

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**HOUSE BILL 1065
Committee Substitute Favorable 4/27/05
Committee Substitute #2 Reported Without Prejudice 5/31/05**

Short Title: Sullivan Act II.

(Local)

Sponsors:

Referred to:

March 31, 2005

1 A BILL TO BE ENTITLED
2 AN ACT REGARDING WATER RATES IN BUNCOMBE COUNTY.

3 Whereas, the North Carolina General Assembly previously adopted Chapter
4 399 of the 1933 Public-Local Laws (known as the "Sullivan Act") to address the
5 particular circumstances of the supplying of water to certain residents of Buncombe
6 County by the City of Asheville and the charges therefore; and

7 Whereas, from the adoption of the Sullivan Act until the present, the City of
8 Asheville, directly or through the Asheville/Buncombe Water Authority, has continued
9 to supply water to certain consumers of water in Buncombe County outside the
10 corporate limits of the City of Asheville in those areas of the County where water has
11 been supplied by the City of Asheville, all at a rate no higher than that charged by the
12 City of Asheville to similarly situated water consumers residing within the corporate
13 limits of said city; and

14 Whereas, from and after 1981, the City of Asheville and the County of
15 Buncombe have discharged various of their obligations relating to the provision of
16 water to certain citizens of Buncombe County residing inside and outside the corporate
17 limits of the City of Asheville and the maintenance and upkeep of their respective water
18 facilities pursuant to an Agreement between the City of Asheville and the County of
19 Buncombe establishing the Asheville/Buncombe Water Authority dated 29 October
20 1981 and certain supplements and amendments thereto (hereinafter "Water
21 Agreement"); and

22 Whereas, practically all, if not all, of the cost of the waterlines serving
23 Buncombe County (outside of the corporate limits of the City of Asheville) has been
24 paid by the County of Buncombe, the various water and sewer districts of the County of
25 Buncombe, by the Asheville/Buncombe Water Authority pursuant to its duties to
26 Buncombe County, and by private developers and landowners, desiring water service in
27 such areas and not paid by the City of Asheville; and

1 Whereas, during the term of the Water Agreement, the County of Buncombe
2 has paid directly to the City of Asheville in excess of \$37,000,000 pursuant to that
3 Agreement; and

4 Whereas, at the time of the adoption of the Water Agreement, certain public
5 recreational facilities were transferred to the County of Buncombe by the City of
6 Asheville, and during the term of the Water Agreement, the costs related to those
7 facilities have been borne by the County of Buncombe; and

8 Whereas, during the term of the Water Agreement, the County of Buncombe
9 has expended \$9,025,715 on capital expenditures for the public recreational facilities
10 referenced above; and

11 Whereas, the City of Asheville has given notice to terminate the Water
12 Agreement as of 30 June 2005; and

13 Whereas, the City of Asheville is entitled to a fair return on its capital
14 investment; and

15 Whereas, upon the termination of the Water Agreement as noticed by the City
16 of Asheville for 30 June 2005, the ownership of the public recreational facilities shall
17 revert to the City of Asheville; and

18 Whereas, upon the termination of the Water Agreement as noticed by the City
19 of Asheville for 30 June 2005, the ownership of all water system facilities conveyed to
20 the City of Asheville pursuant to the Water Agreement shall revert to the County of
21 Buncombe and its water districts; and

22 Whereas, the citizens of Buncombe County outside the corporate limits of the
23 City of Asheville now, or in the future to be, supplied water from lines connected to the
24 waterlines currently maintained by the Asheville/Buncombe Water Authority, and
25 replacements, extensions, and additions thereto, are entitled to obtain water at a fair rate
26 from the water system for which they have paid, through taxes, through payments for
27 water, and through direct payments by the County of Buncombe and its water and sewer
28 districts; and

29 Whereas, the population of Buncombe County is projected to grow by more
30 than thirty-eight percent over the next twenty-five years, and more than two-thirds of
31 that growth is projected to occur outside the current city limits of the City of Asheville;
32 and

33 Whereas, the Asheville/Buncombe Water Authority has developed substantial
34 excess capacity in anticipation of the growth of population in Buncombe County and of
35 supplying water to the additional population from facilities the cost of which has been,
36 and in the future will be, paid out of water system revenues; and

37 Whereas, the complicated pattern of dealings between the City of Asheville
38 and the County of Buncombe regarding the provision of water to water consumers in
39 Buncombe County connected to the waterlines currently maintained by the
40 Asheville/Buncombe Water Authority, and replacements, extensions, and additions
41 thereto has now given rise to the issue of the rate that the City of Asheville may charge
42 the water consumers in Buncombe County connected to the waterlines currently
43 maintained by the Asheville/Buncombe Water Authority, and replacements, extensions,

1 and additions thereto to whom it provides water even though the Sullivan Act remains
2 in full force and effect; and

3 Whereas, it is the exclusive right of the State to regulate the provision of and
4 rates charged for public utilities to the citizens of the State; Now, therefore,
5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** From and after the effective date of this act, it shall be
7 unlawful for the City of Asheville, or any of the governing authorities, agents, or
8 employees thereof, to charge, exact, or collect from any water consumer in Buncombe
9 County currently or hereafter connected to the waterlines currently maintained by the
10 Asheville/Buncombe Water Authority, and replacements, extensions, and additions
11 thereto a rate for water consumed higher than the rate charged for the same
12 classification of water consumer residing or located within the corporate limits of the
13 City of Asheville. Classification of water consumer as referred to herein means the type
14 of facility to which the water is provided (e.g. single-family residence, multiple-family
15 residence, retail, commercial, industrial) without regard to geographic location within
16 Buncombe County.

17 **SECTION 2.** The City of Asheville may, through its officers, agents, and
18 employees, cause any user of water who shall fail to pay promptly his water rent for any
19 month to be cut off and his right to further use of water from the city system to be
20 discontinued until payment of any water rent arrearages, all consistent with
21 G.S. 160A-314(b).

22 **SECTION 3.** It is the purpose and intent of this act to declare that water
23 consumers residing and located outside of the corporate limits of the City of Asheville
24 shall be entitled to the use of Asheville surplus water only, and the governing body of
25 the City of Asheville is authorized and empowered to discontinue the supply of water to
26 any districts, or water consumers, out of the corporate limits of the City of Asheville at
27 anytime that there may be a drought or other emergency or at any time the governing
28 body of the City of Asheville may lawfully deem that the City has use for all of its water
29 supply.

30 **SECTION 4.** It shall be the duty of the Board of Commissioners of
31 Buncombe County and/or the trustees of the different water districts operating outside
32 of the corporate limits of the City of Asheville in Buncombe County to maintain the
33 waterlines owned by the County of Buncombe and such water districts in proper repair
34 in order that there may not be a waste of water by leakage.

35 **SECTION 5.** To the extent that the Sullivan Act (Chapter 399 of the
36 Public-Local Laws of 1933) does not conflict with this act, it continues to apply.

37 **SECTION 6.** This act is effective when it becomes law.