

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 512
HOUSE BILL 514

AN ACT TO AMEND ARTICLE 25 OF CHAPTER 153, NORTH CAROLINA GENERAL STATUTES, TO PERMIT METROPOLITAN SEWERAGE DISTRICTS TO ENCOMPASS LAND IN MORE THAN ONE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153-297 is hereby amended to read as follows:

"§ 153-297. Procedure for creation; resolutions and petitions for creation; notice to and action by the Board of Water and Air Resources; notice and public hearing; resolutions creating districts; actions to set aside proceedings. — Any two or more political subdivisions in one or more counties, or any political subdivision or subdivisions and any unincorporated area or areas located within one or more counties, which political subdivisions or areas need not be contiguous, may petition for the creation of a metropolitan sewerage district under the provisions of this Article by filing with the board or boards of commissioners of the county or counties within which the proposed district will lie:

- (1) A resolution of the governing body of each such political subdivision stating the necessity for the creation of a metropolitan sewerage district under the provisions of this Article in order to preserve and promote the public health and welfare within the area of the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in said resolution, and
- (2) If any unincorporated area is to be included in such district, a petition, signed by not less than fifty-one per centum (51%) of the freeholders resident within such area, defining the boundaries of such area, stating the necessity for the creation of a metropolitan sewerage district under the provisions of this Article in order to preserve and promote the public health and welfare within the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in such petition for such district.

Upon the receipt of such resolutions and petitions requesting the creation of a metropolitan sewerage district, the board or boards of commissioners, through the chairman thereof, shall notify the North Carolina Board of Water and Air Resources of the receipt of such resolutions and petitions, and shall request that a representative of the Board of Water and Air Resources hold a joint public hearing with the board or boards of commissioners concerning the creation of the proposed metropolitan sewerage district. The chairman of the Board of Water and Air Resources and the chairman or chairmen of the board or boards of commissioners shall name a time and place within the proposed district at which the public hearing shall be held; provided, however, that where a proposed district lies within more than one county, the public hearing shall be held in the county within which the greater portion of the proposed district lies. The chairman or chairmen of the board or boards of commissioners shall give prior notice of such hearing by posting a notice at least 30 days prior to the hearing at the courthouse of the county or counties within which the district will lie and also by publication at least once a week for four successive weeks in a newspaper having general circulation in the proposed district, the

first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the creation of such metropolitan sewerage district cannot be concluded at such hearing, such hearing may be continued to a time and place within the proposed district determined by the board or boards of commissioners with the concurrence of the representative of the Board of Water and Air Resources.

If, after such hearing, the Board of Water and Air Resources and the board or boards of commissioners shall deem it advisable to comply with the request of such resolutions and petitions, and determine that the creation of a metropolitan sewerage district would preserve and promote the public health and welfare in the area or areas described in such resolutions and petitions, the Board of Water and Air Resources shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a metropolitan sewerage district under the name and style of "_____ Metropolitan Sewerage District of _____(County)(Counties)"; provided, that the Board of Water and Air Resources may make minor deviations in the boundaries from those prescribed in the resolutions and petitions upon determination by the Board of Water and Air Resources that such deviations are advisable in the interest of the public health, and provided no such district shall include any political subdivision which has not petitioned for inclusion as provided in this Article.

The Board of Water and Air Resources shall cause copies of the resolution creating the metropolitan sewerage district to be sent to the board or boards of commissioners and to the governing body of each political subdivision included in the district. The board or boards of commissioners shall cause a copy of such resolution of the Board of Water and Air Resources to be published in a newspaper circulating within the district once in each of two successive weeks, and a notice substantially in the following form shall be published with such resolution:

The foregoing resolution was passed by the North Carolina Board of Water and Air Resources on the ____ day of _____, 19__, and was first published on the ____ day of _____, 19__.

Any action or proceeding questioning the validity of said resolution or the creation of the metropolitan sewerage district therein described must be commenced within 30 days after the first publication of said resolution.

 Clerk, Board of Commissioners
 for _____County.

Any action or proceeding in any court to set aside a resolution creating a metropolitan sewerage district, or to obtain any other relief upon the ground that such resolution or any proceeding or action taken with respect to the creation of such district is invalid, must be commenced within 30 days after the first publication of the resolution and said notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the creation of the metropolitan sewerage district therein described shall be asserted, nor shall the validity of the resolution or of the creation of such metropolitan sewerage district be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period."

Sec. 2. G.S. 153-298 is hereby amended to read as follows:

"§ 153-298. District board; composition, appointment, terms, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members. —

(a) Appointment of board for district lying wholly or partly outside city or town limits. The district board of a metropolitan sewerage district lying in whole or in part outside the corporate limits of a city or town shall be appointed immediately after the creation of the district in the following manner:

- (1) If the district lies entirely within one county, the board of commissioners shall appoint to the district board three members who are qualified voters

residing within the district. The members so appointed shall have terms expiring one year, two years and three years, respectively, from the date of adoption of the resolution of the Board of Water and Air Resources creating the district, and the board of commissioners shall designate the length of the term of each member. Successor members shall be appointed for a term of three years.

- (2) If the district lies in two counties, the board of commissioners of the county in which the largest portion of the district lies shall appoint to the district board two qualified voters residing in the county and district to serve for terms of one year and three years, respectively. The board of commissioners of the county in which the lesser portion of the district lies shall appoint to the district board one qualified voter residing in the county and district to serve for a term of two years. All successor members shall be appointed for a term of three years.
- (3) If the district lies in three or more counties, the board of commissioners of each such county shall appoint one member of the district board. Each member so appointed shall be a qualified voter residing in the district and of the county from which he is appointed and shall serve for a term of three years. Successor members shall be appointed for a term of three years.
- (4) The governing body of each political subdivision, other than counties, lying in whole or in part within the district, shall appoint one member of the district board. No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board or boards of commissioners shall be the governing body. If any city or town within the district shall have a population, as determined from the latest decennial census, greater than that of all other political subdivisions (other than counties) and unincorporated areas within the district, the governing body of such city or town shall appoint three members. All members and their successors appointed by the governing bodies of political subdivisions other than counties shall serve for a term of three years and shall be qualified voters residing in the district and the political subdivision from which they are appointed.

(b) Appointment of board for district lying wholly within city or town limits. Any district lying entirely within the corporate limits of two or more cities or towns shall be governed by a district board consisting solely of members appointed by the governing bodies of such cities or towns and, in addition, one member elected by the appointed members of the district board. The governing body of each constituent city or town of the district shall appoint to the district board two qualified voters residing in the district and the city or town. The members so appointed shall elect, by majority vote, one additional member who shall be a qualified voter residing in the district and one of the constituent cities or towns.

One of the two members initially appointed by the governing body of each constituent city or town shall serve for a term which shall expire 30 days following the next regular election held for election of the governing body by which the member was appointed; and the other member shall serve for a term which shall expire two years thereafter. Successor members shall serve for a term of four years.

The member elected by the district board and his successors in office shall serve for a term of four years.

(c) Reappointment; vacancies; removal; term. Members of a district board may be reappointed. If a vacancy shall occur on a district board, the governing body which appointed the member who previously filled the vacancy shall appoint a new member who shall serve for the remainder of the unexpired term. Any member of a district board may be removed for cause

by the governing board that appointed him. All members shall serve until their successors have been duly appointed and qualified.

(d) District board procedures. Each member of the district board, before entering upon his 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 his office; and a record of each such oath shall be filed with the clerk or clerks of the board or boards of commissioners.

The district board shall elect one of its members as chairman and another as vice-chairman and 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 terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the district board.

The district board shall meet regularly at such places and dates as are determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of such meeting. 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. The members of the district board may receive compensation in an amount to be determined by the board, but not to exceed ten dollars (\$10.00) for each meeting attended, and may be reimbursed the amount of actual expenses incurred by them in the performance of their duties."

Sec. 3. G.S. 153-299 is hereby amended to read as follows:

"§ 153-299. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions to set aside proceedings. — If, at any time subsequent to the creation of a district, there shall be filed with the district board a resolution of the governing body of a political subdivision, or a petition, signed by not less than fifty-one per centum (51%) of the freeholders resident within an unincorporated area, requesting inclusion in the district of such political subdivision or unincorporated area, and if the district board shall favor the inclusion in the district of such political subdivision or unincorporated area, the district board shall notify the board or boards of commissioners of the county or counties within which the district lies and shall file with the board or boards of commissioners and with the Board of Water and Air Resources a report setting forth the plans of the district for extending sewerage service to the political subdivision or unincorporated area. The report shall include:

(a) A map or maps of the district and adjacent territory showing the present and proposed boundaries of the district; the existing major sewer interceptors and outfalls; and the proposed extension of such interceptors and outfalls.

(b) A statement setting forth the plans of the district for extending sewerage services to the territory proposed to be included, which plans shall:

- (1) Provide for extending sewerage service to the territory included on substantially the same basis and in the same manner as such services are provided within the rest of the district prior to inclusion of the new territory.
- (2) Set forth a proposed time schedule for extending sewerage service to the territory proposed to be included.
- (3) Set forth the estimated cost of extending sewerage service to the territory proposed to be included; the method by which the district proposes to finance the extension; the outstanding existing indebtedness of the district, if

- any; and the valuation of assessable property within the district and within the territory proposed to be included.
- (4) Contain a declaration of intent of the district board to conform with the plans set forth in the report in extending sewerage services to the territory proposed to be included; and a certification by the chairman of the district board to the effect that the matters and things set forth in the report are true to his knowledge or belief.

The board or boards of commissioners, through the chairmen thereof, shall thereupon request that a representative of the Board of Water and Air Resources hold a joint public meeting with the board or boards of commissioners concerning the inclusion of such political subdivision or unincorporated area in the district. The chairman of the Board of Water and Air Resources and the chairman or chairmen of the board or boards of commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman or chairmen of the board or boards of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county or counties at least 30 days prior to the hearing and also by publication at least once a week for four successive weeks in a newspaper having general circulation in the district and in any such political subdivision or unincorporated area, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the inclusion of such political subdivision or unincorporated area cannot be included at such hearing, such hearing may be continued to a time and place within the district determined by the board or boards of commissioners with the concurrence of the representative of the Board of Water and Air Resources.

If, after such hearing, the Board of Water and Air Resources and the board or boards of commissioners shall determine that the inclusion of such political subdivision or unincorporated area in the district will preserve and promote the public health and welfare, the Board of Water and Air Resources shall adopt a resolution to that effect, defining the boundaries of the district, including such political subdivision or unincorporated area which has filed a resolution or petition as provided for in this section, and declaring such political subdivision or unincorporated area to be included in the district.

If, at or prior to such public hearing, there shall be filed with the district board a petition, signed by not less than ten per centum (10%) of the freeholders residing in the district, requesting an election to be held therein on the question of including any such political subdivision or unincorporated area, the district board shall certify a copy of such petition to the board or boards of commissioners, and the board or boards of commissioners shall request the county board or boards of elections to submit such question to the qualified voters within the district in accordance with the applicable provisions of Chapter 163 of the General Statutes; provided, that the election shall not be held unless the Board of Water and Air Resources has adopted a resolution approving the inclusion of the political subdivision or unincorporated area in the district.

Notice of such election, which shall contain a statement of the boundaries of the territory proposed to be included in the district and the boundaries of the district after inclusion, shall be given by publication once a week for three successive weeks in a newspaper or newspapers having general circulation within the district, the first publication to be at least 30 days prior to the election.

Notice of the resolution of the Board of Water and Air Resources, or in the event that an election pursuant to this section is held, notice of the results of the election, approving the inclusion of the political subdivision or unincorporated area within the district shall be published as provided in G.S. 153-297.

Any action or proceeding in any court to set aside a resolution of the Board of Water and Air Resources or an election approving the inclusion of a political subdivision or unincorporated area within a district or to obtain any other relief upon the ground that such

resolution or election or any proceeding or action taken with respect to the inclusion of the political subdivision or unincorporated area within the district is invalid, must be commenced within 30 days after the first publication of the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the election or the inclusion of the political subdivision or unincorporated area in the district shall be asserted, nor shall the validity of the resolution or the election or the inclusion of the political subdivision or unincorporated area be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

Any political subdivision or unincorporated area included within an existing district by resolution of the Board of Water and Air Resources or by such resolution and election shall be subject to all debts of the district.

The annexation by a city or town within a metropolitan sewerage district of an area lying outside such district shall not be construed as the inclusion within the district of an additional political subdivision or unincorporated area within the meaning of the provisions of this section; but any such areas so annexed shall become a part of the district and shall be subject to all debts thereof.

Immediately following the inclusion of any additional political subdivision or unincorporated area within an existing district, members representing such additional political subdivision or unincorporated area shall be appointed to the district board in the manner provided in G.S. 153-298. The terms of office of the members first appointed to represent such additional subdivision or area may be varied for a period not to exceed six months from the terms provided for in G.S. 153-298, so that the appointment of successors to such members may more nearly coincide with the appointment of successors to members of the existing board; and all successor members shall be appointed for the terms provided for in G.S. 153-298."

Sec. 4. G.S. 153-309 is hereby amended to read as follows:

"§ 153-309. Determination of tax rate by district board; levy and collection of tax; remittance and deposit of funds. — After each assessment for taxes following the creation of the district, the board or boards of commissioners shall file with the district board the valuation of assessable property within the district. The district board shall then determine the amount of funds to be raised by taxation for the ensuing year in excess of available funds to provide for the payment of interest on and the principal of all outstanding general obligation bonds as the same shall become due and payable, to pay the cost of maintaining, repairing and operating any sewerage system or systems, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions.

The district board shall determine the number of cents per one hundred dollars (\$100.00) necessary to raise said amount and certify such rate to the board or boards of commissioners. The board or boards of commissioners shall include the number of cents per one hundred dollars (\$100.00) certified by the district board in its next annual levy against all taxable property within the district, which tax shall be collected as other county taxes are collected, and every month the amount of tax so collected shall be remitted to the district board and deposited by the district board in a separate account in a bank in the State of North Carolina. Such levy may include an amount for reimbursing the county for the additional cost to the county of levying and collecting such taxes, pursuant to such formula as may be agreed upon by the district board and the board or boards of commissioners, to be deducted from the collections and stated with each remittance to the district board. The officer or officers having charge or custody of the funds of the district shall require said bank to furnish security for protection of such deposits as provided in G.S. 159-28 and, after June 30, 1973, G.S. 159-31."

Sec. 5. G.S. 153-321 is hereby amended by striking the reference to "G.S. 153-306", appearing in lines 5 and 6 thereof, and by substituting therefor the language "The Local Government Finance Act"; and by striking the reference to "said G.S. 153-306",

appearing in line 8, and by substituting therefor the language "The Local Government Finance Act".

Sec. 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 7. This act shall become effective upon its ratification.

In the General Assembly read three times and ratified, this the 16th day of May, 1973.