



North Carolina Rural Water Association, Inc®

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March 26, 2018

Legislative Research Commission
300 North Salisbury Street
Raleigh, NC 27603

Re: Potential Solutions to Address Public Enterprise Transfers, Rates, and Regionalization

Dear LRC,

The North Carolina Rural Water Association, Inc® (NCRWA) appreciates the opportunity to work with the LRC Public Enterprise Study-Rates and Transfers. We have prepared the following list of potential legislative and local solutions that could assist in facilitating improved managerial, financial, and technical operations of public enterprises, improve regional efforts, and make more efficient use of the state's water resources, which would encourage economic growth in communities across the state.

We worked, along with local governments associations, with Senator Hartsell to enact legislation (see attached NCGS 130A-317(g))(2015 Session) to encourage voluntary regionalization. Also, the Water and Sewer Working Group of the Environmental Review Commission recommended a DENR Study of IBT Laws (see attached Senate Bill 757)(2014 Session).

NCRWA defines regionalization of water and wastewater systems as being a voluntary combined effort of two or more entities, through physical interconnection, joint management or interlocal agreement, or shared or transferred assets, to take proactive steps to realize the joint benefits of economies of scale in order to plan for and provide a high quality, sustainable product and service to the citizens and businesses of the state. We oppose mandated regionalization. **All comments provided are made in the context of voluntary regionalization where desired by the systems that would be party to the regionalized system.**

1. Remove/reduce statutory obstacles and burdens that restrict regional efforts, including the repeal of *sub-basin* interbasin transfer laws and rules. Interbasin transfer (IBT) laws restricting the movement of water within the same major river basins due to sub-basins being considered separate river basins under state law need to be modified to accomplish the following:
 - a. Define and identify the sub-basins separately from the major river basins in the North Carolina General Statutes, and direct that conforming changes be made to



the North Carolina Administrative Code. See attached map of river basins and sub-basins as provided by NCDEQ.

- b. Regarding sub-basins, expand current exemptions as to what does not constitute a transfer. A major step in this effort is to provide that water sold through a wholesale agreement is “not a transfer”.
 - c. Develop different requirements for transfers within sub-basins for different types of ownership rights. We understand now that a certificate that is issued as a result of an application for an IBT is a permanent right. If rights to withdraw are for limited time periods, then different requirements for obtaining approval for such transfers could be developed. This would include provisions for the differences between registrations of transfers, permits for transfers, and certificates for transfers, and distinguishing between what transfers are permanently granted and what transfers have some permitted length.
 - d. Amend the application process and requirements for sub-basin transfers to facilitate the transfer of water within the same major river basin.
 - e. Expand the existing exemptions contained within the current IBT laws, in general, to facilitate the transfer of water.
2. Significantly increase the prioritization for regional projects for all state grants and loans and set aside some funds for regional projects. Accommodation must be made for those systems for which regionalization is not geographically feasible.
3. Recognize and encourage the use of joint management agreements and interlocal agreements as forms of regionalization.
4. Ensure that the LGC Unit Assistance List addresses more than financial position or internal controls. Asset condition and investment into infrastructure management, organizational management, and, and financial management should all be considered as cited in the NC Statewide Water and Wastewater Infrastructure Master Plan published by NCDEQ.
5. Create a rating/scoring system that objectively identifies when a system is considered to be under-performing in defined compliance and financial measures.
6. Simplify and facilitate permitting processes for consolidated efforts including those of siting and constructing new reservoirs.
7. Provide regulatory relief for entities acquiring/merging with chronically underperforming systems.
8. Provide a grace period for regulatory relief and financial performance for acquiring/consolidating systems so that regionalization/consolidation that involve under-



performing systems does not cause the new consolidated entity to score poorly on objective scales for system performance.

9. Provide state assistance to facilitate interconnections and expansions for regional efforts, including the use of a public office that would serve as an independent intermediary to assist systems in voluntary consolidation, to guide systems through regional negotiations, and to mediate those negotiations.
10. Establish a de-centralized public utility authority that is funded to assist under-performing systems with consolidated governance, managerial, and financial functions even when system interconnection is not feasible. This would be an alternative to local government owned systems selling assets to investor owned utilities.
11. As a first step to funding infrastructure rehabilitation and replacement, require systems to fund asset depreciation fully and only expend those funds on projects designed to address aging infrastructure.
12. Legislatively require elected officials governing Enterprise Funds that apply for state funding to be adequately educated and trained on Enterprise Fund operations, management, and finances.
13. Provide more robust on-site managerial, financial, and technical assistance to small and rural systems that struggle to recruit and retain qualified personnel as the continued push towards urbanization removes organizational resources from rural North Carolina.

In closing, I would like to offer you our assistance as well as offer it to the LRC and the General Assembly as experts on subject matter involving the water and wastewater industry across the state. We stand ready to assist with the development of a statewide strategy to improve our water and waste water systems. Please contact me directly at danielwilson@ncrwa.com or by phone at 919.812.0428, or contact NCRWA's lobbyist, Jon Carr (jcarr@jordanprice.com) if we can be of assistance.

Sincerely,

A handwritten signature in cursive script that reads "Daniel Wilson".

Daniel Wilson, PE, UMC
Executive Director

cc: Jon Carr, Lobbyist

From 2015 budget, section (g) added

§ 130A-317. Department to provide advice; submission and approval of public water system plans.

(a) The Department shall advise all persons and units of local government locating, constructing, altering or operating or intending to locate, construct, alter or operate a public water system of the most appropriate source of water supply and the best practical method of purifying water from that source having regard to the present and prospective needs and interests of other persons and units of local government which may be affected. The Department shall also advise concerning accepted engineering practices in the location, construction, alteration and operation of public water systems.

(b) All persons and units of local government constructing or altering a public water system shall give prior notice and submit plans, specifications and other information to the Department. The Commission shall adopt rules providing for the amount of prior notice required to be given and the nature and detail of the plans, specifications and other information required to be submitted. The Commission shall take into consideration the complexity of the construction or alteration which may be involved and the resources of the Department to review the plans, specifications and other information. The Department shall review the plans, specifications and other information, and notify the person, Utilities Commission and unit of local government of compliance or lack of compliance with applicable statutes and rules of the Commission.

(c) No person or unit of local government shall begin construction or alteration of a public water system or award a contract for construction or alteration unless all of the following conditions are met:

- (1) The plans for construction or alteration have been prepared by an engineer licensed by this State.
- (2) The Department has determined that the system, as constructed or altered, will be capable of compliance with the drinking water rules.
- (3) The Department has determined that the system is capable of interconnection at an appropriate time with an expanding municipal, county or regional system.
- (4) The Department has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water system.
- (5) The Department has approved the plans and specifications.

(d) Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own approval program in lieu of State approval of water system plans required in subsection (c) of this section for construction or alteration of the distribution system of a proposed or existing public water system, subject to the prior certification of the Department. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where water service is already being provided to the permit applicant by the municipality or connection to the municipal water system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where water service is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of an approval program and statement submitted by any local government, commission, authority, or board, the Department shall certify any local program that meets all of the following conditions:

- (1) Provides by ordinance or local law for requirements compatible with those imposed by this Article, and the standards and rules adopted pursuant to this Article.
- (2) Provides that the Department receives notice and a copy of each application for approval and that the Department receives copies of approved plans.

- (3) Provides that plans and specifications for all construction and alterations be prepared by or under the direct supervision of an engineer licensed to practice in this State.
- (4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial process.
- (5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review program. A local government, commission, authority, or board may either employ an engineer licensed under Chapter 89C of the General Statutes to practice as a professional engineer in the State or contract with an engineer licensed under Chapter 89C of the General Statutes to practice as a professional engineer in the State in order to provide for adequate engineering staff under this subdivision.
- (6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional system.
- (7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the public water system.
- (8) Provides that an approved system, as constructed or altered, will be capable of compliance with the drinking water rules.
- (9) Is approved by the Department as adequate to meet the requirements of this Article and any applicable rules adopted pursuant to this Article.

(e) The Department may deny, suspend, or revoke the certification of a local program upon a finding that a violation of the provisions in subsection (d) of this section has occurred. A local government administering an approval program shall be given notice that there has been a tentative decision to deny, suspend, or revoke certification and that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes where the decision may be challenged. If a violation of the provisions in subsection (d) of this section presents an imminent hazard, certification may be suspended or revoked immediately. The Department shall give notice of the immediate suspension or revocation and notice that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes where the decision may be challenged.

(f) Notwithstanding any other provisions of subsection (d) of this section, if the Department determines that a public water system is violating plan approval requirements of a local program and that the local government has not acted to enforce those approval requirements, the Department may, after written notice to the local government, take enforcement action in accordance with the provisions of this Article.

(g) The Department shall identify systems meeting all of the following criteria:

- (1) As constructed or altered, the system appears capable of interconnectivity with another system or systems located within the same river basin, as set out in G.S. 143-215.22.
- (2) The system appears to have adequate unallocated capacity to expand.
- (3) Interconnectivity would promote public health, protect the environment, or ensure compliance with established drinking water rules.

The Department shall notify the identified systems of the potential for interconnectivity in the future. The systems so notified may discuss options for potential interconnectivity, including joint operations, regionalization, or merger. The Local Government Commission shall be copied on the notice from the Department and shall assist the systems with any questions regarding liabilities of the systems and alterations to the operational structure of the systems. (1979, c. 788, s. 1; 1983, c. 891, s. 2; 1985, c. 697, s. 1; 1987, c. 827, s. 1; 2006-238, s. 1; 2015-241, s. 14.14A(a).)

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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SENATE BILL 757*

Short Title: DENR Study of IBT Laws. (Public)

Sponsors: Senator Hartsell (Primary Sponsor).

Referred to: Agriculture/Environment/Natural Resources.

May 15, 2014

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL
3 RESOURCES TO STUDY THE STATUTES AND RULES GOVERNING INTERBASIN
4 TRANSFERS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
5 COMMISSION.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** The Department of Environment and Natural Resources shall study
8 the statutes and rules governing interbasin transfers and make recommendations as to whether
9 the statutes and rules should be amended. The study shall specifically examine all of the
10 following:

- 11 (1) Whether and to what extent temporary and emergency interbasin transfers,
12 including interbasin transfers to provide drought relief, should be subject to
13 different regulatory requirements than long-term interbasin transfers.
14 (2) Whether and to what extent interbasin transfers between river subbasins
15 should be subject to different regulatory requirements than interbasin
16 transfers between major river basins.
17 (3) Whether there are types of interbasin transfers that should be exempted from
18 the interbasin certification or other regulatory requirements.

19 **SECTION 2.** No later than October 1, 2014, the Department of Environment and
20 Natural Resources shall report its findings and recommendations to the Environmental Review
21 Commission.

22 **SECTION 3.** This act is effective when it becomes law.



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Appendix B: Major River Basins & Sub-Basins in North Carolina

