

## **REQUEST FOR BOARD ACTION**

### **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**MEETING DATE:** April 17, 2013

**SUBJECT:** House Bill 488

**PRESENTER:** Board of Commissioners

**ATTACHMENTS:** Yes

1. House Bill 488
2. Map

#### **SUMMARY OF REQUEST:**

On March 28, Representative Moffitt, Representative Chuck McGrady, and Representative Nathan Ramsey filed state legislation, House Bill 488, which would have the effect of establishing an independent Metropolitan Water and Sewerage District Authority.

The new authority will be composed of the Metropolitan Sewerage District of Buncombe County (MSD), the Public Water Utility System managed by the City of Asheville, and the Cane Creek Water and Sewer District. All assets and liabilities of these respective systems will be transferred to the Authority.

On April 2, 2013, the Bill passed the first reading in the House, and was referred to the Committee on Finance.

#### **BOARD ACTION REQUESTED:**

The Board is requested to discuss the impact of the proposed bill on Henderson County, and to direct Staff accordingly.

#### **SUGGESTED MOTION:**

*No motion suggested.*

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

**H**

**1**

**HOUSE BILL 488**

Short Title:   Regionalization of Public Utilities. (Public)

---

Sponsors:   Representatives Moffitt, McGrady, and Ramsey (Primary Sponsors).  
*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

---

Referred to:   Finance.

---

April 2, 2013

A BILL TO BE ENTITLED

1  
2 AN ACT TO PROMOTE THE PROVISION OF REGIONAL WATER AND SEWER  
3 SERVICES BY TRANSFERRING OWNERSHIP AND OPERATION OF CERTAIN  
4 PUBLIC WATER OR SEWER SYSTEMS THAT DO NOT FUNCTION AS JOINT OR  
5 REGIONAL WATER OR SEWER SYSTEMS TO A METROPOLITAN WATER AND  
6 SEWERAGE DISTRICT.

7       Whereas, regional water and sewer systems provide reliable, cost-effective,  
8 high-quality water and sewer services to a wide range of residential and institutional customers;  
9 and

10       Whereas, in an effort to ensure that the citizens and businesses of North Carolina are  
11 provided with the highest quality services, the State recognizes the value of regional solutions  
12 for public water and sewer for large public systems; Now, therefore,  
13 The General Assembly of North Carolina enacts:

14       **SECTION 1.(a)** All assets, real and personal, tangible and intangible, and all  
15 outstanding debts of any public water system operated by a subdivision of the State and body  
16 politic that serves a population greater than one hundred twenty thousand (120,000) people,  
17 according to data submitted pursuant to G.S. 143-355(l) for the year 2011, that is not operated  
18 as either a joint or regional public water system, shall be transferred to the metropolitan  
19 sewerage district in the county in which the public water system is located, to be operated as a  
20 Metropolitan Water and Sewerage District.

21       **SECTION 1.(b)** All assets, real and personal, tangible and intangible, and all  
22 outstanding debts of any public sewer system operated by a subdivision of the State and body  
23 politic that is interconnected with the metropolitan sewerage district receiving assets pursuant  
24 to Section 1.(a) of this act, that is not operated as either a joint or regional public sewer system,  
25 shall be transferred to that metropolitan sewerage district to be operated as a Metropolitan  
26 Water and Sewerage District.

27       **SECTION 1.(c)** Until appointments are made to the Metropolitan Water and  
28 Sewerage District established pursuant to Section 1.(a) of this act, the district board of the  
29 metropolitan sewerage district in the county in which the public water system, the assets of  
30 which are transferred pursuant to Section 1.(a) of this act, is located shall function as the district  
31 board of the Metropolitan Water and Sewerage District.

32       **SECTION 1.(d)** All necessary permits for operation shall also be transferred to the  
33 Metropolitan Water and Sewerage District established pursuant to Section 1.(a) of this act to  
34 ensure that no current and paid customer loses services due to the regionalization of water and  
35 sewer services required by this act. The new Metropolitan Water and Sewerage District shall



1 immediately begin assessing all permits and the process for transferring the permit or applying  
2 for any needed permits. All State agencies shall assist the new Metropolitan Water and  
3 Sewerage District in obtaining any needed permits in that entity's name.

4 **SECTION 2.** Chapter 162A of the General Statutes is amended by adding a new  
5 Article to read:

6 "Article 5A.

7 "Metropolitan Water and Sewerage Districts.

8 **"§ 162A-85.1. Definitions.**

9 (a) Definitions. – As used in this Article the following definitions shall apply:

10 (1) "Board of commissioners." – The duly elected board of commissioners of  
11 the county or counties in which a metropolitan water and sewerage district  
12 shall be created under the provisions of this Article.

13 (2) "City council" or "Council." – The duly elected city council of any  
14 municipality.

15 (3) "Cost." – As defined in G.S. 162A-65.

16 (4) "District." – A metropolitan water and sewerage district created under the  
17 provisions of this Article.

18 (5) "District board." – A water and sewerage district board established under the  
19 provisions of this Article.

20 (6) "General obligation bonds." – As defined in G.S. 162A-65.

21 (7) "Governing body." – As defined in G.S. 162A-32.

22 (8) "Person." – As defined in G.S. 162A-65.

23 (9) "Political subdivision." – As defined in G.S. 162A-65.

24 (10) "Revenue bonds." – Any bonds the principal of and the interest on which are  
25 payable solely from revenues of a water and sewerage system or systems.

26 (11) "Revenues." – All moneys received by a district from, in connection with, or  
27 as a result of its ownership or operation of a water and sewerage system,  
28 including moneys received from the United States of America, or any  
29 agency thereof, pursuant to an agreement with the district board pertaining to  
30 the water and sewerage system, if deemed advisable by the district board.

31 (12) "Sewage." – As defined in G.S. 162A-65.

32 (13) "Sewage disposal system." – As defined in G.S. 162A-65.

33 (14) "Sewerage system." – As defined in G.S. 162A-65.

34 (15) "Sewers." – As defined in G.S. 162A-65.

35 (16) "Water distribution system." – As defined in G.S. 162A-32.

36 (17) "Water system." – As defined in G.S. 162A-32.

37 (18) "Water treatment or purification plant." – As defined in G.S. 162A-32.

38 (b) Description of Boundaries. – Whenever this Article requires the boundaries of an  
39 area be described, it shall be sufficient if the boundaries are described in a manner which  
40 conveys an understanding of the location of the land and may be by any of the following:

41 (1) By reference to a clearly identified map recorded in the appropriate register  
42 of deeds office.

43 (2) By metes and bounds.

44 (3) By general description referring to natural boundaries, boundaries of  
45 political subdivisions, or boundaries of particular tracts or parcels of land.

46 (4) Any combination of the foregoing.

47 **"§ 162A-85.3. District board.**

48 (a) Appointment. – The district board shall consist of no more than 15 members  
49 appointed as follows:

50 (1) Two individuals by the governing body of each county served, wholly or in  
51 part, by the district.

- 1           (2)    One individual by the governing body of each municipality served by the  
2           district located in any county served by the district with a population greater  
3           than 200,000.
- 4           (3)    Two individuals by the governing body of any municipality served by the  
5           district with a population greater than 75,000, in addition to any  
6           appointments under subdivision (2) of this subsection.
- 7           (4)    One individual by the governing body of any county served by the district  
8           with a population greater than 200,000, in addition to any appointments  
9           under subdivision (1) of this subsection.
- 10          (5)    One individual by the governing body of a county in which a watershed  
11          -serving the district board is located in a municipality not served by the  
12          district, upon recommendation of that municipality. The municipality shall  
13          provide to the governing body of the county a list of three names within 30  
14          days of written request by the county, from which the county must select an  
15          appointee if the names are provided within 30 days of written request.
- 16          (6)    One individual by the governing body of any elected water and sewer district  
17          wholly contained within the boundaries of the district.
- 18          (b)    Terms; Reappointment. – Terms shall be for three years. A member shall serve until  
19          a successor has been duly appointed and qualified.
- 20          (c)    Vacancies; Removal. – If a vacancy shall occur on a district board, the governing  
21          body which appointed the vacating member shall appoint a new member who shall serve for  
22          the remainder of the unexpired term. Any member of a district board may be removed by the  
23          governing board that appointed that member.
- 24          (d)    Oath of Office. – Each member of the district board, before entering upon the  
25          duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of  
26          the United States and of this State and to discharge faithfully the duties of the office. A record  
27          of each such oath shall be filed with the clerk or clerks of the governing boards appointing the  
28          members.
- 29          (e)    Chair; Officers. – The district board shall elect one of its members as chairman and  
30          another as vice-chairman. The district board shall appoint a secretary and a treasurer who may,  
31          but need not, be members of the district board. The offices of secretary and treasurer may be  
32          combined. The district board may also appoint an assistant secretary and an assistant treasurer  
33          or, if the office is combined, an assistant secretary-treasurer who may, but need not, be  
34          members of the district board. The terms of office of the chairman, vice-chairman, secretary,  
35          treasurer, assistant secretary, and assistant treasurer shall be as provided in the bylaws of the  
36          district board.
- 37          (f)    Meetings; Quorum. – The district board shall meet regularly at such places and  
38          dates as are determined by the district board. All meeting shall comply with Article 33C of  
39          Chapter 143 of the General Statutes. A majority of the members of the district board shall  
40          constitute a quorum, and the affirmative vote of a majority of the members of the district board  
41          present at any meeting thereof shall be necessary for any action taken by the district board. No  
42          vacancy in the membership of the district board shall impair the right of a quorum to exercise  
43          all the rights and perform all the duties of the district board. Each member, including the  
44          chairman, shall be entitled to vote on any question.
- 45          (g)    Compensation. – The members of the district board may receive compensation in an  
46          amount to be determined by the district board but not to exceed that compensation paid to  
47          members of Occupational Licensing Boards as provided in G.S. 93B-5(a) for each meeting of  
48          the district board attended and for attendance at each regularly scheduled committee meeting of  
49          the district board. The members of the district board may also be reimbursed the amount of  
50          actual expenses incurred by that member in the performance of that member's duties.
- 51          "§ 162A-85.5. Powers generally.

1       (a) Each district shall be deemed to be a public body and body politic and corporate  
2 exercising public and essential governmental functions to provide for the preservation and  
3 promotion of the public health and welfare, and each district is hereby authorized and  
4 empowered to do all of the following:

5           (1) To exercise any power of a Metropolitan Water District under Article 4 of  
6 this Chapter.

7           (2) To exercise any power of a Metropolitan Sewerage District under Article 5  
8 of this Chapter.

9           (3) To do all acts and things necessary or convenient to carry out the powers  
10 granted by this Article.

11       (b) Each district shall keep its accounts on the basis of a fiscal year commencing on the  
12 first day of July and ending on the thirtieth day of June of the following year.

13 **"§ 162A-85.7. Bonds and notes authorized.**

14       A metropolitan water and sewerage district shall have power from time to time to issue  
15 bonds and notes under the Local Government Finance Act.

16 **"§ 162A-85.9. Determination of tax rate by district board; levy, collection, and remittance**  
17 **of tax.**

18       (a) After each assessment for taxes following the creation of the district, the board or  
19 boards of commissioners shall file with the district board the valuation of assessable property  
20 within the district. The district board shall then determine the amount of funds to be raised by  
21 taxation for the ensuing year in excess of available funds to provide for the payment of interest  
22 on and the principal of all outstanding general obligation bonds as the same shall become due  
23 and payable, to pay the cost of maintaining, repairing, and operating any water system and any  
24 sewerage system or systems, and to pay all obligations incurred by the district in the  
25 performance of its lawful undertakings and functions.

26       (b) The district board shall determine the number of cents per one hundred dollars  
27 (\$100.00) necessary to raise said amount and certify such rate to the board or boards of  
28 commissioners.

29       (c) The board or boards of commissioners shall include the number of cents per one  
30 hundred dollars (\$100.00) certified by the district board in its next annual levy against all  
31 taxable property within the district, which tax shall be collected as other county taxes are  
32 collected, and every month the amount of tax so collected shall be remitted to the district board  
33 and deposited by the district board in a separate account in a bank in the State of North  
34 Carolina. Such levy may include an amount for reimbursing the county for the additional cost  
35 to the county of levying and collecting such taxes, pursuant to such formula as may be agreed  
36 upon by the district board and the board or boards of commissioners, to be deducted from the  
37 collections and stated with each remittance to the district board.

38       (d) The officer or officers having charge or custody of the funds of the district shall  
39 require said bank to furnish security for protection of such deposits as provided in G.S. 159-28  
40 and G.S. 159-31.

41 **"§ 162A-85.13. Rates and charges for services.**

42       (a) The district board may fix, and may revise from time to time, rents, rates, fees, and  
43 other charges for the use of and for the services furnished or to be furnished by any water  
44 system or sewerage system. Such rents, rates, fees, and charges may not apply differing  
45 treatment within and outside the corporate limits of any city or county within the jurisdiction of  
46 the district board. Such rents, rates, fees, and charges shall not be subject to supervision or  
47 regulation by any bureau, board, commission, or other agency of the State or of any political  
48 subdivision.

49       (b) Any such rents, rates, fees, and charges pledged to the payment of revenue bonds of  
50 the district shall be fixed and revised so that the revenues of the water system or sewerage  
51 system, together with any other available funds, shall be sufficient at all times to pay the cost of

1 maintaining, repairing, and operating the sewerage system the revenues of which are pledged to  
2 the payment of such revenue bonds, including reserves for such purposes, and to pay the  
3 interest on and the principal of such revenue bonds as the same shall become due and payable  
4 and to provide reserves therefor. If any such rents, rates, fees, and charges are pledged to the  
5 payment of any general obligation bonds issued under this Article, such rents, rates, fees, and  
6 charges shall be fixed and revised so as to comply with the requirements of such pledge.

7 (c) The district board may provide methods for collection of such rents, rates, fees, and  
8 charges and measures for enforcement of collection thereof, including penalties and the denial  
9 or discontinuance of service.

10 **"§ 162A-85.17. Rights-of-way and easements.**

11 A right-of-way or easement in, along, or across any State highway system, road, or street,  
12 and along or across any city or town street within a district is hereby granted to a district in case  
13 such right-of-way is found by the district board to be necessary or convenient for carrying out  
14 any of the work of the district. Any work done in, along, or across any State highway system,  
15 road, street, or property shall be done in accordance with the rules and regulations and any  
16 reasonable requirements of the Department of Transportation, and any work done in, along, or  
17 across any municipal street or property shall be done in accordance with any reasonable  
18 requirements of the municipal governing body.

19 **"§ 162A-85.19. Authority of governing bodies of political subdivisions.**

20 (a) The governing body of any political subdivision is hereby authorized and  
21 empowered to do any of the following:

22 (1) Subject to the approval of the Local Government Commission, to transfer  
23 jurisdiction over and to lease, lend, sell, grant, or convey to a district, upon  
24 such terms and conditions as the governing body of such political  
25 subdivision may agree upon with the district board, the whole or any part of  
26 any existing sewerage system or systems or such real or personal property as  
27 may be necessary or useful in connection with the acquisition, construction,  
28 reconstruction, improvement, extension, enlargement, equipment, repair,  
29 maintenance, or operation of any water system or sewerage system by the  
30 district, including public roads and other property already devoted to public  
31 use.

32 (2) To make and enter into contracts or agreements with a district, upon such  
33 terms and conditions and for such periods as such governing body and the  
34 district board may determine for any of the following:

35 a. For the collection, treatment, or disposal of sewage.

36 b. For the supply of raw or treated water on a regular retail or wholesale  
37 basis.

38 c. For the supply of raw or treated water on a standby wholesale basis.

39 d. For the construction of jointly financed facilities whose title shall be  
40 vested in the district.

41 e. For the collecting by such political subdivision or by the district of  
42 rents, rates, fees, or charges for the services and facilities provided to  
43 or for such political subdivision or its inhabitants by any water  
44 system or sewerage system and for the enforcement of collection of  
45 such rents, rates, fees, and charges.

46 f. For the imposition of penalties, including the shutting off of the  
47 supply of water furnished by any water system owned or operated by  
48 such political subdivision, in the event that the owner, tenant, or  
49 occupant of any premises utilizing such water shall fail to pay any  
50 such rents, rates, fees, or charges.

1           (3)    To fix, and revise from time to time, rents, rates, fees, and other charges for  
2           the services furnished or to be furnished by a water system or sewerage  
3           system under any contract between the district and such political subdivision  
4           and to pledge all or any part of the proceeds of such rents, rates, fees, and  
5           charges to the payment of any obligation of such political subdivision to the  
6           district under such contract.

7           (4)    To pay any obligation of such political subdivision to the district under such  
8           contract from any available funds of the political subdivision and to levy and  
9           collect a tax ad valorem for the making of any such payment.

10          (5)    In its discretion or if required by law, to submit to its qualified electors under  
11          the election laws applicable to such political subdivision any contract or  
12          agreement which such governing body is authorized to make and enter into  
13          with the district under the provisions of this Article.

14          (b)    Any such election upon a contract or agreement called under subsection (a) of this  
15          section may, at the discretion of the governing body, be called and held under the election laws  
16          applicable to the issuance of bonds by such political subdivision.

17          **"§ 162A-85.21. Submission of preliminary plans to planning groups; cooperation with**  
18          **planning agencies.**

19          (a)    Prior to the time final plans are made for the location and construction of any water  
20          system or sewerage system, the district board shall present preliminary plans for such  
21          improvement to the county or municipal governing board for their consideration, if such facility  
22          is to be located within the jurisdiction of any such county or municipality. The district board  
23          shall make every effort to cooperate with the county or municipality in the location and  
24          construction of a proposed facility authorized under this Article.

25          (b)    Any district board created under the authority of this Article is hereby directed,  
26          wherever possible, to coordinate its plans for the construction of water system or sewerage  
27          system improvements with the overall plans for the development of the planning area if such  
28          district is located wholly or in part within a county or municipal planning area.

29          (c)    The approval of any such plan of the district shall be required from the governing  
30          body of the county or municipality prior to the start of construction.

31          **"§ 162A-85.25. Adoption and enforcement of ordinances.**

32          (a)    A district shall have the same power as a city under G.S. 160A-175 to assess civil  
33          finances and penalties for violation of its ordinances and may secure injunctions to further ensure  
34          compliance with its ordinances as provided by this section.

35          (b)    An ordinance may provide that its violation shall subject the offender to a civil  
36          penalty of not more than one thousand dollars (\$1,000) to be recovered by the district in a civil  
37          action in the nature of debt if the offender does not pay the penalty within a prescribed period  
38          of time after he has been cited for violation of the ordinance. Any person assessed a civil  
39          penalty by the district shall be notified of the assessment by registered or certified mail, and the  
40          notice shall specify the reasons for the assessment. If the person assessed fails to pay the  
41          amount of the assessment to the district within 30 days after receipt of notice, or such longer  
42          period, not to exceed 180 days, as the district may specify, the district may institute a civil  
43          action in the General Court of Justice of the county in which the violation occurred or, in the  
44          discretion of the district, in the General Court of Justice of the county in which the person  
45          assessed has his or its principal place of business, to recover the amount of the assessment. The  
46          validity of the district's action may be appealed directly to General Court of Justice in the  
47          county in which the violation occurred or may be raised at any time in the action to recover the  
48          assessment. Neither failure to contest the district's action directly nor failure to raise the issue of  
49          validity in the action to recover an assessment precludes the other.

50          (c)    An ordinance may provide that it may be enforced by an appropriate equitable  
51          remedy issuing from court of competent jurisdiction. In such case, the General Court of Justice

1 shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense  
2 to the application of the district for equitable relief that there is an adequate remedy at law.

3 (d) Subject to the express terms of an ordinance, a district ordinance may be enforced  
4 by any one, all, or a combination of the remedies authorized and prescribed by this section.

5 (e) An ordinance may provide, when appropriate, that each day's continuing violation  
6 shall be a separate and distinct offense.

7 **"§ 162A-85.29. No privatization.**

8 The district board may not in any way privatize the provision of water or sewer to the  
9 customers of the district unless related to administrative matters only."

10 **SECTION 3.** G.S. 159-44(4) reads as rewritten:

11 "(4) "Unit," "unit of local government," or "local government" means counties;  
12 cities, towns, and incorporated villages; consolidated city-counties, as  
13 defined by G.S. 160B-2(1); sanitary districts; mosquito control districts;  
14 hospital districts; merged school administrative units described in  
15 G.S. 115C-513; metropolitan sewerage districts; metropolitan water districts;  
16 metropolitan water and sewerage districts; county water and sewer districts;  
17 regional public transportation authorities; and special airport districts."

18 **SECTION 4.** G.S. 159-48(e) reads as rewritten:

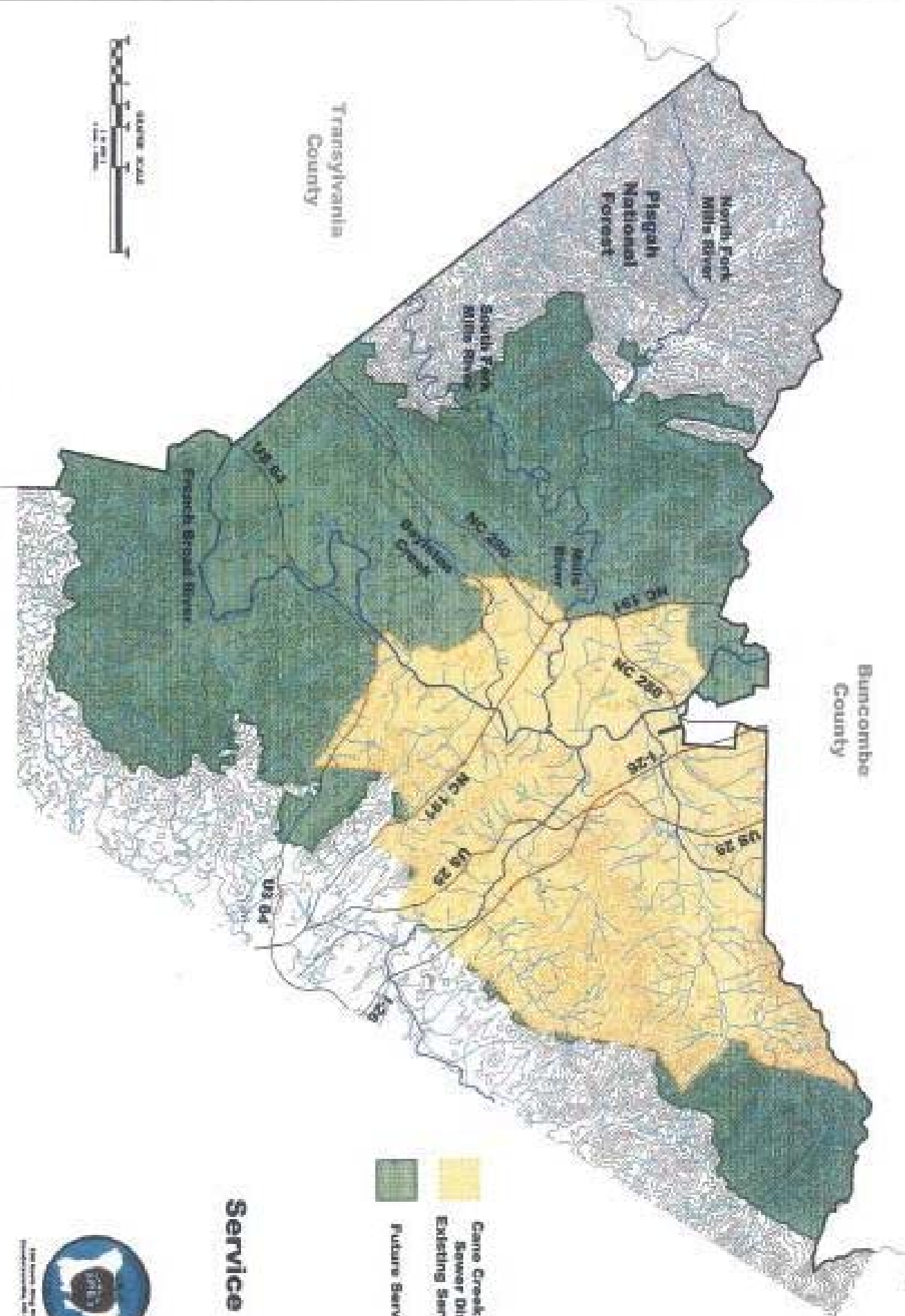
19 "(e) Each sanitary district, mosquito control district, hospital district, merged school  
20 administrative unit described in G.S. 115C-513; metropolitan sewerage district, metropolitan  
21 water district, metropolitan water and sewerage district, county water and sewer district,  
22 regional public transportation authority and special airport district is authorized to borrow  
23 money and issue its bonds under this Article in evidence thereof for the purpose of paying any  
24 capital costs of any one or more of the purposes for which it is authorized, by general laws  
25 uniformly applicable throughout the State, to raise or appropriate money, except for current  
26 expenses."

27 **SECTION 5.** G.S. 159-81(1) reads as rewritten:

28 "(1) "Municipality" means a county, city, town, incorporated village, sanitary  
29 district, metropolitan sewerage district, metropolitan water district,  
30 metropolitan water and sewerage district, county water and sewer district,  
31 water and sewer authority, hospital authority, hospital district, parking  
32 authority, special airport district, special district created under Article 43 of  
33 Chapter 105 of the General Statutes, regional public transportation authority,  
34 regional transportation authority, regional natural gas district, regional sports  
35 authority, airport authority, joint agency created pursuant to Part 1 of Article  
36 20 of Chapter 160A of the General Statutes, a joint agency authorized by  
37 agreement between two cities to operate an airport pursuant to G.S. 63-56,  
38 and the North Carolina Turnpike Authority described in Article 6H of  
39 Chapter 136 of the General Statutes and transferred to the Department of  
40 Transportation pursuant to G.S. 136-89.182(b), but not any other forms of  
41 State or local government."

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





Buncombe County

Transylvania County



- Cane Creek Water & Sewer District - Existing Service Area
- Future Service Area

**Service Areas**



1000 Cane Creek Road, Asheville, NC 28804

