

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2004-143
HOUSE BILL 1083**

AN ACT TO PROMOTE WATER CONSERVATION IN MULTIFAMILY RESIDENTIAL PROPERTIES BY AMENDING VARIOUS STATE LAWS REGARDING THE USE OF SUBMETERS IN LIGHT OF CHANGES IN POLICY RELATED TO WATER TESTING REQUIREMENTS AND WATER CONSERVATION BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-3 reads as rewritten:

"§ 42-3. Term forfeited for nonpayment of rent.

In all verbal or written leases of real property of any kind in which is fixed a definite time for the payment of the rent reserved therein, there shall be implied a forfeiture of the term upon failure to pay the rent within 10 days after a demand is made by the lessor or his agent on said lessee for all past-due rent, and the lessor may forthwith enter and dispossess the tenant without having declared such forfeiture or reserved the right of reentry in the lease. ~~Where a written lease establishes a monthly rent that includes water and sewer services under G.S. 62-110(g), the terms "rent" and "rental payment", as used in this Chapter, mean base rent only.~~

SECTION 2. G.S. 42-26(b) reads as rewritten:

"(b) An arrearage in ~~additional rent costs~~ owed by a tenant for water ~~and or~~ sewer services pursuant to G.S. 62-110(g) shall not be used as a basis for termination of a ~~lease~~ lease under this Chapter. Any ~~partial payment to the landlord of monthly rent~~ shall be applied first to the ~~base rent~~ rent owed and then to charges for water or sewer service, unless otherwise designated by the tenant."

SECTION 3. G.S. 42-42(a) is amended by adding a new subsection to read:

"(6) If the landlord is charging for the cost of providing water or sewer service pursuant to G.S. 42-42.1 and has actual knowledge from either the supplying water system or other reliable source that water being supplied to tenants within the landlord's property exceeds a maximum contaminant level established pursuant to Article 10 of Chapter 130A of the General Statutes, provide notice that water being supplied exceeds a maximum contaminant level."

SECTION 4. Article 5 of Chapter 42 of the General Statutes is amended by adding a new section to read:

"§ 42-42.1. Water Conservation.

(a) For the purpose of encouraging water conservation, pursuant to a written rental agreement, a landlord may charge for the cost of providing water or sewer service to tenants who occupy the same contiguous premises pursuant to G.S. 62-110(g).

(b) The landlord may not disconnect or terminate the tenant's water or sewer services due to the tenant's nonpayment of the amount due for water or sewer services."

SECTION 5. G.S. 42-46(d) reads as rewritten:

"(d) A lessor shall not charge a late fee to a lessee because of the lessee's failure to pay ~~additional rent~~ for water ~~and or~~ sewer services provided pursuant to G.S. 62-110(g)."

SECTION 6. G.S. 42-51 reads as rewritten:

"§ 42-51. Permitted uses of the deposit.

Security deposits for residential dwelling units shall be permitted only for the tenant's possible nonpayment of ~~base rent and additional rent costs~~ for water and/or sewer services provided pursuant to G.S. 62-110(g), damage to the premises, nonfulfillment of rental period, any unpaid bills ~~which that~~ become a lien against the demised property due to the tenant's occupancy, costs of re-renting the premises after breach by the tenant, costs of removal and storage of tenant's property after a summary ejectment proceeding or court costs in connection with terminating a tenancy. The security deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one and one-half months' rent if a tenancy is month to month, and two months' rent for terms greater than month to month. These deposits must be fully accounted for by the landlord as set forth in G.S. 42-52."

SECTION 7. G.S. 62-110(g) reads as rewritten:

"(g) ~~For~~ In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, for the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a lessor, pursuant to a written rental agreement, to allocate lessor to charge for the costs for of providing water and or sewer service on a metered use basis to persons who occupy the same contiguous premises. The following provisions shall apply:

- (1) All charges for water or sewer service shall be based on the user's metered consumption of water, which shall be determined by metered measurement of all water consumed and not by any partial measurement of water consumption, unless specifically authorized by the Commission. The rate charged by the lessor shall not exceed the unit consumption rate charged by the supplier of the service.
- (2) A written rental agreement shall specify a monthly rent that shall be the sum of the base rent plus additional rent at a rate that does not exceed the actual purchase price of the water and sewer service to the provider plus The lessor may charge a reasonable administrative fee. fee for providing water or sewer service not to exceed the maximum administrative fee authorized by the Commission.
- (3) The Commission shall issue rules to define contiguous premises and to implement this subsection. In issuing the rule to define contiguous premises, the Commission shall consider contiguous premises where manufactured homes, as defined in G.S. 143-145(7), or spaces for manufactured homes are rented.
- (4) The Commission shall develop an application that lessors must submit for authority to charge for water or sewer service. The form shall include all of the following:
 - a. A description of the applicant and the property to be served.
 - b. A description of the proposed billing method and billing statements.
 - c. The schedule of rates charged to the applicant by the supplier.
 - d. The schedule of rates the applicant proposes to charge the applicant's customers.
 - e. The administrative fee proposed to be charged by the applicant.
 - f. The name of and contact information for the applicant and its agents.
 - g. The name of and contact information for the supplying water or sewer system.
 - h. Any additional information that the Commission may require.
- (5) The Commission shall approve or disapprove an application within 30 days of the filing of a completed application with the Commission. If

- the Commission has not issued an order disapproving a completed application within 30 days, the application shall be deemed approved.
- (6) A provider of water or sewer service under this subsection may increase the rate for service so long as the rate does not exceed the unit consumption rate charged by the supplier of the service. A provider of water or sewer service under this subsection may change the administrative fee so long as the administrative fee does not exceed the maximum administrative fee authorized by the Commission. In order to change the rate or administrative fee, the provider shall file a notice of revised schedule of rates and fees with the Commission. The Commission may prescribe the form by which the provider files a notice of a revised schedule of rates and fees under this subsection. The form shall include all of the following:
- a. The current schedule of the unit consumption rates charged by the provider.
 - b. The schedule of rates charged by the supplier to the provider that the provider proposes to pass through to the provider's customers.
 - c. The schedule of the unit consumption rates proposed to be charged by the provider.
 - d. The current administrative fee charged by the provider, if applicable.
 - e. The administrative fee proposed to be charged by the provider.
- (7) A notification of revised schedule of rates and fees shall be presumed valid and shall be allowed to become effective upon 14 days notice to the Commission, unless otherwise suspended or disapproved by order issued within 14 days after filing.
- (8) Notwithstanding any other provision of this Chapter, the Commission shall determine the extent to which the services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates that may be allocated-charged for the services. Nothing in this subsection shall be construed to alter the rights, obligations, or remedies of persons providing water and-or sewer services and their customers under any other provision of law.
- (9) A provider of water or sewer service under this subsection shall not be required to file annual reports pursuant to G.S. 62-36 or to furnish a bond pursuant to G.S. 62-110.3."

SECTION 8. G.S. 130A-315(d) reads as rewritten:

"(d) When a person that receives water from a public water system is authorized by the Utilities Commission, pursuant to G.S. 62-110(g), to ~~install sub-meters and allocate-charge for the costs for-of providing water service to persons who occupy the same contiguous premises, or sewer service,~~ that person shall be regulated as a consecutive water system-not be subject to regulation under this Article solely as a result of submetering and billing for water service. ~~The monitoring, analysis, and record keeping requirements applicable to consecutive water systems under this section shall be satisfied by the monitoring, analysis, and record keeping performed by the supplying water system and submitted to the Department in compliance with this section.~~ The supplying water system shall perform the same level of monitoring, analysis, and record keeping that the supplying system would perform if the ~~person that receives the water-providing water system~~ had not been authorized to allocate-the-charge for the costs for-of providing water or sewer service under G.S. 62-110(g), but the supplying water system shall not be required to perform additional monitoring, analysis, and record keeping. A supplying water system is not responsible for operation, maintenance, or repair of the consecutive water system. pursuant to G.S. 62-110(g).

(e) When a public water system supplies water through a master meter to a water system not regulated by this Article, the supplying water system is not responsible for operation, maintenance, or repair of the providing water system. The supplying water system shall not be responsible for contamination that is confined to the providing water system if the supplying water system meets applicable requirements for water quality, treatment, and system operation for that contaminant. The supplying water system may monitor the water within the providing water system for contamination pursuant to rules adopted under this Article. The supplying water system and the Department shall have access to the providing water system to investigate water quality problems and to determine whether any contamination is confined to the providing water system and whether the quality of the water supplied by the supplying water system is contributing contamination to the providing water system.

(f) If water in the providing water system exceeds the maximum contaminant levels established pursuant to this Article and the Department determines that the supplying water system is not responsible, the supplying water system must notify the providing water system owner in writing within one day of determining that the contamination is confined solely to the providing water system for bacteria, nitrate, and nitrite, and within 30 days for all other contaminants."

SECTION 9. On 1 August 2004 all certificates of authority for allocation of rental costs and all temporary operating authority as traditional water or sewer utilities issued by the Utilities Commission to entities that provide water or sewer services pursuant to G.S. 62-110(g), as that subsection read prior to the amendments made by Section 7 of this act, shall terminate. All entities operating under these certificates or temporary operating authority shall be deemed to have certificates of authority to charge for water or sewer service at their then existing rates.

SECTION 10. Effective 1 August 2004, Utilities Commission Rules R18-11 through R18-17 shall be rescinded and former Commission Rules R18-1 through R18-7 as they existed on 18 December 2001 shall be reinstated, subject to the authority of the Commission to modify or rescind them or adopt additional rules.

SECTION 11. This act becomes effective 1 August 2004.

In the General Assembly read three times and ratified this the 13th day of July, 2004.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:31 p.m. this 29th day of July, 2004