

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**HOUSE BILL 1064
Committee Substitute Favorable 4/27/05**

Short Title: Sullivan Act III.

(Local)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

1 AN ACT REGARDING THE PROVISION OF WATER SERVICE IN BUNCOMBE
2 COUNTY.
3

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

8 Whereas, the North Carolina General Assembly has also enacted AN ACT
9 REGARDING WATER RATES IN BUNCOMBE COUNTY, S.L. 2005- ____
10 (hereinafter "Sullivan II") regarding water rates in Buncombe County; and

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

18 Whereas, from and after 1981, the City of Asheville and the County of
19 Buncombe have discharged various of their obligations relating to the provision of
20 water to certain citizens of Buncombe County residing inside and outside the corporate
21 limits of the City of Asheville and the maintenance and upkeep of their respective water
22 facilities pursuant to an Agreement between the City of Asheville and the County of
23 Buncombe establishing the Asheville/Buncombe Water Authority dated 29 October
24 1981 and certain supplements and amendments thereto (hereinafter "Water
25 Agreement"); and

26 Whereas, practically all, if not all, of the cost of the waterlines serving
27 Buncombe County (outside of the corporate limits of the City of Asheville) has been
28 paid by the County of Buncombe, the various water and sewer districts of the County of
29 Buncombe, by the Asheville/Buncombe Water Authority pursuant to its duties to

1 Buncombe County, and by private developers and landowners, desiring water service in
2 such areas and not paid by the City of Asheville; and

3 Whereas, the waterlines inside the corporate limits of the City of Asheville in
4 areas annexed by the City of Asheville after 1959 with preexisting waterlines in place
5 have not been purchased by the City of Asheville; and

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

9 Whereas, at the time of the adoption of the Water Agreement, certain public
10 recreational facilities were transferred to the County of Buncombe by the City of
11 Asheville, and during the term of the Water Agreement, the costs related to those
12 facilities have been borne by the County of Buncombe; and

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

16 Whereas, the City of Asheville has given notice to terminate the Water
17 Agreement as of 30 June 2005; 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 the public recreational facilities as
20 improved and maintained shall revert to the City of Asheville; and

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

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

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

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

40 Whereas, the excess capacity in the water system maintained by the
41 Asheville/Buncombe Water Authority, is such that the system has a current capacity in
42 excess of 41 million gallons per day and a current average usage of 22 million gallons
43 per day; and

1 Whereas, the Mills River water treatment plant of the Asheville/Buncombe
2 Water Authority was constructed at a location and in a manner that substantial
3 additional capacity can be added to the water system now served by the
4 Asheville/Buncombe Water Authority in the future without the construction of an
5 additional water treatment plant; and

6 Whereas, the complicated pattern of dealings between the City of Asheville
7 and the County of Buncombe regarding the provision of water to Buncombe County
8 water consumers connected to the waterlines currently maintained by the
9 Asheville/Buncombe Water Authority, and replacements, extensions, and additions
10 thereto has now given rise to the issue of whether current and future consumers of water
11 connected to the waterlines currently maintained by the Asheville/Buncombe Water
12 Authority, and replacements, extensions, and additions thereto in Buncombe County are
13 entitled to obtain water from the water system currently maintained by the
14 Asheville/Buncombe Water Authority; and

15 Whereas, it is the exclusive right of the State to regulate the provision of
16 public utilities to the citizens of the State; Now, therefore,
17 The General Assembly of North Carolina enacts:

18 **SECTION 1.** From and after 30 June 2005, the City of Asheville shall
19 provide water to all water consumers in Buncombe County connected to the waterlines
20 currently maintained by the Asheville/Buncombe Water Authority, and replacements,
21 extensions, and additions thereto and to all water consumers who in the future become
22 connected to said lines, replacements, extensions, and additions thereto, so long as the
23 average daily usage of said water system does not exceed the sum of the fifty-year
24 minimum safe yields then existing at the following locations:

- 25 (1) The Mills River water treatment facility;
- 26 (2) The North Fork Reservoir; and
- 27 (3) The Bee Tree Reservoir.

28 **SECTION 2.** It is the purpose and intent of this act to declare that consumers
29 of water outside of the corporate limits of the City of Asheville in Buncombe County
30 who are now or who may hereafter be connected to the waterlines currently maintained
31 by the Asheville/Buncombe Water Authority, and replacements, extensions, and
32 additions thereto shall be entitled to purchase water from the then-existing water supply
33 of the City of Asheville, as defined above, so long as there is excess capacity in said
34 system.

35 **SECTION 3.** It shall be the duty of the County Commissioners of
36 Buncombe County and/or the trustees of the different water districts operating outside
37 of the corporate limits of the City of Asheville in Buncombe County to maintain the
38 waterlines owned by the County of Buncombe and such water districts in proper repair
39 in order that there may not be a waste of water by leakage.

40 **SECTION 4.** To the extent that the Sullivan Act (Chapter 399 of the
41 Public-Local Laws of 1933) does not conflict with this act, it continues to apply.

42 **SECTION 5.** This act becomes effective June 30, 2005.