

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 907*

Short Title: MSD Amendments.

(Public)

Sponsors: Senators Ledbetter; Carpenter and Clark.

Referred to: Judiciary.

April 17, 1997

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW EXPANSION OF METROPOLITAN SEWERAGE DISTRICTS,
2 TO PROTECT PERSONNEL RECORDS OF EMPLOYEES OF THOSE
3 DISTRICTS, AND TO EXTEND TO ALL LOCAL GOVERNMENT
4 PROTECTION OF GEOGRAPHIC INFORMATION SYSTEMS.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. Article 5 of Chapter 162A of the General Statutes is amended by
8 adding the following new sections:

9 "**§ 162A-68.1. Extension of metropolitan sewerage districts.**

10 (a) Extension by Resolution. – The district board may, by resolution, extend the
11 boundaries of the district to include additional unincorporated areas upon a finding by the
12 district board that the district is currently providing sewerage service to the proposed area
13 to be included on substantially the same basis and in the same manner as such services
14 are provided within the rest of the district, and the inclusion of the unincorporated area
15 will promote the public health and welfare. For the purpose of this section, 'providing
16 sewerage service on substantially the same basis and in the same manner as such services
17 are provided within the rest of the district' shall be construed to include all properties
18 currently being served by sewer or within 300 feet of a public sewer line.

19 (b) Extension by Petition. – The district board may, by resolution, extend the
20 boundaries of the district when one hundred percent (100%) of the real property owners

1 within the proposed additional area to be included within the district have petitioned the
2 district board for inclusion.

3 The petition shall be prepared in substantially the following form:

4 'Date _____

5 To the _____ (Name of district board) of the _____

6 A. We the undersigned owners of real property respectfully request that the area
7 described in paragraph _____ of this petition be included in the metropolitan sewerage
8 district of _____

9 B. The area to be included is described as follows:

10
11 [description of territory to be included]'

12 (c) Report. – Before the public hearing required by subsection (d) of this section,
13 the district board shall have prepared a report containing:

14 (1) A map of the current and proposed boundaries of the district; and

15 (2) A statement showing that the area to be included meets the standards
16 and requirements established in subsection (a) or (b) of this section.

17 The report shall be available for public inspection in the office of the clerk of the
18 district board for at least two weeks before the date of the public hearing required by
19 subsection (d) _____ of this section.

20 (d) Hearing and Notice. – The district board shall hold a public hearing before
21 adopting any resolution extending the boundaries of the district. Notice of the hearing
22 shall state the date, hour, and place of the hearing and its subject, and shall include a
23 statement that the report required by subsection (c) of this section is available for
24 inspection in the offices of the district. The notice shall be published at least once not
25 less than one week before the date of the hearing. In addition, unless the hearing is
26 because of a petition for inclusion submitted under subsection (b) of this section, the
27 notice shall be mailed, at least four weeks before the date of the hearing, to the owners, as
28 shown by the county tax records as of the preceding January 1, of all property located
29 within the proposed area to be included in the district. The notice may be mailed by any
30 class of U.S. mail which is fully prepaid. The person designated by the district board to
31 mail the notice shall certify to the district board that the mailing has been completed, and
32 that person's certificate shall be conclusive in the absence of fraud.

33 (e) Effective Date. – The resolution extending the boundaries of the district shall
34 take effect upon a date to be determined by the district board.

35 (f) No Extension to Neighboring Counties Without Permission. – A district board
36 may not adopt a resolution under this section which would extend the district into another
37 county unless the governing board of the other county has adopted a resolution requesting
38 the district board to do so.

39 (g) Extension of Boundaries to Include Territory Within a Sanitary District. – The
40 district board may not adopt a resolution extending the district boundaries to include
41 territory lying within the corporate limits of a sanitary district unless the governing body
42 of the sanitary district agrees, by resolution, to the inclusion.

1 (h) Any additional unincorporated area that is included within an existing district
2 shall be represented by the members representing the county in which the unincorporated
3 area lies except that:

4 (1) If inclusion of the additional unincorporated area extends the district
5 into more than one county, members representing the unincorporated
6 area in the new county shall be appointed in accordance with G.S.
7 162A-67(a)(2) immediately following the inclusion of the additional
8 area.

9 (2) If the inclusion of the additional unincorporated area has the effect of
10 changing the county in which the largest portion of the district lies, new
11 members representing the county comprising the larger portion of the
12 district shall be appointed in accordance with G.S. 162A-67(a)(2)
13 immediately following the inclusion, and no reappointment shall be
14 made by the county in which the lesser portion of the district lies upon
15 expiration of the first term of a member representing that county
16 following the inclusion.

17 (3) If the resolution extending the boundaries of the district includes
18 territory within a sanitary district, that additional area shall be
19 represented by the members representing the county in which the
20 sanitary district lies.

21 (i) Any action or proceeding in any court to set aside a resolution of the district
22 board approving the inclusion of an additional unincorporated area within the district or
23 to obtain any other relief upon the ground that such resolution or any proceeding or
24 action taken with respect to the inclusion of the additional unincorporated area within the
25 district is invalid, must be commenced with 30 days after the publication of the notice of
26 the public hearing in subsection (d) of this section. After the expiration of such period of
27 limitation, no right of action or defense founded upon the invalidity of the resolution or
28 the inclusion of the additional unincorporated area in the district shall be asserted, nor
29 shall the validity of the resolution or the inclusion of the additional unincorporated area
30 be open to question in any court upon any ground whatever, except in an action or
31 proceeding commenced within such period.

32 **"§ 162A-69.1. Privacy of employee personnel records.**

33 (a) Notwithstanding the provisions of G.S. 132-6 or any other law concerning
34 access to public records, personnel files of employees, former employees, or applicants
35 for employment maintained by a district are subject to inspection and may be disclosed
36 only as provided by this section. For purposes of this section, an employee's personnel
37 file consists of any information in any form gathered by the district with respect to that
38 employee and, by way of illustration but not limitation, relating to his application,
39 selection or nonselection, performance, promotions, demotions, transfers, suspension and
40 other disciplinary actions, evaluation forms, leave, salary, and termination of
41 employment. As used in this section, 'employee' includes former employees of the
42 district.

1 (b) The following information with respect to each district employee is a matter of
2 public record: name; age; date of original employment or appointment to the service;
3 current position title; current salary; date and amount of the most recent increase or
4 decrease in salary; date of the most recent promotion, demotion, transfer, suspension,
5 separation, or other change in position classification; and the office to which the
6 employee is currently assigned. The district shall determine in what form and by whom
7 this information will be maintained. Any person may have access to this information for
8 the purpose of inspection, examination, and copying, during regular business hours,
9 subject only to such rules and regulations for the safekeeping of public records as the
10 district may have adopted. Any person denied access to this information may apply to
11 the appropriate division of the General Court of Justice for an order compelling
12 disclosure, and the court shall have jurisdiction to issue such orders.

13 (c) All information contained in the district employee's personnel file, other than
14 the information made public by subsection (b) of this section, is confidential and shall be
15 open to inspection only in the following instances:

16 (1) The employee or his duly authorized agent may examine all portions of
17 his personnel file except (i) letters of reference solicited prior to
18 employment, and (ii) information concerning a medical disability,
19 mental or physical, that a prudent physician would not divulge to his
20 patient.

21 (2) A licensed physician designated in writing by the employee may
22 examine the employee's medical record.

23 (3) A district employee having supervisory authority over the employee
24 may examine all material in the employee's personnel file.

25 (4) By order of a court of competent jurisdiction, any person may examine
26 such portion of any employee's personnel file as may be ordered by the
27 court.

28 (5) An official of an agency of the State or federal government, or any
29 political subdivision of the State, may inspect any portion of a personnel
30 file when such inspection is deemed by the official having custody of
31 such records to be inspected to be necessary and essential to the
32 pursuance of a proper function of the inspecting agency, but no
33 information shall be divulged for the purpose of assisting in a criminal
34 prosecution (of the employee), or for the purpose of assisting in an
35 investigation of (the employee's) tax liability. However, the official
36 having custody of such records may release the name, address, and
37 telephone number from a personnel file for the purpose of assisting in a
38 criminal investigation.

39 (6) An employee may sign a written release, to be placed with his personnel
40 file, that permits the person with custody of the file to provide, either in
41 person, by telephone, or by mail, information specified in the release to
42 prospective employers, educational institutions, or other persons
43 specified in the release.

1 (7) The chief administrative officer, with concurrence of the district, may
2 inform any person of the employment or nonemployment, promotion,
3 demotion, suspension or other disciplinary action, reinstatement,
4 transfer, or termination of a district employee and the reasons for that
5 personnel action. Before releasing the information, the chief
6 administrative officer or district shall determine in writing that the
7 release is essential to maintaining public confidence in the
8 administration of district services or to maintaining the level and quality
9 of district services. This written determination shall be retained in the
10 office of the chief administrative officer or the secretary of the district,
11 and is a record available for public inspection and shall become part of
12 the employee's personnel file.

13 (d) Even if considered part of an employee's personnel file, the following
14 information need not be disclosed to an employee nor to any other person:

15 (1) Testing or examination material used solely to determine individual
16 qualifications for appointment, employment, or promotion in the
17 district's service, when disclosure would compromise the objectivity or
18 the fairness of the testing or examination process.

19 (2) Investigative reports or memoranda and other information concerning
20 the investigation of possible criminal actions of an employee until the
21 investigation is completed and no criminal action taken, or until the
22 criminal action is concluded.

23 (3) Information that might identify an undercover law enforcement officer
24 or a law enforcement informer.

25 (4) Notes, preliminary drafts, and internal communications concerning an
26 employee. In the event such materials are used for any official
27 personnel decision, then the employee or his duly authorized agent shall
28 have a right to inspect such materials.

29 (e) The district may permit access, subject to limitations it may impose, to selected
30 personnel files by a professional representative of a training, research, or academic
31 institution if that person certifies that that person will not release information identifying
32 the employees whose files are opened and that the information will be used solely for
33 statistical, research, or teaching purposes. This certification shall be retained by the
34 district as long as each personnel file examined is retained.

35 (f) A district that maintains personnel files containing information other than the
36 information mentioned in subsection (b) of this section shall establish procedures
37 whereby an employee, who objects to material in his file on grounds that it is inaccurate
38 or misleading, may seek to have the material removed from the file or may place in the
39 file a statement relating to the material.

40 (g) A public official or employee who knowingly, willfully, and with malice
41 permits any person to have access to information contained in a personnel file, except as
42 is permitted by this section, is guilty of a Class 2 misdemeanor and is punishable only by
43 a fine not to exceed five hundred dollars (\$500.00).

1 (h) Any person not specifically authorized by this section to have access to a
2 personnel file designated as confidential, who shall:

3 (1) Knowingly and willfully examine in its official filing place; or

4 (2) Remove or copy

5 any portion of a confidential personnel file shall be guilty of a Class 2 misdemeanor and
6 is punishable only by a fine not to exceed five hundred dollars (\$500.00)."

7 Section 2. G.S. 132-10 reads as rewritten:

8 **"§ 132-10. Qualified exception for geographical information systems.**

9 Geographical information systems databases and data files developed and operated by
10 ~~counties and cities~~ units of local government are public records within the meaning of this
11 Chapter. The ~~county or city~~ unit of local government shall provide public access to such
12 systems by public access terminals or other output devices. Upon request, the ~~county or~~
13 ~~city~~ unit of local government shall furnish copies, in documentary or electronic form, to
14 anyone requesting them at reasonable cost. As a condition of furnishing an electronic
15 copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a
16 ~~county or city~~ unit of local government may require that the person obtaining the copy
17 agree in writing that the copy will not be resold or otherwise used for trade or commercial
18 purposes. For purposes of this section, publication or broadcast by the news media shall
19 not constitute a resale or use of the data for trade or commercial purposes and use of
20 information without resale by a licensed professional in the course of practicing the
21 professional's profession shall not constitute use for a commercial purpose. As used in
22 this section, 'unit of local government' means a municipality as defined by G.S. 159-81
23 and also means a local school administrative unit."

24 Section 3. This act is effective when it becomes law.