d 1293 § 2(b), at 1307 (1971).

State courts across the country have applied the same rule.

For example, in People ex rel. Department of Public Works v. City of Los Angeles, the court held that a city was entitled to compensation after the state condemned a park that the city owned and operated in its proprietary capacity. 33 Cal. Rptr. 797, 800 (Ct. App. 1963).

Applying the same rule, a New York court held that a town was entitled to compensation after the state seized land that the town had bought and maintained for the benefit of its residents. Town of Peru v. State, 315 N.Y.S.2d 775, 776-77 (App. Div. 1970).

Other states' courts agree. See, e.g., Town of Winchester v. Cox, 26 A.2d 592, 595 (Conn. 1942) ("Where land is held by a municipality in its proprietary capacity, it cannot be taken for public use without compensation to the municipality."); City of New Orleans v. State, 443 So. 2d 562, 572 (La. 1983) ("[The state constitution] prohibits the state

from taking any property including public property owned by political subdivisions, except upon payment of just compensation."); City of Cambridge v. Comm'r of Pub. Welfare, 257 N.E.2d 782, 785 (Mass. 1970) (a municipality "has the same right to be compensated as an individual has" when the state takes property held in a "private or proprietary capacity").

In sum, article I, section 19 of the North Carolina Constitution protects municipalities that operate in a proprietary capacity, as well as municipal taxpayers, against takings without just compensation. The Court of Appeals erred by repealing this constitutional right.

III. THE COURT OF APPEALS ERRED IN ITS COMMENTS ON THE STATUS OF THE CLAIMS THAT THE TRIAL COURT NEVER REACHED.

Finally, the Court of Appeals seemed to imply that the City had abandoned its impairment-of-contract claims—claims that the trial court never reached—because the parties' briefs on the State's appeal did not address those claims. Decision below, 777 S.E.2d at 102-03; see R pp 164-65. If that was what the court meant to say, the court erred by saying it.

The court reasoned that, because the City did not argue its contract-impairment claims as alternative grounds for affirmance, "any argument by Asheville based on these claims for relief are [sic] waived." Decision below, 777 S.E.2d at 103. The court also stated that "any argument regarding" one of these claims "is not preserved." Id. at 95 n.2.

This language probably means only that the Court of Appeals did not consider these claims as issues on appeal. However, the language could also mean that these claims have been abandoned forever—even

in any proceedings on remand. If the court meant to express the second of these conclusions,[12] it made a serious error of appellate procedure.

The North Carolina Rules of Appellate Procedure allow, but do not require, an appellee to brief alternative grounds for affirmance. When an appellee does not brief alternative grounds, neither the rules nor any other source of law provides that the appellee waives entire claims because of that forbearance.

A. The "May" Language in Appellate Rules 28(c) and 10(c) Shows That Briefing of Alternative Grounds Is Allowed, but Not Required.

Under the Appellate Rules, an appellee may brief alternative grounds for affirmance, but it is not required to do so.

Rule 28(c) addresses alternative grounds for affirmance. It states that "an appellee may present issues on appeal based on any action or omission of the trial court that deprived the appellee of an alternative basis in law for supporting the judgment." N.C. R. App. P. 28(c) (emphasis added).

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[12] In the Court of Appeals, the City petitioned for rehearing and asked the court to clarify the above statements in its opinion. See Petition for Rehearing at 20-31, No. COA14-1255 (N.C. Ct. App. Nov. 9, 2015). The court denied the petition, without comment, the next day.

Rule 10(c) confirms that pursuing alternative grounds for affirmance is optional, not mandatory. That rule states that "an appellee may list proposed issues on appeal in the record on appeal based on any action or omission of the trial court that was properly preserved for appellate review and that deprived the appellee of an alternative basis in law for supporting the judgment." Id. r. 10(c) (emphasis added).

"Ordinarily when the word 'may' is used in a statute, it will be construed as permissive and not mandatory." In re Hardy, 294 N.C. 90, 97, 240 S.E.2d 367, 372 (1978). Applying that common-sense meaning of "may," this Court has written that the rules "allow[ ]" an appellee to raise alternative grounds for affirmance. State v. Stokes, 367 N.C. 474, 478, 756 S.E.2d 32, 35 (2014).

Thus, although an appellee may raise alternative grounds for affirming a judgment, omitting those grounds does not rob the appellee of its entire claims related to those grounds. No North Carolina rule or decision has ever held otherwise.

To the contrary, the Court of Appeals has written that when an appellee has alternative grounds for affirmance but does not brief them,

what the appellee loses is "consideration [of those grounds] on appeal." Tate Terrace Realty Inv'rs, Inc. v. Currituck Cty., 127 N.C. App. 212, 224, 488 S.E.2d 845, 852 (1997) (emphasis added). Here, the City has already suffered that consequence. In deciding the State's appeal, the Court of Appeals did not consider alternative paths to an affirmance. See Decision below, 777 S.E.2d at 102-03. The law provides no other consequence.

In the Court of Appeals, the State did not argue for a waiver of the City's unadjudicated claims. Instead, the waiver-related comments in the court's opinion were a product of the court's own invention.

In sum, if the Court of Appeals meant to eliminate the City's impairment-of-contract claims altogether, the court misunderstood the Appellate Rules.

B. To Interpret the Appellate Rules to Extinguish Claims That a Trial Court Never Reached Would Be Unsound.

There are compelling reasons why courts have not applied waiver in a case like this one.

Requiring appellees to brief all of their claims—including claims that a trial court never reached, as here—would have adverse

consequences for this state's appellate courts and litigants. It would make appellate briefs longer and more complex. It would require parties and the courts to spend extensive time on issues that might well prove academic, increasing the courts' already heavy workload.

In some cases, moreover, the alternative theories that would be forcibly injected into appeals would be constitutional claims. Forcing the appellate courts to grapple with those claims would violate the principle that courts should avoid constitutional questions when it is unnecessary to decide them. See Anderson v. Assimos, 356 N.C. 415, 416, 572 S.E.2d 101, 102 (2002).

Finally, compelling appellees (and thus courts) to address alternative theories, on pain of waiver, would disserve a "fundamental purpose" of the Appellate Rules: to expedite appellate review. See Hart, 361 N.C. at 315-16, 644 S.E.2d at 205.[13]

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[13] If this Court decided to adopt a new waiver doctrine here, the City requests that the Court apply Appellate Rule 2 to suspend the effect of this new interpretation of the rules and "prevent manifest injustice" to the City. N.C. R. App. P. 2. As shown above, existing rules and case law gave the City no warning that the non-briefing of alternative grounds could affect entire claims on remand. Indeed, in the Court of Appeals, the State never argued for waiver of these claims.

The City hopes that the Court's rulings on the merits will make this issue an academic one. However, if the Court reaches this issue, it respectfully requests that the Court clarify that the City's fourth and fifth claims remain alive on remand.

CONCLUSION

The City respectfully requests that the Court reverse the decision of the Court of Appeals and reinstate the trial court's judgment. The City also requests that the Court reverse any decision by the Court of Appeals that the City has abandoned its contract-impairment claims.

Respectfully submitted, this 3d day of March, 2016.

ELLIS & WINTERS LLP

/s/ Electronically submitted
Matthew W. Sawchak
N.C. State Bar No. 17059
matt.sawchak@elliswinters.com

Rule 33(b) Certification: I certify that all of the lawyers listed below have authorized me to list their names on this document as if they had personally signed it.

Paul M. Cox
No. 49146; paul.cox@elliswinters.com
Emily E. Erixson
No. 47136; emily.erixson@elliswinters.com
P.O. Box 33550
Raleigh, NC 27636
(919) 865-7000

CAMPBELL SHATLEY, PLLC

Robert F. Orr
N.C. State Bar No. 6798
bob@csedlaw.com
674 Merrimon Avenue, Suite 210
Asheville, NC 28804
(828) 398-2775

LONG, PARKER, WARREN, ANDERSON & PAYNE, P.A.

Robert B. Long, Jr.
N.C. State Bar No. 2787
fran@longparker.com
14 South Pack Square, Suite 600
Asheville, NC 28802
(828) 258-2296

CITY OF ASHEVILLE
CITY ATTORNEY'S OFFICE

Robin T. Currin
N.C. State Bar No. 17624
rcurrin@ashevillenc.gov
P.O. Box 7148
Asheville, NC 28802
(828) 259-5610

Counsel for the City of Asheville

CERTIFICATE OF SERVICE

I certify that today, I caused the attached document to be served on all counsel by e-mail and U.S. mail, addressed to:

I. Faison Hicks, Esq.
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629
fhicks@ncdoj.gov

William Clarke, Esq.
Roberts & Stevens, P.A.
P.O. Box 7647
Asheville, NC 28802
bclarke@roberts-stevens.com

Stephen W. Petersen, Esq.
Smith Moore Leatherwood, LLP
434 Fayetteville Street, Suite 2800
Raleigh, NC 27601
steve.petersen@smithmoorelaw.com

Allegra Collins, Esq.
Allegra Collins Law
225 Hillsborough Street, Suite 301
Raleigh, NC 27603
allegracollins@hotmail.com

James P. Cauley, III, Esq.
Gabriel Du Sablon, Esq.
Cauley Pridgen, P.A.
P.O. Drawer 2367
Wilson, NC 27894
jcauley@cauleypridgen.com
gdusablon@cauleypridgen.com

Kimberly S. Hibbard, Esq.
Gregory F. Schwitzgebel, III, Esq.
N.C. League of Municipalities
215 North Dawson Street
Raleigh, NC 27603
khibbard@nclm.org
gschwitz@nclm.org

Edward J. Coyne, III, Esq.
Ward and Smith, P.A.
P.O. Box 7068
Wilmington, NC 28406-7068
ejcoyne@wardandsmith.com

This the 3d day of March, 2016.

/s/ Electronically submitted
Matthew W. Sawchak

CONTENTS OF APPENDIX

News Articles

(c1) For a volunteer medical or health care provider who provides services at a free clinic to receive the protection from liability provided in this section, the free clinic shall provide the following notice to the patient, or person authorized to give consent for treatment, for the patient's retention prior to the delivery of health care services:

"NOTICE

Under North Carolina law, a volunteer medical or health care provider shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the medical or health care provider's voluntary provision of health care services unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the volunteer medical or health care provider."

(d) A nonprofit community health referral service that refers low-income patients to ~~physicians~~ medical or health care providers for free services is not liable for the acts or omissions of the ~~physician~~ medical or health care providers in rendering service to that patient if the nonprofit community health referral service maintains liability insurance covering the acts and omissions of the nonprofit health referral service and any liability pursuant to subsection (a) of this section.

(e) As used in this section, a "nonprofit community health referral service" is a nonprofit, 501(c)(3) tax-exempt organization organized to provide for no charge the referral of low-income, uninsured patients to volunteer health care providers who provide health care services without charge to patients."

SECTION 2. G.S. 90-21.102(2) reads as rewritten:

"(2) Free clinic. — A nonprofit, 501(c)(3) tax-exempt organization organized for the purpose of providing health care services without charge or for a minimum fee to cover administrative ~~costs~~ costs.~~and that maintains liability insurance covering the acts and omissions of the free clinic and any liability pursuant to G.S. 90-21.16(a).~~"

SECTION 3. This act becomes effective October 1, 2013, and applies to claims that arise on or after that date.

In the General Assembly read three times and ratified this the 6th day of May, 2013.

Became law upon approval of the Governor at 4:42 p.m. on the 13th day of May, 2013.

Session Law 2013-50 **H.B. 488**

AN ACT TO PROMOTE THE PROVISION OF REGIONAL WATER AND SEWER SERVICES BY TRANSFERRING OWNERSHIP AND OPERATION OF CERTAIN PUBLIC WATER AND SEWER SYSTEMS TO A METROPOLITAN WATER AND SEWERAGE DISTRICT.

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

Whereas, in an effort to ensure that the citizens and businesses of North Carolina are provided with the highest quality services, the State recognizes the value of regional solutions for public water and sewer for large public systems; Now, therefore,

The General Assembly of North Carolina enacts:

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

(1) The public water system is owned and operated by a municipality located in a county where a metropolitan sewerage district is operating.

(2) The public water system has not been issued a certificate for an interbasin transfer.

(3) The public water system serves a population greater than 120,000 people, according to data submitted pursuant to G.S. 143-355(l).

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

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

SECTION 1.(d) Until appointments are made to the Metropolitan Water and Sewerage District established pursuant to this act, the district board of the metropolitan sewerage district in the county in which the public water system, the assets of which are transferred pursuant to Section 1(a) of this act, is located shall function as the district board of the Metropolitan Water and Sewerage District. All members of the metropolitan sewerage district shall continue to serve on the district board of the Metropolitan Water and Sewerage District until the governing body with appointing authority appoints or replaces that individual on the district board of the Metropolitan Water and Sewerage District.

SECTION 1.(e) All necessary permits for operation shall also be transferred to the Metropolitan Water and Sewerage District established pursuant to this act to ensure that no current and paid customer loses services due to the regionalization of water and sewer services required by this act. The new Metropolitan Water and Sewerage District shall immediately begin assessing all permits and the process for transferring the permit or applying for any needed permits. All State agencies shall assist the new Metropolitan Water and Sewerage District in obtaining any needed permits in that entity's name.

SECTION 1.(f) For purposes of this section, the transfer of all outstanding debts by operation of law shall make the Metropolitan Water and Sewer District liable for all debts attached to and related to the assets transferred under this section, and the Metropolitan Water and Sewer District shall indemnify and hold harmless the grantor entity for any outstanding debts transferred under this section.

SECTION 2. Chapter 162A of the General Statutes is amended by adding a new Article to read:

"Article 5A.

"Metropolitan Water and Sewerage Districts.

"**§ 162A-85.1. Definitions.**

(a) Definitions. – As used in this Article, the following definitions shall apply:

(1) Board of commissioners. – The duly elected board of commissioners of the county or counties in which a metropolitan water and sewerage district shall be created under the provisions of this Article.

(2) City council or Council. – The duly elected city council of any municipality.

(3) Cost. – As defined in G.S. 162A-65.

(4) District. – A metropolitan water and sewerage district created under the provisions of this Article.

(5) District board. – A water and sewerage district board established under the provisions of this Article.

(6) General obligation bonds. – As defined in G.S. 162A-65.

(7) Governing body. – As defined in G.S. 162A-32.

(8) Person. – As defined in G.S. 162A-65.

(9) Political subdivision. – As defined in G.S. 162A-65.

(10) Revenue bonds. – Any bonds the principal of and the interest on which are payable solely from revenues of a water and sewerage system or systems.

(11) Revenues. – All moneys received by a district from, in connection with, or as a result of its ownership or operation of a water and sewerage system, including moneys received from the United States of America, or any agency thereof, pursuant to an agreement with the district board pertaining to the water and sewerage system, if deemed advisable by the district board.

(12) Sewage. – As defined in G.S. 162A-65.

(13) Sewage disposal system. – As defined in G.S. 162A-65.

(14) Sewerage system. – As defined in G.S. 162A-65.

(15) Sewers. – As defined in G.S. 162A-65.

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

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

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

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

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

(2) By metes and bounds.

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

(4) Any combination of the foregoing.

"**§ 162A-85.2. Creation.**

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

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

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

(3) The boundaries of the district board.

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

"**§ 162A-85.3. District board.**

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

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

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

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

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

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

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

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

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

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

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

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

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

"**§ 162A-85.4. Expansion of district board after creation.**

(a) After creation pursuant to G.S. 162A-85.2, the district board may expand to include other political subdivisions if the district board and the political subdivision adopt identical resolutions indicating the political subdivision will become a participant in the district board.

(b) Prior to adopting the resolution under subsection (a) of this section, the district board and the political subdivision shall hold at least two public hearings on the matter, held at least 30 days apart, after publication of the notices of public hearing in a newspaper of general circulation, published at least 10 days before each public hearing.

(c) Upon adoption of the identical resolutions, the political subdivision shall appoint a district member in accordance with G.S. 162A-85.3(a), if that political subdivision is entitled to an appointment under that section.

"**§ 162A-85.5. Powers generally.**

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

(1) To exercise any power of a Metropolitan Water District under G.S. 162A-36, except subdivision (9) of that section.

(2) To exercise any power of a Metropolitan Sewer District under G.S. 162A-69, except subdivision (9) of that section.

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

(b) Each district shall keep its accounts on the basis of a fiscal year commencing on the first day of July and ending on the 30th day of June of the following year.

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

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

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

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

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

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

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

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

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

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

(1) Subject to the approval of the Local Government Commission regarding the disposition of any outstanding debt related to the water system or sewer system, or both, to transfer jurisdiction over and to lease, lend, sell, grant, or convey to a district, upon such terms and conditions as the governing body of such political subdivision may agree upon with the district board, the whole or any part of any existing water system or systems or sewerage system or systems or such real or personal property as may be necessary or useful in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance, or

operation of any water system or sewerage system by the district, including public roads and other property already devoted to public use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) This section shall not apply to renovations, repairs, or regular maintenance of water systems or sewer systems.

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

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

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

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

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

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

"§ 162A-85.29. No privatization.

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

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

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

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

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

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

"(1) "Municipality" means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, metropolitan water and sewerage district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, special district created under Article 43 of

Chapter 105 of the General Statutes, regional public transportation authority, regional transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, a joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, and the North Carolina Turnpike Authority described in Article 6H of Chapter 136 of the General Statutes and transferred to the Department of Transportation pursuant to G.S. 136-89.182(b), but not any other forms of State or local government."

SECTION 5.5. Article 5 of Chapter 162A of the General Statutes is amended by adding a new section to read:

"**§ 162A-66.5. Approval of all political subdivisions required.**

Prior to the adoption of a resolution under G.S. 162A-66 on or after April 1, 2013, the Environmental Management Commission shall receive a resolution supporting the establishment of a district board from (i) the board of commissioners of the county or counties lying wholly or partly within the boundaries of the proposed district and (ii) from the governing board of each political subdivision in the county or counties lying wholly or partly within the boundaries of the proposed district. If the Environmental Management Commission does not receive a resolution from each of those political subdivisions, the Environmental Management Commission may not adopt the resolution to create the district board."

SECTION 6. This act becomes effective May 15, 2013, and the Metropolitan Water and Sewerage District in Section 1 of this act shall be created by operation of law.

In the General Assembly read three times and ratified this the 2nd day of May, 2013.

Became law on the date it was ratified.

Session Law 2013-51 **H.B. 484**

AN ACT TO ESTABLISH A PERMITTING PROGRAM FOR THE SITING AND OPERATION OF WIND ENERGY FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 21C.

"Permitting of Wind Energy Facilities.

"**§ 143-215.115. Definitions.**

In addition to the definitions set forth in G.S. 143-212, the following definitions apply to this Article:

(1) "Major military installation" means Fort Bragg, Pope Army Airfield, Marine Corps Base Camp Lejeune, New River Marine Corps Air Station, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the United States Coast Guard Air Station at Elizabeth City, Naval Support Activity Northwest, Air Route Surveillance Radar (ARSR-4) at Fort Fisher, and Seymour Johnson Air Force Base, in its own right and as the responsible entity for the Dare County Bombing Range, and any facility located within the State that is subject to the installations' oversight and control.

(2) "Wind energy facility" means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of one megawatt or more of energy.

"(g) For purposes of enforcing this Chapter and Article 34 of Chapter 66 of the General Statutes, the following provisions are applicable:

(1) ~~the law~~ Law enforcement agents of the Department of the Secretary of State have statewide jurisdiction and have all of the powers and authority of law enforcement officers. The agents have the authority to assist local law enforcement agencies in their investigations and to initiate and carry out, on their own or in coordination with local law enforcement agencies, investigations of violations.

(2) Any party to a transaction requiring a notarial certificate for verification and any attorney licensed in this State who is involved in such a transaction in any capacity, whether or not the attorney is representing one of the parties to the transaction, may execute an affidavit and file it with the Secretary of State, setting forth the actions which the affiant alleges constitute violations. Upon receipt of the affidavit, law enforcement agents of the Department shall initiate and carry out, on their own or in coordination with local law enforcement agencies, investigations of violations."

SECTION 6. Sections 1 and 3 of this act become effective September 1, 2013. Section 2 of this act becomes effective July 1, 2014. Section 5 of this act is effective when it becomes law and applies to notarial acts and omissions occurring on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of July, 2013.

Became law upon approval of the Governor at 10:46 a.m. on the 23rd day of August, 2013.

Session Law 2013-388 **S.B. 341**

AN ACT TO ESTABLISH AN EXPEDITED PROCESS FOR THE MODIFICATION OF INTERBASIN TRANSFER CERTIFICATES AND FOR THE ISSUANCE OF INTERBASIN TRANSFER CERTIFICATES IN THE CENTRAL COASTAL PLAIN CAPACITY USE AREA AND THE COASTAL AREA COUNTIES AND TO AMEND S.L. 2013-50, AN ACT TO PROMOTE THE PROVISION OF REGIONAL WATER AND SEWER SERVICES BY TRANSFERRING OWNERSHIP AND OPERATION OF CERTAIN PUBLIC WATER AND SEWER SYSTEMS TO A METROPOLITAN WATER AND SEWERAGE DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.22G reads as rewritten:

"§ **143-215.22G. Definitions.**

In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following definitions apply to this Part.

(1) "River basin" means any of the following river basins designated on the map entitled "Major River Basins and Sub-basins in North Carolina" and filed in the Office of the Secretary of State on 16 April 1991. The term "river basin" includes any portion of the river basin that extends into another state. Any area outside North Carolina that is not included in one of the river basins listed in this subdivision comprises a separate river basin.

a.	1-1	Broad River.
b.	2-1	Haw River.
c.	2-2	Deep River.
d.	2-3	Cape Fear River.
e.	2-4	South River.
f.	2-5	Northeast Cape Fear River.

g.	2-6	New River.
h.	3-1	Catawba River.
i.	3-2	South Fork Catawba River.
j.	4-1	Chowan River.
k.	4-2	Meherrin River.
l.	5-1	Nolichucky River.
m.	5-2	French Broad River.
n.	5-3	Pigeon River.
o.	6-1	Hiwassee River.
p.	7-1	Little Tennessee River.
q.	7-2	Tuskasegee (Tuckasegee) River.
r.	8-1	Savannah River.
s.	9-1	Lumber River.
t.	9-2	Big Shoe Heel Creek.
u.	9-3	Waccamaw River.
v.	9-4	Shallotte River.
w.	10-1	Neuse River.
x.	10-2	Contentnea Creek.
y.	10-3	Trent River.
z.	11-1	New River.
aa.	12-1	Albemarle Sound.
bb.	13-1	Ocoee River.
cc.	14-1	Roanoke River.
dd.	15-1	Tar River.
ee.	15-2	Fishing Creek.
ff.	15-3	Pamlico River and Sound.
gg.	16-1	Watauga River.
hh.	17-1	White Oak River.
ii.	18-1	Yadkin (Yadkin-Pee Dee) River.
jj.	18-2	South Yadkin River.
kk.	18-3	Uwharrie River.
ll.	18-4	Rocky River.

(2) "Surface water" means any of the waters of the State located on the land surface that are not derived by pumping from groundwater.

(3) "Transfer" means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin. However, notwithstanding the basin definitions in G.S. 143-215.22G(1), the following are not transfers under this Part:

a. The discharge of water upstream from the point where it is withdrawn.

b. The discharge of water downstream from the point where it is withdrawn.

(4) "Public water system" means any unit of local government or large community water system subject to the requirements of G.S. 143-355(l).

(5) "Mainstem" means that portion of a river having the same name as a river basin defined in subdivision (1) of this section. "Mainstem" does not include named or unnamed tributaries."

SECTION 2. G.S. 143-215.22L reads as rewritten:

"§ **143-215.22L. Regulation of surface water transfers.**

(a) Certificate Required. – No person, without first obtaining a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per ~~day~~ day, calculated as a daily average of a calendar month and not to exceed 3,000,000 gallons per day in any one day, from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending 1 July 1993 if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to 1 July 1993.

(b) Exception. – Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was in existence or under construction on 1 July 1993.

(c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of intent to file a petition that includes a nontechnical description of the applicant's request and an identification of the proposed water source. Within 90 days after the applicant files a notice of intent to file a petition, the applicant shall hold at least one public meeting in the source river basin upstream from the proposed point of withdrawal, at least one public meeting in the source river basin downstream from the proposed point of withdrawal, and at least one public meeting in the receiving river basin to provide information to interested parties and the public regarding the nature and extent of the proposed transfer and to receive comment on the scope of the environmental documents. Written notice of the public meetings shall be provided at least 30 days before the public meetings. At the time the applicant gives notice of the public meetings, the applicant shall request comment on the alternatives and issues that should be addressed in the environmental documents required by this section. The applicant shall accept written comment on the scope of the environmental documents for a minimum of 30 days following the last public meeting. Notice of the public meetings and opportunity to comment on the scope of the environmental documents shall be provided as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in:

a. Each county in this State located in whole or in part of the area of the source river basin upstream from the proposed point of withdrawal.

b. Each city or county located in a state located in whole or in part of the surface drainage basin area of the source river basin that also falls within, in whole or in part, the area denoted by one of the following eight-digit cataloging units as organized by the United States Geological Survey:

03050105 (Broad River: NC and SC);
03050106 (Broad River: SC);
03050107 (Broad River: SC);
03050108 (Broad River: SC);
05050001 (New River: NC and VA);
05050002 (New River: VA and WV);
03050101 (Catawba River: NC and SC);
03050103 (Catawba River: NC and SC);
03050104 (Catawba River: SC);
03010203 (Chowan River: NC and VA);
03010204 (Chowan River: NC and VA);
06010105 (French Broad River: NC and TN);
06010106 (French Broad River: NC and TN);
06010107 (French Broad River: TN);
06010108 (French Broad River: NC and TN);

06020001 (Hiwassee River: AL, GA, TN);
06020002 (Hiwassee River: GA, NC, TN);
06010201 (Little Tennessee River: TN);
06010202 (Little Tennessee River: TN, GA, and NC);
06010204 (Little Tennessee River: NC and TN);
03060101 (Savannah River: NC and SC);
03060102 (Savannah River: GA, NC, and SC);
03060103 (Savannah River: GA and SC);
03060104 (Savannah River: GA);
03060105 (Savannah River: GA);
03040203 (Lumber River: NC and SC);
03040204 (Lumber River: NC and SC);
03040206 (Lumber River: NC and SC);
03040207 (Lumber River: NC and SC);
03010205 (Albemarle Sound: NC and VA);
06020003 (Ocoee River: GA, NC, and TN);
03010101 (Roanoke River: VA);
03010102 (Roanoke River: NC and VA);
03010103 (Roanoke River: NC and VA);
03010104 (Roanoke River: NC and VA);
03010105 (Roanoke River: VA);
03010106 (Roanoke River: NC and VA);
06010102 (Watauga River: TN and VA);
06010103 (Watauga River: NC and TN);
03040101 (Yadkin River: VA and NC);
03040104 (Yadkin River: NC and SC);
03040105 (Yadkin River: NC and SC);
03040201 (Yadkin River: NC and SC);
03040202 (Yadkin River: NC and SC).

c. Each county in this State located in whole or in part of the area of the source river basin downstream from the proposed point of withdrawal.

d. Any area in the State in a river basin for which the source river basin has been identified as a future source of water in a local water supply plan prepared pursuant to G.S. 143-355(l).

e. Each county in the State located in whole or in part of the receiving river basin.

(3) By giving notice by first-class mail or electronic mail to each of the following:

a. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the source river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

b. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the receiving river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

c. The governing body of any public water ~~supply~~system that withdraws water upstream or downstream from the withdrawal point of the proposed transfer.

d. If any portion of the source or receiving river basins is located in another state, all state water management or use agencies, environmental protection agencies, and the office of the governor in that state upstream or downstream from the withdrawal point of the proposed transfer.

e. All persons who have registered a water withdrawal or transfer from the proposed source river basin under this Part or under similar law in an another state.

f. All persons who hold a certificate for a transfer of water from the proposed source river basin under this Part or under similar law in an another state.

g. All persons who hold a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit for a discharge of 100,000 gallons per day or more upstream or downstream from the proposed point of withdrawal.

h. To any other person who submits to the applicant a written request to receive all notices relating to the petition.

(d) Environmental Documents. – The definitions set out in G.S. 113A-9 apply to this section. The Department shall conduct a study of the environmental impacts of any proposed transfer of water for which a certificate is required under this section. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. An environmental assessment shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes; except that an environmental impact statement shall be prepared for every proposed transfer of water from one major river basin to another for which a certificate is required under this section. The applicant who petitions the Commission for a certificate under this section shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes. An environmental impact statement prepared pursuant to this subsection shall include all of the following:

(1) A comprehensive analysis of the impacts that would occur in the source river basin and the receiving river basin if the petition for a certificate is granted.

(2) An evaluation of alternatives to the proposed interbasin transfer, including water supply sources that do not require an interbasin transfer and use of water conservation measures.

(3) A description of measures to mitigate any adverse impacts that may arise from the proposed interbasin transfer.

(e) Public Hearing on the Draft Environmental Document. – The Commission shall hold a public hearing on the draft environmental document for a proposed interbasin transfer after giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate where a copy of the environmental document can be reviewed and the procedure to be followed by anyone wishing to submit written comments and questions on the environmental document. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The Commission shall accept written comment on the draft environmental document for a minimum of 30 days following the last public hearing. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft environmental document.

(f) Determination of Adequacy of Environmental Document. – The Commission shall not act on any petition for an interbasin transfer until the Commission has determined that the environmental document is complete and adequate. A decision on the adequacy of the environmental document is subject to review in a contested case on the decision of the Commission to issue or deny a certificate under this section.

(g) Petition. – An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include all of the following:

(1) A general description of the facilities to be used to transfer the water, ~~including the location and capacity of water intakes, pumps, pipelines, and other facilities.~~including current and projected areas to be served by the transfer, current and projected capacities of intakes, and other relevant facilities.

(2) A description of all the proposed consumptive and nonconsumptive uses of the water to be transferred.

(3) A description of the water quality of the source river and receiving river, including information on aquatic habitat for rare, threatened, and endangered species; in-stream flow data for segments of the source and receiving rivers that may be affected by the transfer; and any waters that are impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).

(4) A description of the water conservation measures used by the applicant at the time of the petition and any additional water conservation measures that the applicant will implement if the certificate is granted.

(5) A description of all sources of water within the receiving river basin, including surface water impoundments, groundwater wells, reinjection storage, and purchase of water from another source within the river basin, that is a practicable alternative to the proposed transfer that would meet the applicant's water supply needs. The description of water sources shall include sources available at the time of the petition for a certificate and any planned or potential water sources.

(6) A description of water transfers and withdrawals registered under G.S. 143-215.22H or included in a local water supply plan prepared pursuant to G.S. 143-355(l) from the source river basin, including transfers and withdrawals at the time of the petition for a certificate and any planned or reasonably foreseeable transfers or withdrawals by a public water system with service area located within the source river basin.

(7) A demonstration that the proposed transfer, if added to all other transfers and withdrawals required to be registered under G.S. 143-215.22H or included in any local water supply plan prepared by a public water system with service area located within the source basin pursuant to G.S. 143-355(l) from the source river basin at the time of the petition for a certificate, would not reduce the amount of water available for use in the source river basin to a degree that would impair existing uses, pursuant to the antidegradation policy set out in 40 Code of Federal Regulation § 131.12 (Antidegradation Policy) (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto, or existing and planned consumptive and nonconsumptive uses of the water in the source river basin. If the proposed transfer would impact a reservoir within the source river basin, the demonstration must include a finding that the transfer would not result in a water level in the reservoir that is inadequate to support existing uses of the reservoir, including recreational uses.

(8) The applicant's future water supply needs and the present and reasonably foreseeable future water supply needs for public water systems with service

area located within the source river basin. The analysis of future water supply needs shall include agricultural, recreational, and industrial uses, and electric power generation. Local water supply plans prepared pursuant to G.S. 143-355(l) for water systems with service area located within the source river basin shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems.

(9) The applicant's water supply plan prepared pursuant to G.S. 143-355(l). If the applicant's water supply plan is more than two years old at the time of the petition, then the applicant shall include with the petition an updated water supply plan.

(10) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(h) Settlement Discussions. – Upon the request of the applicant, any interested party, or the Department, or upon its own motion, the Commission may appoint a mediation officer. The mediation officer may be a member of the Commission, an employee of the Department, or a neutral third party but shall not be a hearing officer under subsections (e) or (j) of this section. The mediation officer shall make a reasonable effort to initiate settlement discussions between the applicant and all other interested parties. Evidence of statements made and conduct that occurs in a settlement discussion conducted under this subsection, whether attributable to a party, a mediation officer, or other person shall not be subject to discovery and shall be inadmissible in any subsequent proceeding on the petition for a certificate. The Commission may adopt rules to govern the conduct of the mediation process.

(i) Draft Determination. – Within 90 days after the Commission determines that the environmental document prepared in accordance with subsection (d) of this section is adequate or the applicant submits its petition for a certificate, whichever occurs later, the Commission shall issue a draft determination on whether to grant the certificate. The draft determination shall be based on the criteria set out in this section and shall include the conditions and limitations, findings of fact, and conclusions of law that would be required in a final determination. Notice of the draft determination shall be given as provided in subsection (c) of this section.

(j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the draft determination as provided in subsection (i) of this section, the Commission shall hold public hearings on the draft determination. At least one hearing shall be held in the affected area of the source river basin, and at least one hearing shall be held in the affected area of the receiving river basin. In determining whether more than one public hearing should be held within either the source or receiving river basins, the Commission shall consider the differing or conflicting interests that may exist within the river basins, including the interests of both upstream and downstream parties potentially affected by the proposed transfer. The public hearings shall be conducted by one or more hearing officers appointed by the Chair of the Commission. The hearing officers may be members of the Commission or employees of the Department. The Commission shall give at least 30 days' written notice of the public hearing as provided in subsection (c) of this section. The Commission shall accept written comment on the draft determination for a minimum of 30 days following the last public hearing. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft determination.

(k) Final Determination: Factors to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact and conclusions of law with regard to each item:

(1) The necessity and reasonableness of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans for public water systems with service area located within the source river basin prepared pursuant to G.S. 143-355(l) shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems. Information on projected future water needs for public water systems with service area located within the source river basin that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the source river basin.

(3) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the petition for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan for public water systems with service area located within the source river basin that has been submitted to the Department in accordance with G.S. 143-355(l).

(4) The present and reasonably foreseeable future beneficial and detrimental effects on the receiving river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans prepared pursuant to G.S. 143-355(l) that affect the receiving river basin shall be used to evaluate the projected future water needs in the receiving river basin that will be met by public water systems. Information on projected future water needs that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the receiving river basin.

(5) The availability of reasonable alternatives to the proposed transfer, including the potential capacity of alternative sources of water, the potential of each alternative to reduce the amount of or avoid the proposed transfer, probable costs, and environmental impacts. In considering alternatives, the Commission is not limited to consideration of alternatives that have been proposed, studied, or considered by the applicant. The determination shall include a specific finding as to why the applicant's need for water cannot be satisfied by alternatives within the receiving basin, including unused capacity under a transfer for which a certificate is in effect or that is otherwise authorized by law at the time the applicant submits the petition. The determination shall consider the extent to which access to potential sources of surface water or groundwater within the receiving river basin is no longer available due to depletion, contamination, or the declaration of a capacity use area under Part 2 of Article 21 of Chapter 143 of the General Statutes. The determination shall consider the feasibility of the applicant's purchase of water from other water suppliers within the receiving basin and of the transfer of water from another sub-basin within the receiving major river basin. Except in circumstances of technical or economic infeasibility or

adverse environmental impact, the Commission's determination as to reasonable alternatives shall give preference to alternatives that would involve a transfer from one sub-basin to another within the major receiving river basin over alternatives that would involve a transfer from one major river basin to another major river basin.

(6) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(7) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(8) Whether the service area of the applicant is located in both the source river basin and the receiving river basin.

(9) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(l) Final Determination: Information to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall consider all of the following sources of information:

(1) The petition.

(2) The environmental document prepared pursuant to subsection (d) of this section.

(3) All oral and written comment and all accompanying materials or evidence submitted pursuant to subsections (e) and (j) of this section.

(4) Information developed by or available to the Department on the water quality of the source river basin and the receiving river basin, including waters that are identified as impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)), that are subject to a total maximum daily load (TMDL) limit under subsections (d) and (e) of section 303 of the federal Clean Water Act, or that would have their assimilative capacity impaired if the certificate is issued.

(5) Any other information that the Commission determines to be relevant and useful.

(m) Final Determination: Burden and Standard of Proof; Specific Findings. – The Commission shall grant a certificate for a water transfer if the Commission finds that the applicant has established by a preponderance of the evidence all of the following:

(1) The benefits of the proposed transfer outweigh the detriments of the proposed transfer. In making this determination, the Commission shall be guided by the approved environmental document and the policy set out in subsection (t) of this section.

(2) The detriments have been or will be mitigated to the maximum degree practicable.

(3) The amount of the transfer does not exceed the amount of the projected shortfall under the applicant's water supply plan after first taking into account all other sources of water that are available to the applicant.

(4) There are no reasonable alternatives to the proposed transfer.

(n) Final Determination: Certificate Conditions and Limitations. – The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may impose any conditions or limitations on a certificate that the Commission finds necessary to achieve the purposes of this Part including a limit on the period for which the certificate is valid. The conditions and limitations shall include any mitigation measures proposed by the

applicant to minimize any detrimental effects within the source and receiving river basins. In addition, the certificate shall require all of the following conditions and limitations:

(1) A water conservation plan that specifies the water conservation measures that will be implemented by the applicant in the receiving river basin to ensure the efficient use of the transferred water. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the water conservation plan shall provide for the mandatory implementation of water conservation measures by the applicant that equal or exceed the most stringent water conservation plan implemented by a ~~community water system, as defined in G.S. 143-355(l),~~ public water system that withdraws water from the source river basin.

(2) A drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions or other emergencies that occur within the source river basin. Except in circumstances of technical or economic infeasibility or adverse environmental impact, this drought management plan shall include mandatory reductions in the permitted amount of the transfer based on the severity and duration of a drought occurring within the source river basin and shall provide for the mandatory implementation of a drought management plan by the applicant that equals or exceeds the most stringent water conservation plan implemented by a ~~community water system, as defined in G.S. 143-355(l),~~public water system that withdraws water from the source river basin.

(3) The maximum amount of water that may be ~~transferred on a daily basis,~~transferred, calculated as a daily average of a calendar month, and methods or devices required to be installed and operated that measure the amount of water that is transferred.

(4) A provision that the Commission may amend a certificate to reduce the maximum amount of water authorized to be transferred whenever it appears that an alternative source of water is available to the certificate holder from within the receiving river basin, including, but not limited to, the purchase of water from another water supplier within the receiving basin or to the transfer of water from another sub-basin within the receiving major river basin.

(5) A provision that the Commission shall amend the certificate to reduce the maximum amount of water authorized to be transferred if the Commission finds that the applicant's current projected water needs are significantly less than the applicant's projected water needs at the time the certificate was granted.

(6) A requirement that the certificate holder report the quantity of water transferred during each calendar quarter. The report required by this subdivision shall be submitted to the Commission no later than 30 days after the end of the quarter.

(7) Except as provided in this subdivision, a provision that the applicant will not resell the water that would be transferred pursuant to the certificate to another public water ~~supply~~ system. This limitation shall not apply in the case of a proposed resale or transfer among public water ~~supply~~ systems within the receiving river basin as part of an interlocal agreement or other regional water supply arrangement, provided that each participant in the interlocal agreement or regional water supply arrangement is a co-applicant for the certificate and will be subject to all the terms, conditions, and limitations made applicable to any lead or primary applicant.

(o) Administrative and Judicial Review. – Administrative and judicial review of a final decision on a petition for a certificate under this section shall be governed by Chapter 150B of the General Statutes.

(p) Certain Preexisting Transfers. – In cases where an applicant requests approval to increase a transfer that existed on 1 July 1993, the Commission may approve or disapprove only the amount of the increase. If the Commission approves the increase, the certificate shall be issued for the amount of the preexisting transfer plus any increase approved by the Commission. A certificate for a transfer approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part. A certificate for the increase of a preexisting transfer shall contain all of the conditions and limitations required by subsection (m) of this section.

(q) Emergency Transfers. – In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health, safety, or welfare requires a transfer of water, the Secretary of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary shall consult with those parties listed in subdivision (3) of subsection (c) of this section that are likely to be affected by the proposed transfer. However, the Secretary shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions of law in approving a temporary transfer under this subsection. If the Secretary approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary based on demonstrated need as set forth in this subsection.

(r) Relationship to Federal Law. – The substantive restrictions, conditions, and limitations upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government. This section shall govern the transfer of water from one river basin to another unless preempted by federal law.

(s) Planning Requirements. – When any transfer for which a certificate was issued under this section equals or exceeds eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S.143-355(l). When the transfer equals or exceeds ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(t) Statement of Policy. – It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. It is the public policy of this State that the reasonably foreseeable future water needs of a public water system with its service area located primarily in the receiving river basin are subordinate to the reasonably foreseeable future water needs of a public water system with its service area located primarily in the source river basin. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto.

~~(u) Renewal of Certificate. – A petition to extend or renew a certificate shall be treated as a new petition.~~

(v) Modification of Certificate. – A certificate may be modified as provided in this subsection.

(1) The Commission or the Department may make any of the following modifications to a certificate after providing electronic notice to persons who have identified themselves in writing as interested parties:

a. Correction of typographical errors.
b. Clarification of existing conditions or language.
c. Updates, requested by the certificate holder, to a conservation plan, drought management plan, or compliance and monitoring plan.
d. Modifications requested by the certificate holder to reflect altered requirements due to the amendment of this section.

(2) A person who holds a certificate for an interbasin transfer of water may request that the Commission modify the certificate. The request shall be considered and a determination made according to the following procedures:

a. The certificate must have been issued pursuant to G.S. 162A-7, 143-215.22I, or 143-215.22L and the certificate holder must be in substantial compliance with the certificate.
b. The certificate holder shall file a notice of intent to file a request for modification that includes a nontechnical description of the certificate holder's request and identification of the proposed water source.
c. The certificate holder shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required for the modification of a certificate unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.
d. Upon determining that the documentation submitted by the certificate holder is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the request for modification in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the request for the modification and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The certificate holder who petitions the Commission for a modification under this subdivision shall pay the costs associated with the notice and public hearing.
e. The Department shall accept comments on the requested modification for a minimum of 30 days following the public hearing.
f. The Commission or the Department may require the certificate holder to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.
g. The Commission shall make a final determination whether to grant the requested modification based on the factors set out in subsection (k) of this section, information provided by the certificate holder, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.
h. The Commission shall grant the requested modification if it finds that the certificate holder has established by a preponderance of the evidence that the requested modification satisfies the requirements of subsection (m) of this section. The Commission may grant the requested modification in whole or in part, or deny the request, and may impose such limitations and conditions on the modified certificate as it deems necessary and relevant to the modification.

i. The Commission shall not grant a request for modification if the modification would result in the transfer of water to an additional major river basin.

j. The Commission shall not grant a request for modification if the modification would be inconsistent with the December 3, 2010 Settlement Agreement entered into between the State of North Carolina, the State of South Carolina, Duke Energy Carolinas, and the Catawba River Water Supply Project.

(w) Requirements for Coastal Counties. – A petition for a certificate to transfer surface water to supplement ground water supplies in the 15 counties designated as the Central Capacity Use Area under 15A NCAC 2E .0501, or to transfer surface water withdrawn from the mainstem of a river to provide service to one of the coastal area counties designated pursuant to G.S. 113A-103, shall be considered and a determination made according to the following procedures:

(1) The applicant shall file a notice of intent that includes a nontechnical description of the applicant's request and identification of the proposed water source.

(2) The applicant shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

(3) Upon determining that the documentation submitted by the applicant is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the petition in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the petition and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The applicant who petitions the Commission for a certificate under this subdivision shall pay the costs associated with the notice and public hearing.

(4) The Department shall accept comments on the petition for a minimum of 30 days following the public hearing.

(5) The Commission or the Department may require the applicant to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

(6) The Commission shall make a final determination whether to grant the certificate based on the factors set out in subsection (k) of this section, information provided by the applicant, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

(7) The Commission shall grant the certificate if it finds that the applicant has established by a preponderance of the evidence that the petition satisfies the requirements of subsection (m) of this section. The Commission may grant the certificate in whole or in part, or deny the request, and may impose such limitations and conditions on the certificate as it deems necessary and relevant."

SECTION 3.(a) Section 1 of S.L. 2011-298 reads as rewritten:

"**SECTION 1.** Notwithstanding G.S. 143-215.22I and G.S. 143-215.22L, a certificate issued pursuant to G.S. 143-215.22L is not required for a transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501."

SECTION 3.(b) Section 4 of S.L. 2011-298 reads as rewritten:

"**SECTION 4.(a)** This act is effective when it becomes law and applies to any transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated on or after August 31, 2007.

"**SECTION 4.(b)** Section 1 of this act shall expire if the cumulative volume of water ~~transfers~~ transfers, by public water supply systems sharing a single intake, from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated on or after August 31, 2007, by any person that does not hold a certificate for an interbasin transfer on or before the effective date of this act, exceeds 8,000,000 gallons per day.

"**SECTION 4.(c)** Any transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated while Section 1 of this act is effective shall not require certification pursuant to G.S. 143-215.22L upon expiration of Section 1 of this act."

SECTION 3.(c) Section 7 of S.L. 2007-518, as amended by Section 4 of S.L. 2010-155 and Section 2 of S.L. 2011-298, reads as rewritten:

"~~**SECTION 7.(a)** Except as provided in subsections (b), (c) and (d) of this section, this~~ **SECTION 7.** This act becomes effective when it becomes law and applies to any petition for a certificate for a transfer of surface water from one river basin to another river basin first made on or after that date.

~~"**SECTION 7.(c)** For purposes of this subsection, "isolated river basin" means each of the following river basins set out in G.S. 143-215.22G(1):~~

~~g.~~	~~2-6~~	~~New River.~~
~~v.~~	~~9-4~~	~~Shallotte River.~~
~~aa.~~	~~12-1~~	~~Albemarle Sound.~~
~~hh.~~	~~17-1~~	~~White Oak River.~~

~~For a petition for a certificate for transfer of surface water from a river basin to an isolated river basin, this act becomes effective 1 July 2020. Prior to 1 July 2020, a petition for a certificate for transfer of surface water from a river basin to an isolated river basin shall be considered and acted upon by the Environmental Management Commission pursuant to the procedures and standards set out in G.S. 143-215.22I on 1 July 2007.~~

~~"**SECTION 7.(d)** Notwithstanding subsection (c) of this section, an applicant for a certificate for transfer of surface water from a river basin to an isolated river basin may request that the applicant be subject to the certification process that would apply if the transfer was not into an isolated river basin.~~"

SECTION 4. Section 1(a)(2) of S.L. 2013-50 is repealed.

SECTION 5. S.L. 2013-50 is amended by adding a new section to read:

"**SECTION 1.(g)** For purposes of this section, a public water system shall not include any system that is operated simultaneously with a sewer system by the same public body, in conjunction with the provision of other utility services for its customers."

SECTION 6. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of July, 2013.

Became law upon approval of the Governor at 10:46 a.m. on the 23rd day of August, 2013.

Chapter 153A.

Counties.

§ 153A-275. Authority to operate public enterprises.

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

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

(1955, c. 370; 1957, c. 266, s. 3; 1961, c. 514, s. 1; c. 1001, s. 1; 1967, c. 462; 1971, c. 568; 1973, c. 822, s. 1; 1991 (Reg. Sess., 1992), c. 836, s. 2.)

Chapter 160A.

Cities and Towns.

§ 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.

(1971, c. 698, s. 1; 1973, c. 426, s. 51; 1975, c. 821, s. 5; 1979, 2nd Sess., c. 1247, s. 29; 1991 (Reg. Sess., 1992), c. 836, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 3

SENATE BILL 341
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/30/13
House Committee Substitute Favorable 7/15/13

Short Title: Amend Interbasin Transfer Law. (Public)

Sponsors:

Referred to:

March 19, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN EXPEDITED PROCESS FOR THE MODIFICATION OF INTERBASIN TRANSFER CERTIFICATES AND FOR THE ISSUANCE OF INTERBASIN TRANSFER CERTIFICATES IN THE CENTRAL COASTAL PLAIN CAPACITY USE AREA AND THE COASTAL AREA COUNTIES AND TO AMEND S.L. 2013-50, AN ACT TO PROMOTE THE PROVISION OF REGIONAL WATER AND SEWER SERVICES BY TRANSFERRING OWNERSHIP AND OPERATION OF CERTAIN PUBLIC WATER AND SEWER SYSTEMS TO A METROPOLITAN WATER AND SEWERAGE DISTRICT.

The General Assembly of North Carolina enacts:

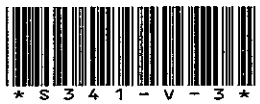
SECTION 1. G.S. 143-215.22G reads as rewritten:

"**§ 143-215.22G. Definitions.**

In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following definitions apply to this Part.

(1) "River basin" means any of the following river basins designated on the map entitled "Major River Basins and Sub-basins in North Carolina" and filed in the Office of the Secretary of State on 16 April 1991. The term "river basin" includes any portion of the river basin that extends into another state. Any area outside North Carolina that is not included in one of the river basins listed in this subdivision comprises a separate river basin.

a.	1-1	Broad River.
b.	2-1	Haw River.
c.	2-2	Deep River.
d.	2-3	Cape Fear River.
e.	2-4	South River.
f.	2-5	Northeast Cape Fear River.
g.	2-6	New River.
h.	3-1	Catawba River.
i.	3-2	South Fork Catawba River.
j.	4-1	Chowan River.
k.	4-2	Meherrin River.
l.	5-1	Nolichucky River.
m.	5-2	French Broad River.
n.	5-3	Pigeon River.
o.	6-1	Hiwassee River.



p.	7-1	Little Tennessee River.
q.	7-2	Tuskasegee (Tuckasegee) River.
r.	8-1	Savannah River.
s.	9-1	Lumber River.
t.	9-2	Big Shoe Heel Creek.
u.	9-3	Waccamaw River.
v.	9-4	Shallotte River.
w.	10-1	Neuse River.
x.	10-2	Contentnea Creek.
y.	10-3	Trent River.
z.	11-1	New River.
aa.	12-1	Albemarle Sound.
bb.	13-1	Ocoee River.
cc.	14-1	Roanoke River.
dd.	15-1	Tar River.
ee.	15-2	Fishing Creek.
ff.	15-3	Pamlico River and Sound.
gg.	16-1	Watauga River.
hh.	17-1	White Oak River.
ii.	18-1	Yadkin (Yadkin-Pee Dee) River.
jj.	18-2	South Yadkin River.
kk.	18-3	Uwharrie River.
ll.	18-4	Rocky River.

(2) "Surface water" means any of the waters of the State located on the land surface that are not derived by pumping from groundwater.

(3) "Transfer" means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin. However, notwithstanding the basin definitions in G.S. 143-215.22G(1), the following are not transfers under this Part:

a. The discharge of water upstream from the point where it is withdrawn.

b. The discharge of water downstream from the point where it is withdrawn.

(4) "Public water system" means any unit of local government or large community water system subject to the requirements of G.S. 143-355(l).

(5) "Mainstem" means that portion of a river having the same name as a river basin defined in subdivision (1) of this section. "Mainstem" does not include named or unnamed tributaries."

SECTION 2. G.S. 143-215.22L reads as rewritten:

"**§ 143-215.22L. Regulation of surface water transfers.**

(a) Certificate Required. – No person, without first obtaining a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per ~~day~~ day, calculated as a daily average of a calendar month and not to exceed 3,000,000 gallons per day in any one day, from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending 1 July 1993 if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to 1 July 1993.

(b) Exception. – Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was in existence or under construction on 1 July 1993.

(c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of intent to file a petition that includes a nontechnical description of the applicant's request and an identification of the proposed water source. Within 90 days after the applicant files a notice of intent to file a petition, the applicant shall hold at least one public meeting in the source river basin upstream from the proposed point of withdrawal, at least one public meeting in the source river basin downstream from the proposed point of withdrawal, and at least one public meeting in the receiving river basin to provide information to interested parties and the public regarding the nature and extent of the proposed transfer and to receive comment on the scope of the environmental documents. Written notice of the public meetings shall be provided at least 30 days before the public meetings. At the time the applicant gives notice of the public meetings, the applicant shall request comment on the alternatives and issues that should be addressed in the environmental documents required by this section. The applicant shall accept written comment on the scope of the environmental documents for a minimum of 30 days following the last public meeting. Notice of the public meetings and opportunity to comment on the scope of the environmental documents shall be provided as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in:

a. Each county in this State located in whole or in part of the area of the source river basin upstream from the proposed point of withdrawal.

b. Each city or county located in a state located in whole or in part of the surface drainage basin area of the source river basin that also falls within, in whole or in part, the area denoted by one of the following eight-digit cataloging units as organized by the United States Geological Survey:

03050105 (Broad River: NC and SC);
03050106 (Broad River: SC);
03050107 (Broad River: SC);
03050108 (Broad River: SC);
05050001 (New River: NC and VA);
05050002 (New River: VA and WV);
03050101 (Catawba River: NC and SC);
03050103 (Catawba River: NC and SC);
03050104 (Catawba River: SC);
03010203 (Chowan River: NC and VA);
03010204 (Chowan River: NC and VA);
06010105 (French Broad River: NC and TN);
06010106 (French Broad River: NC and TN);
06010107 (French Broad River: TN);
06010108 (French Broad River: NC and TN);
06020001 (Hiwassee River: AL, GA, TN);
06020002 (Hiwassee River: GA, NC, TN);
06010201 (Little Tennessee River: TN);
06010202 (Little Tennessee River: TN, GA, and NC);
06010204 (Little Tennessee River: NC and TN);

03060101 (Savannah River: NC and SC);
03060102 (Savannah River: GA, NC, and SC);
03060103 (Savannah River: GA and SC);
03060104 (Savannah River: GA);
03060105 (Savannah River: GA);
03040203 (Lumber River: NC and SC);
03040204 (Lumber River: NC and SC);
03040206 (Lumber River: NC and SC);
03040207 (Lumber River: NC and SC);
03010205 (Albemarle Sound: NC and VA);
06020003 (Ocoee River: GA, NC, and TN);
03010101 (Roanoke River: VA);
03010102 (Roanoke River: NC and VA);
03010103 (Roanoke River: NC and VA);
03010104 (Roanoke River: NC and VA);
03010105 (Roanoke River: VA);
03010106 (Roanoke River: NC and VA);
06010102 (Watauga River: TN and VA);
06010103 (Watauga River: NC and TN);
03040101 (Yadkin River: VA and NC);
03040104 (Yadkin River: NC and SC);
03040105 (Yadkin River: NC and SC);
03040201 (Yadkin River: NC and SC);
03040202 (Yadkin River: NC and SC).

c. Each county in this State located in whole or in part of the area of the source river basin downstream from the proposed point of withdrawal.

d. Any area in the State in a river basin for which the source river basin has been identified as a future source of water in a local water supply plan prepared pursuant to G.S. 143-355(l).

e. Each county in the State located in whole or in part of the receiving river basin.

(3) By giving notice by first-class mail or electronic mail to each of the following:

a. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the source river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

b. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the receiving river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

c. The governing body of any public water ~~supply~~ system that withdraws water upstream or downstream from the withdrawal point of the proposed transfer.

d. If any portion of the source or receiving river basins is located in another state, all state water management or use agencies, environmental protection agencies, and the office of the governor in that state upstream or downstream from the withdrawal point of the proposed transfer.

e. All persons who have registered a water withdrawal or transfer from the proposed source river basin under this Part or under similar law in an another state.

f. All persons who hold a certificate for a transfer of water from the proposed source river basin under this Part or under similar law in an another state.

g. All persons who hold a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit for a discharge of 100,000 gallons per day or more upstream or downstream from the proposed point of withdrawal.

h. To any other person who submits to the applicant a written request to receive all notices relating to the petition.

(d) Environmental Documents. – The definitions set out in G.S. 113A-9 apply to this section. The Department shall conduct a study of the environmental impacts of any proposed transfer of water for which a certificate is required under this section. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. An environmental assessment shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes; except that an environmental impact statement shall be prepared for every proposed transfer of water from one major river basin to another for which a certificate is required under this section. The applicant who petitions the Commission for a certificate under this section shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes. An environmental impact statement prepared pursuant to this subsection shall include all of the following:

(1) A comprehensive analysis of the impacts that would occur in the source river basin and the receiving river basin if the petition for a certificate is granted.

(2) An evaluation of alternatives to the proposed interbasin transfer, including water supply sources that do not require an interbasin transfer and use of water conservation measures.

(3) A description of measures to mitigate any adverse impacts that may arise from the proposed interbasin transfer.

(e) Public Hearing on the Draft Environmental Document. – The Commission shall hold a public hearing on the draft environmental document for a proposed interbasin transfer after giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate where a copy of the environmental document can be reviewed and the procedure to be followed by anyone wishing to submit written comments and questions on the environmental document. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The Commission shall accept written comment on the draft environmental document for a minimum of 30 days following the last public hearing. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft environmental document.

(f) Determination of Adequacy of Environmental Document. – The Commission shall not act on any petition for an interbasin transfer until the Commission has determined that the environmental document is complete and adequate. A decision on the adequacy of the environmental document is subject to review in a contested case on the decision of the Commission to issue or deny a certificate under this section.

(g) Petition. – An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include all of the following:

(1) A general description of the facilities to be used to transfer the water, ~~including the location and capacity of water intakes, pumps, pipelines, and other facilities.~~including current and projected areas to be served by the transfer, current and projected capacities of intakes, and other relevant facilities.

(2) A description of all the proposed consumptive and nonconsumptive uses of the water to be transferred.

(3) A description of the water quality of the source river and receiving river, including information on aquatic habitat for rare, threatened, and endangered species; in-stream flow data for segments of the source and receiving rivers that may be affected by the transfer; and any waters that are impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).

(4) A description of the water conservation measures used by the applicant at the time of the petition and any additional water conservation measures that the applicant will implement if the certificate is granted.

(5) A description of all sources of water within the receiving river basin, including surface water impoundments, groundwater wells, reinjection storage, and purchase of water from another source within the river basin, that is a practicable alternative to the proposed transfer that would meet the applicant's water supply needs. The description of water sources shall include sources available at the time of the petition for a certificate and any planned or potential water sources.

(6) A description of water transfers and withdrawals registered under G.S. 143-215.22H or included in a local water supply plan prepared pursuant to G.S. 143-355(l) from the source river basin, including transfers and withdrawals at the time of the petition for a certificate and any planned or reasonably foreseeable transfers or withdrawals by a public water system with service area located within the source river basin.

(7) A demonstration that the proposed transfer, if added to all other transfers and withdrawals required to be registered under G.S. 143-215.22H or included in any local water supply plan prepared by a public water system with service area located within the source basin pursuant to G.S. 143-355(l) from the source river basin at the time of the petition for a certificate, would not reduce the amount of water available for use in the source river basin to a degree that would impair existing uses, pursuant to the antidegradation policy set out in 40 Code of Federal Regulation § 131.12 (Antidegradation Policy) (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto, or existing and planned consumptive and nonconsumptive uses of the water in the source river basin. If the proposed transfer would impact a reservoir within the source river basin, the demonstration must include a finding that the transfer would not result in a water level in the reservoir that is inadequate to support existing uses of the reservoir, including recreational uses.

(8) The applicant's future water supply needs and the present and reasonably foreseeable future water supply needs for public water systems with service area located within the source river basin. The analysis of future water supply needs shall include agricultural, recreational, and industrial uses, and electric power generation. Local water supply plans prepared pursuant to G.S. 143-355(l) for water systems with service area located within the source river basin shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems.

(9) The applicant's water supply plan prepared pursuant to G.S. 143-355(l). If the applicant's water supply plan is more than two years old at the time of the petition, then the applicant shall include with the petition an updated water supply plan.

(10) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(h) Settlement Discussions. – Upon the request of the applicant, any interested party, or the Department, or upon its own motion, the Commission may appoint a mediation officer. The mediation officer may be a member of the Commission, an employee of the Department, or a neutral third party but shall not be a hearing officer under subsections (e) or (j) of this section. The mediation officer shall make a reasonable effort to initiate settlement discussions between the applicant and all other interested parties. Evidence of statements made and conduct that occurs in a settlement discussion conducted under this subsection, whether attributable to a party, a mediation officer, or other person shall not be subject to discovery and shall be inadmissible in any subsequent proceeding on the petition for a certificate. The Commission may adopt rules to govern the conduct of the mediation process.

(i) Draft Determination. – Within 90 days after the Commission determines that the environmental document prepared in accordance with subsection (d) of this section is adequate or the applicant submits its petition for a certificate, whichever occurs later, the Commission shall issue a draft determination on whether to grant the certificate. The draft determination shall be based on the criteria set out in this section and shall include the conditions and limitations, findings of fact, and conclusions of law that would be required in a final determination. Notice of the draft determination shall be given as provided in subsection (c) of this section.

(j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the draft determination as provided in subsection (i) of this section, the Commission shall hold public hearings on the draft determination. At least one hearing shall be held in the affected area of the source river basin, and at least one hearing shall be held in the affected area of the receiving river basin. In determining whether more than one public hearing should be held within either the source or receiving river basins, the Commission shall consider the differing or conflicting interests that may exist within the river basins, including the interests of both upstream and downstream parties potentially affected by the proposed transfer. The public hearings shall be conducted by one or more hearing officers appointed by the Chair of the Commission. The hearing officers may be members of the Commission or employees of the Department. The Commission shall give at least 30 days' written notice of the public hearing as provided in subsection (c) of this section. The Commission shall accept written comment on the draft determination for a minimum of 30 days following the last public hearing. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft determination.

(k) Final Determination: Factors to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact and conclusions of law with regard to each item:

(1) The necessity and reasonableness of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans for public water systems with service area located within the source river basin prepared pursuant to G.S. 143-355(l) shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems. Information on projected future water needs for public water systems with service area located within the source river basin that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the source river basin.

(3) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the petition for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan for public water systems with service area located within the source river basin that has been submitted to the Department in accordance with G.S. 143-355(l).

(4) The present and reasonably foreseeable future beneficial and detrimental effects on the receiving river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans prepared pursuant to G.S. 143-355(l) that affect the receiving river basin shall be used to evaluate the projected future water needs in the receiving river basin that will be met by public water systems. Information on projected future water needs that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the receiving river basin.

(5) The availability of reasonable alternatives to the proposed transfer, including the potential capacity of alternative sources of water, the potential of each alternative to reduce the amount of or avoid the proposed transfer, probable costs, and environmental impacts. In considering alternatives, the Commission is not limited to consideration of alternatives that have been proposed, studied, or considered by the applicant. The determination shall include a specific finding as to why the applicant's need for water cannot be satisfied by alternatives within the receiving basin, including unused capacity under a transfer for which a certificate is in effect or that is otherwise authorized by law at the time the applicant submits the petition. The determination shall consider the extent to which access to potential sources of surface water or groundwater within the receiving river basin is

no longer available due to depletion, contamination, or the declaration of a capacity use area under Part 2 of Article 21 of Chapter 143 of the General Statutes. The determination shall consider the feasibility of the applicant's purchase of water from other water suppliers within the receiving basin and of the transfer of water from another sub-basin within the receiving major river basin. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the Commission's determination as to reasonable alternatives shall give preference to alternatives that would involve a transfer from one sub-basin to another within the major receiving river basin over alternatives that would involve a transfer from one major river basin to another major river basin.

(6) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(7) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(8) Whether the service area of the applicant is located in both the source river basin and the receiving river basin.

(9) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(l) Final Determination: Information to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall consider all of the following sources of information:

(1) The petition.

(2) The environmental document prepared pursuant to subsection (d) of this section.

(3) All oral and written comment and all accompanying materials or evidence submitted pursuant to subsections (e) and (j) of this section.

(4) Information developed by or available to the Department on the water quality of the source river basin and the receiving river basin, including waters that are identified as impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)), that are subject to a total maximum daily load (TMDL) limit under subsections (d) and (e) of section 303 of the federal Clean Water Act, or that would have their assimilative capacity impaired if the certificate is issued.

(5) Any other information that the Commission determines to be relevant and useful.

(m) Final Determination: Burden and Standard of Proof; Specific Findings. – The Commission shall grant a certificate for a water transfer if the Commission finds that the applicant has established by a preponderance of the evidence all of the following:

(1) The benefits of the proposed transfer outweigh the detriments of the proposed transfer. In making this determination, the Commission shall be guided by the approved environmental document and the policy set out in subsection (t) of this section.

(2) The detriments have been or will be mitigated to the maximum degree practicable.

(3) The amount of the transfer does not exceed the amount of the projected shortfall under the applicant's water supply plan after first taking into account all other sources of water that are available to the applicant.

(4) There are no reasonable alternatives to the proposed transfer.

(n) Final Determination: Certificate Conditions and Limitations. – The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may impose any conditions or limitations on a certificate that the Commission finds necessary to achieve the purposes of this Part including a limit on the period for which the certificate is valid. The conditions and limitations shall include any mitigation measures proposed by the applicant to minimize any detrimental effects within the source and receiving river basins. In addition, the certificate shall require all of the following conditions and limitations:

(1) A water conservation plan that specifies the water conservation measures that will be implemented by the applicant in the receiving river basin to ensure the efficient use of the transferred water. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the water conservation plan shall provide for the mandatory implementation of water conservation measures by the applicant that equal or exceed the most stringent water conservation plan implemented by a ~~community water system, as defined in G.S. 143-355(l),~~ public water system that withdraws water from the source river basin.

(2) A drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions or other emergencies that occur within the source river basin. Except in circumstances of technical or economic infeasibility or adverse environmental impact, this drought management plan shall include mandatory reductions in the permitted amount of the transfer based on the severity and duration of a drought occurring within the source river basin and shall provide for the mandatory implementation of a drought management plan by the applicant that equals or exceeds the most stringent water conservation plan implemented by a ~~community water system, as defined in G.S. 143-355(l),~~public water system that withdraws water from the source river basin.

(3) The maximum amount of water that may be ~~transferred on a daily basis,~~transferred, calculated as a daily average of a calendar month, and methods or devices required to be installed and operated that measure the amount of water that is transferred.

(4) A provision that the Commission may amend a certificate to reduce the maximum amount of water authorized to be transferred whenever it appears that an alternative source of water is available to the certificate holder from within the receiving river basin, including, but not limited to, the purchase of water from another water supplier within the receiving basin or to the transfer of water from another sub-basin within the receiving major river basin.

(5) A provision that the Commission shall amend the certificate to reduce the maximum amount of water authorized to be transferred if the Commission finds that the applicant's current projected water needs are significantly less than the applicant's projected water needs at the time the certificate was granted.

(6) A requirement that the certificate holder report the quantity of water transferred during each calendar quarter. The report required by this

subdivision shall be submitted to the Commission no later than 30 days after the end of the quarter.

(7) Except as provided in this subdivision, a provision that the applicant will not resell the water that would be transferred pursuant to the certificate to another public water ~~supply~~ system. This limitation shall not apply in the case of a proposed resale or transfer among public water ~~supply~~ systems within the receiving river basin as part of an interlocal agreement or other regional water supply arrangement, provided that each participant in the interlocal agreement or regional water supply arrangement is a co-applicant for the certificate and will be subject to all the terms, conditions, and limitations made applicable to any lead or primary applicant.

(o) Administrative and Judicial Review. – Administrative and judicial review of a final decision on a petition for a certificate under this section shall be governed by Chapter 150B of the General Statutes.

(p) Certain Preexisting Transfers. – In cases where an applicant requests approval to increase a transfer that existed on 1 July 1993, the Commission may approve or disapprove only the amount of the increase. If the Commission approves the increase, the certificate shall be issued for the amount of the preexisting transfer plus any increase approved by the Commission. A certificate for a transfer approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part. A certificate for the increase of a preexisting transfer shall contain all of the conditions and limitations required by subsection (m) of this section.

(q) Emergency Transfers. – In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health, safety, or welfare requires a transfer of water, the Secretary of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary shall consult with those parties listed in subdivision (3) of subsection (c) of this section that are likely to be affected by the proposed transfer. However, the Secretary shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions of law in approving a temporary transfer under this subsection. If the Secretary approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary based on demonstrated need as set forth in this subsection.

(r) Relationship to Federal Law. – The substantive restrictions, conditions, and limitations upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government. This section shall govern the transfer of water from one river basin to another unless preempted by federal law.

(s) Planning Requirements. – When any transfer for which a certificate was issued under this section equals or exceeds eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S.143-355(l). When the transfer equals or exceeds ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(t) Statement of Policy. – It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. It is the public policy of this State that the reasonably foreseeable future water needs of a public water system with its service area located

primarily in the receiving river basin are subordinate to the reasonably foreseeable future water needs of a public water system with its service area located primarily in the source river basin. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto.

~~(u) Renewal of Certificate. – A petition to extend or renew a certificate shall be treated as a new petition.~~

(v) Modification of Certificate. – A certificate may be modified as provided in this subsection.

(1) The Commission or the Department may make any of the following modifications to a certificate after providing electronic notice to persons who have identified themselves in writing as interested parties:

a. Correction of typographical errors.

b. Clarification of existing conditions or language.

c. Updates, requested by the certificate holder, to a conservation plan, drought management plan, or compliance and monitoring plan.

d. Modifications requested by the certificate holder to reflect altered requirements due to the amendment of this section.

(2) A person who holds a certificate for an interbasin transfer of water may request that the Commission modify the certificate. The request shall be considered and a determination made according to the following procedures:

a. The certificate must have been issued pursuant to G.S. 162A-7, 143-215.22I, or 143-215.22L and the certificate holder must be in substantial compliance with the certificate.

b. The certificate holder shall file a notice of intent to file a request for modification that includes a nontechnical description of the certificate holder's request and identification of the proposed water source.

c. The certificate holder shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required for the modification of a certificate unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

d. Upon determining that the documentation submitted by the certificate holder is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the request for modification in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the request for the modification and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The certificate holder who petitions the Commission for a modification under this subdivision shall pay the costs associated with the notice and public hearing.

e. The Department shall accept comments on the requested modification for a minimum of 30 days following the public hearing.

f. The Commission or the Department may require the certificate holder to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

g. The Commission shall make a final determination whether to grant the requested modification based on the factors set out in subsection (k) of this section, information provided by the certificate holder, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

h. The Commission shall grant the requested modification if it finds that the certificate holder has established by a preponderance of the evidence that the requested modification satisfies the requirements of subsection (m) of this section. The Commission may grant the requested modification in whole or in part, or deny the request, and may impose such limitations and conditions on the modified certificate as it deems necessary and relevant to the modification.

i. The Commission shall not grant a request for modification if the modification would result in the transfer of water to an additional major river basin.

j. The Commission shall not grant a request for modification if the modification would be inconsistent with the December 3, 2010 Settlement Agreement entered into between the State of North Carolina, the State of South Carolina, Duke Energy Carolinas, and the Catawba River Water Supply Project.

(w) Requirements for Coastal Counties. – A petition for a certificate to transfer surface water to supplement ground water supplies in the 15 counties designated as the Central Capacity Use Area under 15A NCAC 2E .0501, or to transfer surface water withdrawn from the mainstem of a river to provide service to one of the coastal area counties designated pursuant to G.S. 113A-103, shall be considered and a determination made according to the following procedures:

(1) The applicant shall file a notice of intent that includes a nontechnical description of the applicant's request and identification of the proposed water source.

(2) The applicant shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

(3) Upon determining that the documentation submitted by the applicant is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the petition in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the petition and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The applicant who petitions the Commission for a certificate under this subdivision shall pay the costs associated with the notice and public hearing.

(4) The Department shall accept comments on the petition for a minimum of 30 days following the public hearing.

(5) The Commission or the Department may require the applicant to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

(6) The Commission shall make a final determination whether to grant the certificate based on the factors set out in subsection (k) of this section, information provided by the applicant, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

(7) The Commission shall grant the certificate if it finds that the applicant has established by a preponderance of the evidence that the petition satisfies the requirements of subsection (m) of this section. The Commission may grant the certificate in whole or in part, or deny the request, and may impose such limitations and conditions on the certificate as it deems necessary and relevant."

SECTION 3.(a) Section 1 of S.L. 2011-298 reads as rewritten:

"**SECTION 1.** Notwithstanding G.S. 143-215.22I and G.S. 143-215.22L, a certificate issued pursuant to G.S. 143-215.22L is not required for a transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501."

SECTION 3.(b) Section 4 of S.L. 2011-298 reads as rewritten:

"**SECTION 4.(a)** This act is effective when it becomes law and applies to any transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated on or after August 31, 2007.

"**SECTION 4.(b)** Section 1 of this act shall expire if the cumulative volume of water ~~transfers~~ transfers, by public water supply systems sharing a single intake, from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated on or after August 31, 2007, by any person that does not hold a certificate for an interbasin transfer on or before the effective date of this act, exceeds 8,000,000 gallons per day.

"**SECTION 4.(c)** Any transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated while Section 1 of this act is effective shall not require certification pursuant to G.S. 143-215.22L upon expiration of Section 1 of this act."

SECTION 3.(c) Section 7 of S.L. 2007-518, as amended by Section 4 of S.L. 2010-155 and Section 2 of S.L. 2011-298, reads as rewritten:

"~~**SECTION 7.(a)** Except as provided in subsections (b), (c) and (d) of this section, this~~ **SECTION 7.** This act becomes effective when it becomes law and applies to any petition for a certificate for a transfer of surface water from one river basin to another river basin first made on or after that date.

"~~**SECTION 7.(c)** For purposes of this subsection, "isolated river basin" means each of the following river basins set out in G.S. 143-215.22G(1):~~

~~g. 2-6 New River.~~

~~v. 9-4 Shallotte River.~~

~~aa. 12-1 Albemarle Sound.~~

~~hh. 17-1 White Oak River.~~

~~For a petition for a certificate for transfer of surface water from a river basin to an isolated river basin, this act becomes effective 1 July 2020. Prior to 1 July 2020, a petition for a certificate for transfer of surface water from a river basin to an isolated river basin shall be~~

~~considered and acted upon by the Environmental Management Commission pursuant to the procedures and standards set out in G.S. 143-215.22I on 1 July 2007.~~

"~~**SECTION 7.(d)** Notwithstanding subsection (c) of this section, an applicant for a certificate for transfer of surface water from a river basin to an isolated river basin may request that the applicant be subject to the certification process that would apply if the transfer was not into an isolated river basin.~~"

SECTION 4. Section 1(a)(2) of S.L. 2013-50 is repealed.

SECTION 5. This act is effective when it becomes law.

N.C. R. App. P. 10
Preservation of Issues at Trial; Proposed Issues on Appeal

. . .

(c) *Appellee's Proposed Issues on Appeal as to an Alternative Basis in Law.* Without taking an appeal, an appellee may list proposed issues on appeal in the record on appeal based on any action or omission of the trial court that was properly preserved for appellate review and that deprived the appellee of an alternative basis in law for supporting the judgment, order, or other determination from which appeal has been taken. An appellee's list of proposed issues on appeal shall not preclude an appellee from presenting arguments on other issues in its brief.

Portions of the record or transcript of proceedings necessary to an understanding of such proposed issues on appeal as to an alternative basis in law may be included in the record on appeal by agreement of the parties under Rule 11(a), may be included by the appellee in a proposed alternative record on appeal under Rule 11(b), or may be designated for inclusion in the verbatim transcript of proceedings, if one is filed under Rule 9(c)(2).

[Adopted: 13 June 1975. Amended: 10 June 1981--10(b)(2), applicable to every case the trial of which begins on or after 1 October 1981; 7 July 1983--10(b)(3); 27 November 1984--applicable to appeals in which the notice of appeal is filed on or after 1 February 1985; 8 December 1988--effective for all judgments of the trial tribunal entered on or after 1 July 1989. Reenacted and Amended: 2 July 2009--changed title of rule; deleted former 10(a); renumbered and amended remaining subsections as (a)--(c)--effective 1 October 2009 and applies to all cases appealed on or after that date.]

N.C. R. App. P. 28
Briefs: Function and Content

. . .

(c) *Content of Appellee's Brief; Presentation of Additional Issues.* An appellee's brief shall contain a subject index and table of authorities as required by Rule 26(g), an argument, a conclusion, identification of counsel, and proof of service in the form provided in Rule 28(b) for an appellant's brief, and any appendix required or allowed by this Rule 28. It need contain no statement of the issues presented, of the procedural history of the case, of the grounds for appellate review, of the facts, or of the standard(s) of review, unless the appellee disagrees with the appellant's statements and desires to make a restatement or unless the appellee desires to present issues in addition to those stated by the appellant.

Without taking an appeal, an appellee may present issues on appeal based on any action or omission of the trial court that deprived the appellee of an alternative basis in law for supporting the judgment, order, or other determination from which appeal has been taken. Without having taken appeal or listing proposed issues as permitted by Rule 10(c), an appellee may also argue on appeal whether a new trial should be granted to the appellee rather than a judgment notwithstanding the verdict awarded to the appellant when the latter relief is sought on appeal by the appellant. If the appellee presents issues in addition to those stated by the appellant, the appellee's brief must contain a full, non-argumentative summary of all material facts necessary to understand the new issues supported by references to pages in the record on appeal, the transcript of proceedings, or the appendixes, as appropriate, as well as a statement of the applicable standard(s) of review for those additional issues.

An appellee may supplement the record with any materials pertinent to the issues presented on appeal, as provided in Rule 9(b)(5).

[Adopted: 13 June 1975. Amended: 27 January 1981--repeal 28(d)--effective 1 July 1981; 10 June 1981--28(b), (c)--effective 1 October 1981; 12 January 1982--28(b)(4)--effective 15 March 1982; 7 December 1982--28(i)--effective 1 January 1983; 27 November 1984--28(b), (c), (d), (e), (g), (h)--effective 1 February 1985; 30 June 1988--28(a), (b), (c), (d), (e), (h), (i)--effective 1 September 1988; 8 June 1989--28(h), (j)--effective 1 September 1989; 26 July 1990--28(h)(2)--effective 1 October 1990; 18 October 2001--28(b)(4)-(10), (c), (j)--effective 31 October 2001; 3 October 2002--28(j)--effective 7 October 2002; 6 May 2004--28(d), (h), (j)(2), (k)--effective 12 May 2004; 23 August 2005--28(b)(6), (c), (h)(4)--effective 1 September 2005; 25 January 2007--28(b)(6), para. 1; 28(d(3)(a), (b); 28(i), paras. 2, 3,; 28(j)(2)(A)(1) & (2); added 28(d)(1)(d)--effective 1 March 2007 and applies to all cases appealed on or after that date. Reenacted and Amended: 2 July 2009--amended 28(a), (b), (c), (d), (e), (h), (i), (j); deleted former 28(k) and replaced with new language in 28(a) -- effective 1 October 2009 and applies to all cases appealed on or after that date. Amended: 28 February 2013--28(h), 28(j)(2)(A), and 28(j)(2)(B)--effective 15 April 15 2013.]

Bill could take Greenville's water

By Michael Abramowitz
The Daily Reflector
Friday, June 28, 2013
10 Comments | Leave a Comment

The fate of Greenville's water system has been tied to legal complications over a water system on the other end of the state, city officials and local legislative delegates confirmed on Thursday.

A new law that allows the state to transfer ownership and operations of water systems from municipalities to a group of regional systems took effect in May for municipalities that meet specific criteria. Greenville and its state-chartered water authority, Greenville Utilities, were exempted from the law.

But revisions being fashioned by the Senate Agricultural, Environment and Natural Resources Committee to another bill could eliminate that exemption.

If amended in its current form and signed by Gov. Pat McCrory, the new law automatically would transfer ownership and operations of Greenville's public water system out of the hands of the city and Greenville Utilities Commission to Grifton and the Contentnea Metropolitan Sewerage District, a metropolitan water and sewage system, without any compensation.

The action is being taken because the city of Asheville in Buncombe County filed a lawsuit on May 14 challenging the General Assembly on the utilities transfer law, based on its narrow focus on that city alone.

Counsel for the legislators had recommended a revision to House Bill 94 that would apply the transfer law to utilities statewide and overcome the legal challenge, local legislative delegates said.

The Agriculture Committee action further complicated the issue, Sen. Don Davis, D-Snow Hill said.

Session Law 213-50 (House Bill 488) Section 1.(a) provides for the transfer of water services from public-owned systems like GUC to a state-owned system like Contentnea's if the public system operates in a county where a metropolitan system exists; if the public system has not been issued a certificate for interbasin transfer and if the public system serves a population greater than 120,000 people.

By repealing the second section — issuance of a certificate for interbasin transfer — Asheville would cease to be the only municipality affected by the legislation. Other public systems would meet the criteria and the grounds for Asheville's lawsuit would be nullified.

But the Senate committee's proposed actions have drawn Pitt and Pamlico counties into the equation. Pamlico County has a customer base of about 6,000. It would not likely to be affected by the population requirement.

Greenville, though, has a current customer base of about 95,000 and could be forced to transfer its authority to Contentnea within five to six years if the bill becomes law, according to projections by GUC General Manager/CEO Tony Cannon.

Rep. Brian Brown, a Greenville Republican said Thursday that he was aware that Greenville would be excluded from the outcome that was aimed at Asheville because GUC met the interbasin transfer provision set out in the bill passed in May. When Asheville sued the General Assembly shortly after that, Brown was made aware that the interbasin provision would be pulled out of the Senate version of the bill, he said.

"I immediately began to work on some prevailing language that would assure that GUC would not be affected by this change," Brown said. "I met with Tony Cannon many times and met with Rep. Moffitt to try to reach a solution to his local issue in Asheville that would avoid GUC, the city of Greenville and all of its customers from being affected by this legislation."

Brown could not assure the outcome, but said that all the members of the Pitt County legislative delegation are working in a combined effort to protect Greenville Utilities' interests.

"We understand what's at stake and we're working well together to make sure our interests are protected," Brown said.

Davis said efforts are being made to clarify the Pitt County and Greenville positions for Agriculture Committee members and other legislators who might believe local authorities support the revisions.

"It could be very devastating," Davis said. "When you talk about transferring GUC operations to Contentnea, I wonder if they even have the capacity to do that. Interfering with the administrative arrangement that's been put in place between the City of Greenville and its utility without asking the people who are served by this arrangement is absolutely a tremendous concern.

This (situation) is purely spinning out of Asheville," Davis said. "I can't think of and don't know of anybody in our community who is in support of this."

Sen. Louis Pate, Republican from Wayne County, said he found out about the legislative actions on June 21 and pulled the current bill from the Senate calendar on Thursday just before it was acted on. He said he will try to get his colleagues to take a different approach to solving Asheville's issues that does not impact Pitt County and Greenville.

"It's all well and good for Asheville but it's not helping Greenville out one bit," Pate said. "Drawing Greenville and Pitt County into this is just insane by my way of thinking — and they have very nearly done it."

Cannon has been working on the issue for the past week, he said, including trips to Raleigh to meet with legislators.

"This is a concern to us," Cannon said. "It doesn't immediately impact us and I think we've got some time to work on H 94 should it pass. We've been talking with the legislators on this and they want to help us on this. We've got to look at all of our assets and figure out the best way to protect Greenville's water system."

Greenville City Manager Barbara Lipscomb, City Attorney David Holec and Councilwoman Kandie Smith also spent time in Raleigh on Thursday.

"We expressed the city's opposition to this provision to our local legislative delegation," Holec said. "We requested that it either be deleted, not approved, or changed in some manner so it does not apply to Greenville."

Lipscomb said she would like to see Asheville's issues resolved for that city without involving Greenville.

"We'd like to see an orderly process wherein we evaluate our options and how we provide service and make a measured recommendation based on a clear understanding of the processes before we just accept a situation being placed on us by another community," Lipscomb said.

Editorial: Hands off water system

The Daily Reflector
Monday, July 1, 2013
4 Comments | Leave a Comment

The N.C. General Assembly's Republican majority claims to advocate for smaller government, but has compiled a contradictory record by passing several bills that exert state control over resources managed by county or municipal government. The latest example of Raleigh's overreach came in the form of House Bill 488, which seized Asheville's water system and put it under the management of an unelected state board.

Last week, Greenville learned that it may too fall prey to the Legislature's insatiable appetite for control, thanks to a revised Senate bill that would put the city's water system under the control of a different regional authority. This is the latest example of lawmakers creating problems rather than solutions, and it should be relentlessly opposed by the community's legislative delegation.

Last year, the General Assembly demonstrated its willingness to take local assets and place them under state control when it passed a bill putting the Asheville Regional Airport under the direction of a regional airport authority. Though the city of Asheville and Buncombe County had invested millions in the facility, the Legislature did not compensate local government for the loss.

A bill this year to seize Charlotte Douglas International Airport in the same way has passed the Senate. And Asheville was the General Assembly's target of a more sinister act when lawmakers passed a bill that would turn over the city's water system and 22,000acre watershed to the Metropolitan Sewerage District of Buncombe County. Asheville has invested more than $70 million in the system's infrastructure since 2006.

Complicating the state's planned action in Asheville is a lawsuit filed by the city to fight the transfer. The Senate's solution was to revise the bill to create regional authorities to take control of other municipal water systems. That has Greenville in the crosshairs — and the potential that the local system could be transferred under the authority of Grifton and the Contentnea Metropolitan Sewage District, again without compensation.

There is a word for this: theft. There is no evidence of mismanagement in any of these seizures, not clear indication that consumers would benefit from having local

resources under the direction of state boards, with members not selected by voters and therefore without public accountability.

Pitt County's legislative delegation was sent to Raleigh to fight for this community's interests, and never has that been more necessary. The Republican majority's overreach must be stopped and Greenville should fight this theft with any and all means at its disposal.

The New York Times | http://nyti.ms/1VhdZMA

U.S.

When the Water Turned Brown

By ABBY GOODNOUGH, MONICA DAVEY and MITCH SMITH JAN. 23, 2016

FLINT, Mich. — Standing at a microphone in September holding up a baby bottle, Dr. Mona Hanna-Attisha, a local pediatrician, said she was deeply worried about the water. The number of Flint children with elevated levels of lead in their blood had risen alarmingly since the city changed its water supply the previous year, her analysis showed.

Within hours of Dr. Hanna-Attisha's news conference, Michigan state officials pushed back — hard. A Department of Health and Human Services official said that the state had not seen similar results and that it was working with a much larger set of data. A Department of Environmental Quality official was quoted as saying the pediatrician's remarks were "unfortunate," described the mood over Flint's water as "near-hysteria" and said, as the authorities had insisted for months, that the water met state and federal standards.

Dr. Hanna-Attisha said she went home that night feeling shaky and sick, her heart racing. "When a state with a team of 50 epidemiologists tells you you're wrong," she said, "how can you not second-guess yourself?"

No one now argues with Dr. Hanna-Attisha's findings. Not only has she

been proved right, but Gov. Rick Snyder publicly thanked her on Tuesday "for bringing these issues to light."

Nearly a year and a half after the city started using water from the long-polluted Flint River and soon after Dr. Hanna-Attisha's news conference, the authorities reversed course, acknowledging that the number of children with high lead levels in this struggling, industrial city had jumped, and no one should be drinking unfiltered tap water. Residents had been complaining about the strange smells and colors pouring from their taps ever since the switch.

Already this month, federal and state investigations have been announced, National Guard troops were distributing thousands of bottles of water and filters, and Mr. Snyder was calling for millions in state dollars to fix a situation he acknowledged was a "catastrophe."

Yet interviews, documents and emails show that as every major decision was made over more than a year, officials at all levels of government acted in ways that contributed to the public health emergency and allowed it to persist for months. The government continued on its harmful course even after lead levels were found to be rising, and after pointed, detailed warnings came from a federal water expert, a Virginia Tech researcher and others.

For more than a year after an emergency manager — appointed by Mr. Snyder to oversee the city — approved a switch from the Detroit system to water from the Flint River to save money, workers assigned to manage the city's water system failed to lower lead risks with a simple solution: adding chemicals to prevent old pipes from corroding and leaching metals like lead. Disagreements and miscommunication between state and local officials about what federal law requires of so-called corrosion control measures further delayed fixing the problem, the documents show.

"This could have been nipped in the bud before last summer," said Daniel Giammar, an environmental engineer at Washington University in St. Louis.

The testing of homes in Flint for lead, too, was insufficient and flawed, some experts say. Officials failed to focus on the many homes with lead service lines that were most likely to be tainted, instead looking at wider problems that would have muted the calls of alarm.

The city authorities also urged, and state regulators allowed, methods of sampling that experts say had been shown to underestimate lead levels. Residents were advised, for example, to run their water before taking samples, a move that tends to flush out concentrations of lead particles that might have accumulated.

And through it all, officials persisted in playing down and dismissing the concerns of Flint residents — one referred to concerned residents groups as "anti-everything" — and authoritatively vouching for the water's purity, even as they themselves were debating whether it was pure.

Three months before Dr. Hanna-Attisha voiced her fears and findings, a regulations manager for the federal Environmental Protection Agency had sent a detailed interim report to the state and federal authorities that included unambiguous warnings like this: "Recent drinking water sample results indicate the presence of high lead results in the drinking water, which is to be expected in a public water system that is not providing corrosion control treatment."

It is unclear how many people have had elevated lead levels in their blood over the last year and a half. The state has identified 233 since April 2014, but Dr. Hanna-Attisha said its numbers likely "grossly underestimate" exposure, partly because testing was generally limited to 1- and 2-year-olds until recently. Lead remains traceable in the blood for only about a month after exposure.

As criticisms have mounted, high-ranking officials have resigned, including Howard Croft, Flint's director of public works; Dan Wyant, the state's Environmental Quality director; and Susan Hedman, the E.P.A.

regional director.

Dave Murray, a spokesman for Mr. Snyder, issued a statement on Friday calling the crisis "a failure of government — at the local, state and federal levels." He added that the governor was "committed to fixing the problem and addressing the immediate and long-term needs of the people of Flint."

Dr. Hanna-Attisha also cited the wholesale failure of government. "They had the information," she said. "They just weren't looking closely or believing it."

Repeated Assurances

On April 25, 2014, Flint, whose population had dwindled from more than 195,000 in 1960 to fewer than 100,000 people, switched to using the Flint River as its water supply. The city had drawn water from Detroit's system for decades, but it was expensive, and so Flint joined efforts to create a new, regional system that would draw from Lake Huron.

Costs had become a central concern in a city that has lost thousands of auto industry jobs. Fiscal troubles were so significant that the state sent an emergency manager — with ultimate decision-making power — to oversee a recovery. Until the new pipeline to Lake Huron was constructed, the city would take its water from the Flint River, which it had used as a backup.

City leaders toasted the switch with cups of water. Residents were less sure. For years the Flint River had been a dumping ground — for cars and even bodies. Aware of the doubts, the city's first news release on the switch trumpeted state and local officials' assurances.

Then came the odd colors from the tap — greens and browns — and the offensive smells and tastes. Soon there were reports of rashes and clumps of hair falling out. Parts from a General Motors engine plant here were corroding, so the company stopped using Flint's water.

Tammy Loren, a mother of four who rents a home, was having a hard time believing the answers she got about why her sons' skin had itchy rashes. At various times over the last year and a half, she said, their doctors diagnosed scabies, ringworm and other fungal infections, but prescribed medicines never worked. The family even had the home treated by an exterminator, thinking the problem might be fleas.

"The water was brown, and it had a disgusting smell," said Ms. Loren, whose sons are now 14, 12, 11 and 10. "It was like dirt coming out."

For months, Ms. Loren said, she conducted her own research on the Internet and asked plaintive questions on community Facebook pages. Her family started drinking bottled water when it could, but Ms. Loren, who receives federal disability payments for her back and other problems and relies on food stamps, said it was not that often.

"There was times when we couldn't afford it," she said. "We just kept drinking out of the tap."

Through it all, the government reassurances were constant, insistent and unequivocal. "It's a quality, safe product," Mayor Dayne Walling told The Flint Journal in June 2014.

At points, the city's water tested positive for E. coli bacteria, which can cause intestinal illness, and residents were advised to boil their water. City officials pumped extra chlorine into the system to address the bacteria issue, which led to elevated levels of total trihalomethanes, or TTHMs, chemical compounds that may cause health problems after long-term exposure.

A state briefing in February last year acknowledged the TTHM level was "not 'nothing' " but also not an imminent "threat to public health."

In July, Flint sent residents a letter saying it was "pleased to report" the "water is safe."

But officials' efforts to soothe residents about other contaminants seemed to overshadow the growing signs of trouble about lead.

By March 2015, with residents turning up at public events bearing bottles of murky water, the City Council voted to "do all things necessary" to reconnect to Detroit's water system. But the state-appointed emergency manager, Gerald Ambrose, said no. He repeated the official mantra: The water meets state and federal standards. And he noted, once more, that Detroit water was among the most costly in the state.

"Water from Detroit is no safer than water from Flint," Mr. Ambrose said.

Corrosion Control Failure

Behind the scenes, though, officials seemed far less sure.

By the end of February, Miguel Del Toral, the E.P.A. regulations manager who had learned of high lead content in one Flint resident's water, was raising a fundamental question with his state and federal colleagues: What was Flint using to treat the river water to avoid corrosion?

"They are required to have O.C.C.T. in place which is why I was asking what they were using," he wrote in an email on Feb. 27, using the initials for "optimal corrosion control treatment."

Surely, the assumption was, the city was adding a chemical to the water to coat its aging pipes and prevent corrosion, since controlling corrosion is required by a federal rule governing lead and copper. The water that Flint had drawn for years via Detroit from Lake Huron had been treated with orthophosphate, a common anti-corrosion additive. And Flint River water is naturally even harder and more corrosive, experts say, than the water the city was buying from Detroit.

An official from Michigan's Department of Environmental Quality answered Mr. Del Toral's inquiry the same day: Flint has "an optimized

corrosion control program." But less than two months later, the state said it had been wrong. There actually was no treatment in place in Flint to stop corrosion, a timeline of events provided by the state now shows.

The authorities themselves did not agree on what the federal rules meant. Some state officials believed that testing needed to be done over a year before a new plan could be put in place to block corrosion, documents suggest, while other officials thought the treatment with chemicals needed to start the moment Flint began receiving water from the river.

"We made a mistake," Mr. Wyant, then the state's environmental quality director, said in October. Corrosion controls, he said, "should have been required from the beginning."

The lead issues should have been anticipated long before the city switched water supplies, experts said. "I think that's pretty obvious, in going from having a corrosion inhibitor to not having one, you might have expected to have increased corrosion," said Professor Giammar.

By June, Mr. Del Toral wrote in a memo to state and federal colleagues that Flint had essentially stopped providing treatment used to mitigate lead and copper levels in drinking water, which he called a "major concern from a public health standpoint."

E.P.A. officials contend that they pressed Michigan regulators to take more decisive action after Mr. Del Toral's report, but for months federal officials did little to inform the public of those findings or take decisive action. It was not until Thursday that the federal agency issued an emergency order and assumed oversight of lead testing in Flint.

Flaws in Testing

All along, Flint's water was being tested for lead.

Yet when health officials studied tests showing higher levels of lead in

children's blood in the summer of 2014, they suggested that the increases were a result of ordinary seasonal fluctuations. Water samples, too, showed rising levels of lead in the first half of 2015 compared with late 2014, and a Flint Journal data analysis concluded that they were at their highest in 20 years.

There was so much lead found in water at the home of LeeAnne Walters that officials shut her water off in April and temporarily installed a garden hose to carry water from a neighbor's house. Still, state officials noted that the city's levels remained within federal and state standards.

But the water tests themselves were flawed, experts say.

According to the American Civil Liberties Union of Michigan, which conducted its own investigation, as did researchers at Virginia Tech, the city was not only advising residents to run their water before collecting a sample, but doing other things to "skew the outcome of its tests to produce favorable results." For example, the A.C.L.U. reported in September, the city retested water from homes found to have low lead levels, but not from homes whose initial levels were high.

The city also appeared to be unsure which houses had lead service lines connecting them to its water distribution system, the report said. Federal law requires cities testing for lead in drinking water to focus on homes with the highest risk for contamination, but the report found no evidence Flint had done so.

Dr. Hanna-Attisha said that after she shared her methodology with the state, it replicated her findings. Mr. Snyder then announced that the state would provide filters and test tap water.

Marc Edwards, the Virginia Tech professor who helped identify and expose Flint's lead problem, said the state "had no sense of urgency at all, nor did E.P.A."

Ms. Loren, the mother of four, said her sons' skin remained irritated, and she is worrying obsessively about their lead levels, particularly that of her 11-year-old, who has learning disabilities.

"My trust in everybody is completely gone, out the door," she said. "We've been lied to so much, and these aren't little white lies. These lies are affecting our kids for the rest of their lives, and it breaks my heart."

Abby Goodnough reported from Flint, and Monica Davey and Mitch Smith from Chicago.

A version of this article appears in print on January 24, 2016, on page A1 of the New York edition with the headline: Fouled Water and Failed Politics .

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