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## Coates' Canons Blog: New Utility Debt Collection Restrictions Actually Expand Collection Authority

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The General Assembly recently enacted SL 2009-302, with the stated purpose of prohibiting “cities and counties that operate public enterprises from using certain debt collection practices that result in a customer being liable for the past due and unpaid debts of another person.” The new act does not prohibit any debt collection practices that were not already prohibited under existing law, though. In fact, the new act actually expands local governments’ debt collection authority, albeit under limited circumstances. Let us look at the provisions in detail.

### Suspending or Disconnecting Service

The act amends G.S. 153A-277 (which applies to counties) and G.S. 160A-314 (which applies to municipalities). Specifically it states that a county or municipality may not “[s]uspend or disconnect [public enterprise] service to a customer because of a past-due and unpaid balance for service incurred by another person who resides with the customer after service has been provided to the customer’s household,” unless at least one of the listed exceptions applies. *(Note that public enterprise services include water, wastewater, solid waste, airports, off-street parking, public transportation, and stormwater management services for both counties and municipalities. They also include electric, natural gas and cable television services for municipalities only.)*

Although, the provision appears on its face to create a new limitation on local government debt collection practices, counties and municipalities already are so restricted. Public enterprise utility debts generally are the “legal obligations of the person contracting for them.” Thus, before the enactment of SL 2009-302, a local government was prohibited from suspending or disconnecting services to one customer because of another person’s delinquency, regardless of where the two customers currently reside. (The only limited exception may allow a local government to disconnect services to a tenant or occupant of a property or premises if the owner of the property or premises is legally liable for payment and owes a past-due amount. There is a split in authority among the courts that have addressed this issue to date. See G.S. 153A-277(d) and G.S. 160A-314(d) for a description of the circumstances in which the owner of the property or premises is legally liable for payment.)

The act does forge new ground with a few, albeit limited, exceptions to this general rule—which have the effect of expanding a local government’s debt collection authority. A county or municipality may suspend or disconnect public enterprise services to a customer because of a past-due and unpaid balance incurred by another person who resides with the customer after services have been provided to the customer’s household if:

- The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred;
- The person was a member of the customer’s current household when the service was established, and the person had an unpaid balance for the service at that time; *or*
- The person is or becomes responsible for the bill for the service to the customer.

Let us walk through a couple of examples to illustrate the first two exceptions. The first exception likely will occur more frequently than the second. Assume that two roommates—Mary and Jane—live together at one location. Mary contracts for water and sewer services at that location, and incurs a delinquency. Mary and Jane then move together to another location in the same county or municipality. Jane then contracts for utility services at the new location. The county or municipality that provided the services in both locations may suspend or disconnect the services to the new location (contracted for by Jane) until the debts incurred at the old location (by Mary) are paid in full. (Note that one quirky aspect of the new legislation is that the county or municipality could not have refused service to Jane at the new location because of Mary’s delinquency at the old location. The majority rule under the common law is that a local government may not

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refuse to establish service to a customer because of another customer's delinquency. The new act does not alter existing law with respect to establishing service, only with respect to suspending or disconnecting service. Technically, the local government must allow the establishment of service at the new location and then suspend or disconnect the service.)

As for the second exception, assume that Mary and Jane lived in separate locations. Mary failed to pay her outstanding utility debt. Mary and Jane then moved in together and Jane established water and sewer services at the new location. The county or city that provided services at both Mary's old location and Mary and Jane's new location may suspend or disconnect the services at the new location until Mary pays her utility debt in full. Note again that, technically, the local government could not refuse service to Jane at the new location. It must first provide the water and sewer services and then suspend or disconnect the services. Note, also, that this exception only applies because Mary (the individual who owed the past-due amount) resided with Jane at the time Jane applied and received the public enterprise services at the new location. It would not have applied had Mary moved in with Jane after Jane had established the utility services.

These examples illustrate both the narrow application of the exceptions and the practical difficulty of taking advantage of them. How is a local government to know whether Mary lives with Jane, let alone when Mary moved in, if Jane is the one who contracts for the services at the new location? The best approach for local governments may be to require a person who contracts for public enterprise services to list the first and last names, and perhaps former addresses, of all occupants of the property or premises to which services will be provided. Obviously, this is not a perfect solution, as it will be difficult to monitor and enforce, but it may help a local unit recover on some delinquent accounts.

The final exception is self-explanatory. A word of caution to local government officials, though—it is advisable to memorialize any promise to become liable for the debts of another in writing.

### **Liability for Delinquent Account**

The new legislation also provides that, unless one of two exceptions applies, a local government may not require as a condition of continued public enterprise service that a customer agree to be liable for the delinquent account of any other person who resides in the customer's household after the customer establishes the service. Again, this provision does not alter existing law.

The two exceptions, however, are new. A local government may condition continued service on a customer's agreeing to be liable for the delinquent account of another person who resides in the customer's household after the customer establishes the service if:

- The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred; *or*
- The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(Note that these exceptions are the same as the first two exceptions listed above; thus, the same examples apply.)

### **Misrepresenting Identity**

The new legislation further states that, notwithstanding the prohibitions contained in the new sections of G.S. 153A-277 and G.S. 160A-314, "if a customer misrepresents his or her identity in a written or verbal agreement for service or receives service using another person's identity, the [local government] shall have the power to collect a delinquent account using any remedy provided by subsection (b) of this section from that customer." Subsection (b) states that a county or municipality "shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts . . ." It also authorizes a local unit to "discontinue service to any customer whose account remains delinquent for more than 10 days." Once again, although this appears to expand a local government's collection powers under certain circumstances, it does not actually alter existing authority. Unless one of the exceptions discussed above applies, the local unit may not suspend or disconnect service simply because someone who resides at that property or premises owes a past-due amount for services provided at another property or premises. It also may not condition the continued receipt of service on a customer's agreeing to be liable for the delinquent account of any other person who resides in the same household.



## Links

- [www.ncleg.net/Sessions/2009/Bills/House/PDF/H1330v8.pdf](http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H1330v8.pdf)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_153A/GS\\_153A-277.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-277.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-314.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-314.html)