

Issue: Efforts to Subvert Local Decisions About Municipal Water & Sewer Utilities

BACKGROUND:

Despite clear statutory authority to make policy decisions related to the control and operation of city-owned water and sewer utilities outside of the city limits, the 2012 Short Session generated a number of proposals to micromanage the affairs of these utilities out of the state capital. Ignoring the investments made by city tax payers and system rate payers, these proposals damage the economic vitality of large public enterprises – jeopardizing their ability to foster economic development opportunities into the future.

+ **HB 1009:** MSD Amendments (McGrady, Moffitt). This bill was the only successful legislation restricting municipal water and sewer utilities. It sets the stage for a forced regionalization of the Asheville water system. In no uncertain terms, the local communities have been told to determine how they will regionalize the system by the end of 2012, or the General Assembly will regionalize the system from the state capital during the 2013 session. One issue is whether the General Assembly has the legal authority to take the assets of one unit of local government and transfer it to another forcibly, and without compensation. Also, there is a question whether, under N.C.G.S. §160A-321(b), the city has the authority to transfer the system without receiving voter approval.

+ **SB 382:** Amend Water Supply/Water Quality Laws (Apodaca, also Rep. T. Moore). This bill was originally titled “Required Withholding for Nonresidents,” and it passed the Senate on May 24, 2011. It sat idle until one week before the end of the 2012 session, when it morphed into a bill that was designed to force the City of Durham to provide water service for a specific proposed mixed-use development, outside the city limit in Durham County. City officials had decided not to provide service to the development, for a number of valid reasons – including insufficient capacity. In need of water service to make the project viable, the developer approached the General Assembly to force the city to provide the service, and the amended version of this bill would have prevented all cities extending water and sewer service into a “designated urban growth area” from denying service to any property owners in the urban growth area for reasons “not applied equally to property owners within the corporate limits.” The bill also dictated who would pay what costs for extending infrastructure and outlined the comparative rates structure for water rates. As the process played out, the bill was rewritten to make it clear it applied only to Durham. Ultimately, the bill died during the last 5 hours of session (3:30 am) when the Senate refused to go along with the House proposal on an 18-19 vote, recognizing that the General Assembly should not trump the wishes and needs of local communities as it pertains to development patterns and utility planning.

+ **SB 472:** Kinston Public Enterprises (Purcell, also Rep. LaRoque). Similar to SB 382, this bill -- originally titled “Norwood Water Lines” -- passed the Senate on April 20, 2011, and sat dormant until it was renamed “Kinston Public Enterprises” by Rep. LaRoque on June 21, 2012. The new bill eliminated the authority of the city to charge differential rates for water customers outside of the city limits, and, similar to SB 382, required the city to make its services available to all property owners outside of the city limits under the same rules as in-city property owners. In micromanaging the operations of the Kinston water and sewer systems, the bill would have jeopardized the ongoing fiscal viability of the systems. Despite rumors of other legislators wanting to add their cities onto the bill, it ultimately died in the House late in the session.

+ **HB 1227:** Disapprove New River Rule (Jordan). This bill was filed the last day a bill designed to disapprove a rule could be introduced: June 14, 2012. The session ended July 3, 2012. In a nutshell, the bill would have killed a water intake project for the expansion of the Town of Boone’s water system, which the city had been working on for over a decade to ensure the future growth of Boone (including expansions of Appalachian State University) and to which \$21 million of federal money was attached. Allegedly, the bill was introduced to satisfy the protest of a single landowner next to the proposed intake. Following intense lobbying efforts, the bill died in the House Rules Committee.

TALKING POINTS:

Local communities should decide how to meet the water/wastewater needs of a local area, and how to pay for those investments. Not lawmakers in Raleigh.

Cities should be able to operate water/wastewater enterprises like a business, without external interference from the state legislature. Decisions over rates, extensions, financing, and service should all be left to the discretion of system owners.

Intrusive legislative decisions impacting individual water/wastewater systems disrupt predictable rate structures for existing customers