



# HOUSE BILL 538: Water and Sewer Service Related Changes

2015-2016 General Assembly

**Committee:**  
**Introduced by:** Rep. Millis  
**Analysis of:** Fourth Edition

**Date:** July 24, 2015  
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Committee Counsel

**SUMMARY:** *The proposed committee substitute for House Bill 538 would do all of the following:*

- *Specifically authorize water and sewer authorities created under Article 1 of Chapter 162A to:*
  - *Adopt ordinances concerning the regulation and control of water systems owned by the authority.*
  - *Enter into reimbursement agreements with developers or property owners for design and construction of infrastructure.*
  - *Offer and pay rewards up to \$5,000 for information leading to conviction of persons who willfully deface, damage, or destroy, or commits acts of vandalism or larceny of, authority property.*
- *Authorize a county or city to pledge a security interest in an escrow account to secure repayment of certain economic development loans.*
- *Allow the Local Government Commission, until July 1, 2016, to authorize loans of up to 30 year terms for certain water projects.*

## CURRENT LAW & BILL ANALYSIS:

### Sections 1 and 2:

There are several different mechanisms a county and city can use to address water and sewer concerns. One such mechanism is the creation of a water and sewer authority. One or more counties, cities, sanitary districts, or any other political subdivision may create water and sewer authorities. The governing body of each political subdivision must adopt a resolution stating its intent to organize an authority. The resolution must be adopted after a public hearing is held on the issue and notice of the public hearing must be published. A political subdivision can withdraw from an authority at any time prior to the creation of any obligations by the authority.

Generally upon creation, each of the entities has a governing board appointed by the units of local government involved in the operation of the system, with specific authority to set rates and fees, power to sue and be sued, and authority to contract in the name of the entity, amongst other powers and duties. Additionally, a water and sewer authority may issue revenue bonds; impose rates, fees, and charges; and levy special assessments.

**Section 1** would authorize a water and sewer authority to adopt an ordinance concerning the regulation and control of a water system owned or operated by the authority.

**Section 2** would add two new powers and duties for water and sewer authorities as follows:

- To enter into reimbursements agreements to be paid by the authority to a property owner or private developer, in accordance with an ordinance setting out procedures for such

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actions adopted by the authority, for the design and construction of infrastructure that is included on the authority's capital improvement plan and serves the property owner or private developer. Such agreements are not subject to the public contracting provisions, except that the property owner or private developer shall solicit sealed bids or informal bids, if the authority would have had to do so for the project.

- Offer and pay a reward not to exceed \$5,000 for information leading to the arrest and conviction of any person who willfully defaces, damages, or destroys authority property, or any person who commits an act of vandalism or larceny of authority property.

## **Section 3:**

Generally, units of local government may finance indebtedness as provided by statute. G.S. 160A-20 sets out the parameters for a county or city, or other listed units of government, to provide security interests when purchasing, financing or refinancing the purchase of real or personal property by installment contracts, including construction or repair of fixtures or improvements on real property. There is no statutory authority for a county or city to pledge a security interest in an escrow account or a certificate of deposit (CD) to repay a loan.

**Section 3** would add a new statute to Article 3 of Chapter 160A of the General Statutes, Contracts, to allow a county or city to pledge a security interest in an escrow account or CD to secure repayment of an interest free loan from the U.S. Department of Agriculture, either directly or indirectly. Any escrow account or CD pledged as such security would be required to comply with the provisions of the Local Government Budget and Fiscal Control Act.

## **Section 4:**

For loans awarded from the Clean Water State Revolving Fund (CWSRF) or the Drinking Water State Revolving Fund (DWSRF) to a unit of local government, Local Government Commission must consider the loan as if it were a bond proposal and review the proposed loan in accordance with statute. The terms of those loans must be consistent with federal law, and must comply with the following for interest and maturity:

- Interest: The interest rate for the loan may not exceed the lesser of 4% or  $\frac{1}{2}$  the prevailing national market rate for tax-exempt general obligation debt of similar maturities derived from a published indicator. When recommended by the DENR, the Local Government Commission may set an interest rate for a loan for a targeted interest rate project at a rate that is lower than the standard rate to achieve the purpose of the target. A "targeted interest rate project" is a project that is either one of the following:
  1. A high-unit-cost project that is awarded a loan.
  2. A project that is awarded a loan from the CWSRF or the DWSRF and is in a category for which federal law encourages a special focus. G.S. 159G-20(21).
- Maturity: A loan for a project that is not a high-unit-cost project may not exceed 20 years or the project's expected life, whichever is shorter, for the maximum maturity. A loan for a high-unit-cost project is 30 years or the project's expected life, whichever is shorter, for the maximum maturity. A "high-unit-cost project" is a "project that results in an estimated average household user fee for water and sewer service in the area served by the project in excess of the high-unit-cost threshold. The average household user fee is calculated for a continuous 12-month period." G.S. 159G-20(10).

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**Section 4** would allow the Local Government Commission to extend the maximum maturity date from 20 years to 30 years for a targeted interest rate loan if the project serves a system that is ranked as Tier I on the 2007-08 Tier Drought Vulnerability List developed by the Department and the loan amount is at least as great as 8 times the amount of the operating revenue of the unit's system for which the loan is being granted. *This section expires on July 1, 2016.*

## **Section 5:**

Generally, units of local government may finance indebtedness as provided by statute. G.S. 160A-20 sets out the parameters for a county or city, or other listed units of government, to provide security interests when purchasing, financing or refinancing the purchase of real or personal property by installment contracts, including construction or repair of fixtures or improvements on real property. The statute is applicable to only the listed units of government, and for only the actions stated. This practice is sometimes referred to as installment contract financing.

Currently, metropolitan sewerage districts already have this authority under G.S. 160A-20. However metropolitan sewerage districts do not have conforming explicit language in the statute set forth the powers and duties of such entities to engage in the practice; rather those entities have the authority to enter into contracts to accomplish their powers and duties.

Metropolitan water and sewer authorities have statutory authority to enter into installment contracts under G.S. 160A-20, but do have all of the powers and duties of any metropolitan sewerage district, or any metropolitan water district. Metropolitan water districts have no statutory authority for installment financing.

**Section 5** would explicitly authorize metropolitan water and sewerage authorities, and metropolitan water authorities, to engage in the practice of installment contract financing and make conforming changes to the statute governing metropolitan sewerage districts.

**EFFECTIVE DATE:** Except as otherwise noted, effective when it becomes law.