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Local Government and Local Finance

Local Finance

New Sales Tax Revenue and the Reimbursements

The principal preoccupation of cities and counties during the 2001 General Assembly was the state's revenue crisis and its effects on—and opportunities for—local governments. The revenue crisis is discussed at length in Chapter 2, “The State Budget.” The focus of this chapter is the effect of that crisis on local government revenues.

The principal direct effect of the state's difficulties, and of the Governor's efforts to deal with those difficulties, was the Governor's impoundment of the final payment of the so-called reimbursements to local governments for the 2000–2001 fiscal year, a payment of roughly \$95 million statewide. The reimbursements are the various payments the state has made to counties and cities since the mid-1980s in compensation for the loss, through legislative action, of important local government revenue sources. The three major categories of reimbursements compensate local governments for the removal from the property tax base of manufacturers', wholesalers', and retailers' inventories and for the repeal of the intangibles tax. There are also much smaller reimbursements to compensate local governments for the expansion of the so-called homestead exemption, a property tax measure that protects the homes of older and less prosperous citizens, and for the repeal of the sales tax on food stamp purchases. The total annual amount of reimbursements paid to local governments by the state is about \$333.4 million.

The temporary loss of this \$95 million reimbursement payment (the Governor released the money shortly after the beginning of the 2001–2002 fiscal year) made clear to local governments the tenuous nature of this important part of their total revenue structure. The state had terminated payment to local governments of certain state-shared taxes in the early 1990s—again because of state revenue problems—and the Governor's impoundment and the threat that it would be repeated in the current fiscal year reminded many local officials of that earlier episode. In addition, local governments have been unhappy with the reimbursement system for some years, even in good times. The total amount of reimbursements never fully compensated local governments for the

revenues that would have been collected from the repealed taxes or from taxes on the categories of property removed from the tax base. More seriously, there was very little growth built into the reimbursement system; with a relatively minor exception, the amounts of the reimbursements have been fixed and have not grown since their inception. These fixed reimbursement payments contrasted markedly with the growth that would have occurred in the repealed taxes, especially during the vibrant years of the latter 1990s.

Therefore, local governments were particularly open in 2001 to some sort of restructuring of state and local finance in which the local governments would give up the reimbursements in return for authorizations of some combination of new or expanded local taxes that would be adequate to replace the lost reimbursement payments. One proposal that received early local government attention was included in S 1088, introduced by Senator Clodfelter of Mecklenburg County, a former member of the Charlotte city council. Among other things, his bill would have replaced the reimbursements with an additional one-half cent state sales tax, with the proceeds to be distributed to local governments; an additional one-half cent optional local government sales tax; and a new menu of local taxes on meals, hotel and motel occupancy, motor vehicles, and conveyances. A later bill—H 1352, introduced by Representative Hurley of Cumberland County, also a former city official—would have replaced the reimbursements with an optional one-cent local sales tax. This bill more closely presaged the eventual legislation included in the state's appropriations act.

There was a good bit of negotiating between the two houses of the General Assembly and within each chamber, particularly the House, before a state-local revenue package could pass both houses. Thus, a number of proposals were unveiled and then disappeared. The final product, included in the 2001 Appropriations Act [S.L. 2001-424 (S 1005)], essentially trades the reimbursements for a new half-cent local option sales tax, although it takes two years to reach that point. The enacted bill has these components.

State sales tax increase—2001–2003. Effective October 16, 2001, the state sales and use tax was temporarily increased from 4 percent to 4.5 percent, a half-cent increase. The proceeds of this increase will remain with state government and will be used to bolster state revenues during the current economic downturn. While this increase remains in effect, local governments will continue to receive reimbursement payments. The legislation repeals this increase effective July 1, 2003.

Local option sales tax increase—2003 and beyond. Once the temporary state sales tax increase terminates, counties may replace it with an additional local option local government sales and use tax of one-half percent. The earliest time such an increase may take effect is July 1, 2003, the day the temporary state sales tax increase ends. One-half of the proceeds from the new local option tax will be returned to the county of origin in the manner of the original 1 percent local sales tax; the other half will be distributed among the 100 counties on a per capita basis in the manner of the two existing half-cent local sales taxes. Once each half of the proceeds is allocated to a county, it will be divided among the county government and each city and town on the same basis as are the existing local sales taxes.

Reimbursements repeal and state hold-harmless payments—2003 and beyond. Also on July 1, 2003, each of the existing reimbursements will be repealed. The legislation includes provisions, however, that seek to mitigate any adverse effect on local governments: the reimbursements have been replaced with a new sales tax. (A few rural counties had heavy amounts of business inventories and thus large reimbursement payments, which they will not be able to replace solely with sales tax proceeds.) Each year, the Secretary of Revenue is to calculate the amount of proceeds that would be received by each local government from the new half-cent tax if the tax were levied in all 100 counties and then compare that amount with the amount that local government would have received in reimbursements during the 2002–2003 fiscal year. If the amount of calculated sales tax proceeds is less than the amount of the reimbursements, the state will make up the difference. Note, however, that the calculated sales tax proceeds will fully reimburse local governments only if all 100 counties levy the new tax. If fewer than 100 counties levy the tax, the actual amounts received by a local government will usually be less than the calculated amount, and therefore, the state payment received will not fully hold such a government harmless from the repeal of the reimbursements.

Other Measures Generated by the State's Revenue Crisis

Two other bills enacted were directly traceable to the state's revenue crisis. The first involved a temporary amendment to the Local Government Budget and Fiscal Control Act. When local governments adopted their 2001–2002 budget ordinances, there was considerable uncertainty over whether the Governor would release the \$95 million in 2001 reimbursements and whether additional reimbursement payments during the upcoming fiscal year might also be impounded. As a result, a number of local governments adopted budget ordinances on the assumption that the money would not be released or that future payments would not be made, and in some cases, local governments raised property taxes to make up the projected loss in revenue. When the Governor did release the money, the local governments could not adjust their adopted budget ordinances—or at least could not lower their property tax levies because of provisions in the Budget and Fiscal Control Act. The General Assembly responded by including in S.L. 2001-308 (H 42) a one-time authorization that permitted a local government to reduce its property tax levy because it had received additional and unanticipated revenues. The authorization expired October 1, 2001.

In an effort to shore up its own finances, the state is requiring vendors to transmit sales and use tax collections to the state more frequently. Beginning on July 1, 2003, S.L. 2001-427 (H 232) directs the state to pass along this benefit to local governments: the Department of Revenue will distribute local sales taxes collected after that date to counties and cities on a monthly, rather than a quarterly, basis. In return, the act also will require each county to remit to the state on a monthly basis the state's share of the excise tax on conveyances.

Other Local Government Revenues

Telecommunications tax changes. For more than half a century, cities have received a share of the state's utility franchise tax. Originally, and for many years, this tax was levied on electric power companies, natural gas companies, and telephone companies. In 1998 the franchise tax on natural gas companies was repealed and replaced with the piped natural gas tax, with cities receiving a share of the new tax comparable to the amounts they had received under the repealed tax. In this session, the General Assembly repealed the franchise tax on telephone companies, effective January 1, 2002, and replaced it with an increased sales tax on telecommunications services [S.L. 2001-430 (H 571)]. Although the rate of tax on these services will actually go down, the amount of collections should increase, because the new tax will extend to mobile services as well as fixed land lines. Again, cities will receive a share of the new tax comparable to the amounts they had received under the repealed tax.

Henceforth, cities collectively will receive 24.4 percent of the total collections from the new tax (minus \$2,620,948, which is the amount of telephone franchise tax the state has withheld from cities since the mid-1990s). Each city in existence before January 1, 2001, will receive each quarter the same percentage of the new tax that it received from the repealed telephone franchise tax during the last comparable quarter that the earlier tax was still in force. For each city incorporated on or after January 1, 2001, the Secretary of Revenue will determine, using the population of all cities, a per capita amount of tax distributed, and each newer city will receive its per capita amount.

Note an important difference between the distribution pattern for this new tax and the tax it replaced. When a city annexed property under the old tax, its proceeds from the telephone franchise tax would normally increase because it would then receive the taxes levied on services provided within the annexed area. With the new tax, however, except in the case of those cities incorporated after January 1, 2001, an annexation will have no effect on the amount of telecommunications tax received. Each city's percentage share is set based on distributions during 2001, and that percentage will not be affected by changes in city population.

Streamlined sales tax agreement. S.L. 2001-347 (S 144) authorizes the Secretary of Revenue to enter into an agreement with one or more states to provide for a streamlined administration of state and local sales and use taxes. The intention is to simplify these taxes and thereby make it easier to convince Congress to authorize mandatory collection of such taxes on

catalog and Internet vendors. This legislation is discussed more fully in Chapter 25, "State Taxation." One point, however, should be emphasized here. The act adds new G.S. 105-164.64B, effective January 1, 2002, dealing with determining where a taxed sale takes place, and this new provision will have a small effect on the distribution of local government sales and use taxes. Under the new provision, if a sale is over-the-counter, it is characterized as taking place at the business location of the seller. But if the sale involves a delivery, the source of the sale is changed to the location at which the buyer receives the product. The situs of local sales and use transactions has been, in all cases, the business location of the seller. This will change that rule for delivered products, and the change will affect the distribution of the tax proceeds.

Clean Water Bonds reallocation. S.L. 2001-416 (S 247) reallocates some \$71.4 million in proceeds of State Clean Water Bonds from programs that make loans to local governments to programs that make grants to local governments. One-half of the reallocated proceeds are to be used for unsewered community grants and the other half for supplemental grants.

Register of deeds fees/Automation Enhancement and Preservation Fund. G.S. 161-10 establishes uniform fees for county registers of deeds, and almost all the proceeds of these fees have been placed in the county's general fund. S.L. 2001-390 (H 1073) increases the uniform fees somewhat; it also earmarks a portion of the fee revenue held by the county. New G.S. 161-11.3 requires that 10 percent of the fees collected by the register of deeds office pursuant to G.S. 161-10 and retained by the county be placed in a permanent Automation Enhancement and Preservation Fund. The money so earmarked must be used on "computer and imaging technology in the office of the register of deeds." The new statute speaks of a "fund," and it would certainly be appropriate for a county to establish a special revenue fund to account for this money. However, a county also could account for the money through earmarked revenue and expenditure line items in the general fund. The increases, and the earmarking requirement, took effect January 1, 2002.

Disaster assistance grants. S.L. 2001-214 (S 300) makes a number of amendments to the state's emergency management statute (G.S. Chapter 166A), on the recommendation of a special study commission. One part of the act creates a set of rules for state assistance to individuals and local governments that have suffered losses because of a natural disaster. These state funds are intended to supplement any federal funds that might be available.

The act creates new G.S. 166A-6A, which is mainly concerned with setting out what the money may be used for and under what circumstances a local government is eligible for the funds. The act divides states of disaster into three categories, the first of which is defined, in part, as one for which there is no presidential declaration of a disaster. It is only for this first category of disaster that the act permits the distribution of state funds to local governments. The act sets out the criteria that a local government must meet in order to qualify for state funds and then sets out the following permissible uses of the state moneys:

- debris clearance
- emergency protective measures
- roads and bridges
- crisis counseling
- assistance with public transportation needs

Any state grant must be matched with nonstate funds equal to 25 percent of the state grant.

Local Government Borrowing

Special obligation bonds. G.S. Chapter 159I permits local governments to issue special obligation bonds for solid waste projects but for no other purpose. These bonds are secured by any unearmarked source of revenue accruing to the borrowing government, as long as that source of revenue does not result from a tax levied by that government. If money from a borrower-levied tax were pledged to secure the debt, the debt would become a general obligation and would require voter approval.

S.L. 2001-238 (S 123) expands the purposes for which governments may issue special obligation bonds to include

- water supply systems,
- water conservation projects,
- water reuse projects,
- wastewater collection systems, and
- wastewater treatment works.

The listed terms are defined in G.S. 159G-3, which is part of the law authorizing the Clean Water Revolving Loan program, and in S.L. 1998-132, which is the Clean Water Bond authorization. The wastewater terms are generally clear. “Water supply systems” includes all of a local government’s water system, including supply, treatment, and distribution. “Water conservation projects” involve either wastewater or water supply systems and are intended to reduce loss or waste of water in the operation of those systems or to provide more efficient use of water in those systems. “Water reuse projects” involve the actual use or application of treated wastewater in situations that do not require potable water.

At times during its progress through the General Assembly, this act also included authority to finance local confinement facilities with special obligation bonds, but that proposal was dropped before the final enactment of the law.

The Uniform Commercial Code and local government borrowing. In the late 1990s, the Commissioners on Uniform State Laws proposed a substantial revision of Article 9 of the Uniform Commercial Code (U.C.C.), which regulates security interests in personal property. Article 9 had provided that it did not apply to transfers by governments or governmental agencies [G.S. 25-9-104(e)], although it has been common practice for local government security interests entered into pursuant to G.S. 160A-20 to be recorded pursuant to Article 9 in any event. The proposed revision of Article 9, which was accepted by the 2000 General Assembly and which became effective on July 1, 2001, narrowed the exemption for governmental transactions. New G.S. 25-9-109 provided, in its original form, that the article did not apply when another statute expressly governed the creation, perfection, priority, or enforcement of a security interest created by a governmental unit. The nation’s bond attorneys became concerned that this new language created significant difficulties for certain forms of local government debt—especially, in North Carolina, revenue bonds—and they have been seeking modification in the U.C.C. changes. S.L. 2001-218 (S 829) is the North Carolina product of that effort.

The act modifies the definition of *governmental unit* in new G.S. 25-9-102(45) to include entities created to facilitate installment or lease purchase financings—that is, the nonprofit corporations that are normally involved in the issuance of certificates of participation. The act also deletes the uniform provision regarding which governmental obligations are exempt from Article 9 and adds a new provision specifically for North Carolina. This new provision creates a general exclusion from Article 9 for security interests in revenues, rights, funds, or tangible or intangible assets given to secure any form of indebtedness or other payment obligation on borrowed money. It specifically provides, however, that Article 9 does apply to security interests created by a governmental unit in equipment or fixtures.

County/school financing authorization. G.S. 153A-158.1 codifies a number of local acts permitting counties to acquire property for use by their local school systems and allowing school systems and counties to engage in other related activities as part of school financing arrangements. S.L. 2001-76 (H 804) adds five counties to the statute’s coverage, and S.L. 2001-427, Section 7, adds seven more. The number of counties and school systems taking advantage of this statute has grown steadily during the last decade. The statute is now nearly statewide in coverage, applying in 88 of 100 counties.

Energy improvement loans. G.S. Chapter 143, Article 36, Part 3, establishes an energy improvement program within the Department of Administration. The statute authorizes the department to establish a revolving fund for making loans to businesses, with the proceeds to be used for energy-efficient capital improvements. The loans can be up to \$500,000. S.L. 2001-338 (H 332) expands the scope of the program and the entities eligible to borrow money from the

revolving fund, and eligible borrowers now include charitable organizations and local governments.

Henceforth, the program will be able to make secured loans to local governments for energy improvement projects, and the statute sets the interest rate of the loans at 3 percent. In addition, the Department of Administration is authorized to develop and adopt rules under which state-regulated financial institutions will be able to provide secured loans to local governments and other entities under terms and conditions set by the department. Interestingly, local governments are defined to include community colleges and school boards as well as counties, cities, and other political subdivisions.

Financial Administration

Housing authorities exempt from Local Government Budget and Fiscal Control Act. S.L. 2001-206 (S 1056) essentially exempts housing authorities, except for a few cash management sections, from the Local Government Budget and Fiscal Control Act (LGBFCA) and provides an alternative set of budgeting and accounting requirements applicable to authorities. It will be codified in G.S. 159-42 as a new part to Article 3 of G.S. Chapter 159.

Budgeting. The statute requires housing authorities to adopt an annual budget under which estimated revenues and available fund balances equal or exceed estimated expenditures. (Thus, they are not required to have an exactly balanced budget ordinance, as is required of entities subject to the LGBFCA.) There are no expenditure control requirements applicable to this annual budget. The statute requires that the proposed budget be made available for public inspection, that the authority board hold a public hearing on the proposal before adopting the budget, and that the authority give two weeks published notice of the hearing.

The statute then requires an authority to adopt a project ordinance “for those programs which span two or more fiscal years.” Such an ordinance must show an equal amount or more of estimated revenues and fund balances as opposed to estimated expenditures, but again, there is no expenditure control associated with it.

Finance officer. The statute directs each authority to appoint or designate a finance officer, who performs the combined responsibilities of a finance officer and a budget officer under the LGBFCA.

Accounting and financial reporting. The statute directs each authority to comply with appropriate federal requirements on receipt, deposit, investment, transfer, and disbursement of moneys and other assets. It then directs the authority to have its accounts audited annually by a certified public accountant and it regulates the audit engagement contract. Although a copy of the completed audit report is to be filed with the Secretary of the Local Government Commission (LGC), the secretary is not given authority to approve the audit contract or payments under the contract.

Internal control. The LGC is authorized to investigate the internal control procedures of any authority and to require modifications in procedures. Furthermore, the bonding requirements of G.S. 159-29 are extended to the authority finance officer and any other employee handling more than \$100 at any time or having access to authority inventories.

Cash management. The statute directs authorities to comply with the official depository law, except as that law may conflict with federal guidance. It also directs authorities to comply with the daily deposit law and to file semiannual reports with the LGC on deposits and investments. Authorities are permitted to invest available funds pursuant to federal regulations, without regard to the investment rules of the LGBFCA.

Effective date. This part of the act applies to fiscal years beginning on or after October 1, 2001.

S.L. 2001-206 also amends G.S. 159-148, which requires LGC approval of certain financing agreements, thereby recognizing that statute’s applicability to housing authorities. In defining the financings that are subject to LGC approval under the statute, the act provides that the amount obligated for housing authority contracts must be the lesser of \$500,000 or \$2000 per housing unit owned and under active management by the authority.

Single audit supplements. G.S. 159-34(c) regulates the single audit as a matter of state law. It directs that state departments and agencies that provide funds to local governments are to provide the Local Government Commission with documents and compliance standards approved by the State Auditor. S.L. 2001-160 (S 434) makes the LGC itself the approving entity.

Department of Health and Human Services (DHHS) budget guidance. G.S. 108A-88 requires the Secretary of Health and Human Services to notify each county director of social services, before February 15 of each year, of the amount of state and federal moneys the secretary anticipates will be available for social service programs in the upcoming fiscal year. The 2001 Appropriations Act [S.L. 2001-424 (S 1005)] expands the secretary's notification requirements in two ways. First, the notification is to include availability of moneys for public health programs. Second, the notification is to be made to the county manager, the county commissioners, and the county public health director, as well as to the county director of social services.

Local Government

Local Government Annexation, Incorporation, and Merger

Satellite annexations of areas within a city's sphere of influence. One of the standards that a satellite (or noncontiguous) area must meet before it may be annexed by a city is that it must be no closer to some other city than it is to the annexing city. This standard, when combined with an annexation agreement between cities, has sometimes resulted in areas that cannot be satellite annexed by any city. An annexation agreement normally establishes areas—colloquially called *spheres of influence*—in which only one of the participating cities may annex property. If a particular parcel is within City A's sphere of influence but is closer to City B, then City A will not be able to annex that parcel on a satellite basis. And, because the parcel is in City A's sphere of influence, City B will not be able to annex it by any means.

This result led a few cities to obtain local legislation from the General Assembly allowing them to satellite annex parcels within their spheres of influence even if a parcel was closer to another city. The 2001 General Assembly recognized that this was a problem for all cities, and in S.L. 2001-438 (S 210), it expanded to all cities this waiver from the normal standards for satellite annexations. Therefore, if an area is within one city's sphere of influence and may not be annexed by another city that is closer to it, the area may be satellite annexed by the city in whose sphere of influence the property is located.

New incorporations. The 2001 General Assembly approved the possible incorporation of three new cities, each subject to a referendum. The three are Miller's Creek (Wilkes County), Duck (Dare County), and Fairview (Union County). The legislature also authorized a referendum on the merger of the town of Arlington with the town of Jonesville in Surry County. The voters of Miller's Creek turned down incorporation, while Duck's and Fairview's voters approved incorporation, and those of Arlington and Jonesville approved merger.

Purchasing, Contracts, and Property Transactions

Three important acts passed this session affect the rules by which local governments enter into contracts. S.L. 2001-328 (H 1169) makes numerous changes to the primary competitive bidding law, G.S. 143-129; adds a new section to Chapter 143 to authorize a more flexible request for proposals (RFP) procedure for procuring information technology goods and services; and makes several changes to the statutes governing disposal of property by local governments. S.L. 2001-496 (S 914) (various effective dates) substantially expands local governments' authority to enter into building construction and repair contracts with a single contractor rather than entering into separate contracts with multiple contractors. It also authorizes the use of a different building contracting system called *construction manager at risk* and increases the requirements to make "good faith" efforts to encourage participation by certain groups in building contracts. S.L. 2001-

409 (H 115) revises and updates several criminal statutes in the conflicts of interest area, including the venerable G.S. 14-234, which dates from the 1820s and prohibits public officials from benefiting from contracts with the public agencies they serve. All of these acts are discussed in Chapter 21, "Purchasing and Contracting."

Property transactions. Until recently, G.S. 160A-274 had been uniformly interpreted as allowing a governmental unit freely to exchange, lease, buy, sell, and enter into joint use agreements concerning property it owned. In a 1997 court of appeals decision, that power was far more narrowly construed. A provision of S.L. 2001-328 revises G.S. 160A-274(b) to clarify that state and local governments may freely convey property between and among themselves without limitation.

Two other acts affecting property transactions deserve a brief mention. S.L. 2000-239 (S 719) amends G.S. 40A-42(a) to authorize regional public transportation authorities to use "quick-take" condemnation procedures in acquiring land. Under quick-take, title to the property vests in the condemner as soon as the property is condemned, with questions of payment of just compensation being settled later. This act will allow authorities greater latitude in acquiring right-of-ways and other property for projects such as light rail lines.

After Hurricane Floyd, many counties purchased real property affected by the hurricane through the Hazard Mitigation Grant Program. Until July 1, 2001, S.L. 2000-29 (H 18) allowed counties to sell repaired or reconstructed structures affixed or located on such property to their original owners without complying with the property disposal rules of G.S. Chapter 160A, Article 12. The dwelling had to be sold only to the verifiable owner at the time of the hurricane and initially reoccupied by that person, and it had to have been properly repaired in compliance with the state building code.

Access to Meetings and Records

EMS trip tickets. For a number of years, there has been some question about the status under the public records law of the "trip tickets" that emergency medical services (EMS) personnel complete for each call to which they respond. A provision of S.L. 2001-220 (H 452) clarifies the law by making these and related records confidential.

Effective January 1, 2002, new G.S. 143-518 provides that medical records and patient identifiable data compiled and maintained by EMS providers or the Department of Health and Human Services in connection with dispatch, response, treatment, or transport of individual patients, or in connection with the statewide trauma system under G.S. Chapter 131E, Article 7, are strictly confidential. They are not considered public records within the definition of that term in G.S. 132-1, and they are not to be released or made public except in specific cases listed in the statute. Since they are not public records under G.S. Chapter 132, presumably they also are not subject to any requirements governing public records, such as the state's records retention and disposition rules.

G.S. 143-518 also makes strictly confidential the charges, accounts, credit histories, and other personal financial records compiled and maintained by EMS providers or DHHS in connection with the admission, treatment, and discharge of individual patients. Significantly, the statute lists no entities (for example, banks or other creditors) to which this information may be released. If an EMS provider is a department of a local government, however, presumably the local government itself may use the financial information in its own payment collection efforts.

Meetings and records of nonprofit financing corporations. S.L. 2001-84 (S 25) amends a provision of the nonprofit corporations law, G.S. 55A-3-07, to make nonprofit corporations that are organized upon the request of the state for the sole purpose of financing projects for public use subject to the open meetings and public records laws. Such corporations are common in large-scale installment financing arrangements involving certificates of participation, or COPs. (S.L. 2001-84 was adopted as part of a state effort to contract for the construction of three correctional facilities.) While this provision currently applies only to state government, it could easily be adapted to cover local governments as well. Many governmental units participate in G.S. 160A-20 installment financings that involve such corporations.

State Privacy Act. A new law called the State Privacy Act makes it unlawful for any state or local government agency to deny to anyone any right, benefit, or privilege provided by law because of that person's refusal to disclose his or her Social Security account number. The act, S.L. 2001-256 (H 998), is codified at G.S. 143-64.60. The only exceptions are for a disclosure that is required or permitted by federal statute and a disclosure to a state or local agency that maintains a system of records, if the records were in existence and operating before January 1, 1975, and the disclosure was required prior to that date to verify a person's identity. Any state or local agency that requests an individual to disclose his account number must inform the person whether the disclosure is mandatory or voluntary, by what statutory or other authority the number is being requested, and what uses will be made of the number.

Public enterprise billing information. S.L. 2001-473 (S 774) amends G.S. 132-1.1 to make public enterprise billing information not a public record as defined in G.S. 132-1. As in the case of EMS trip tickets, discussed above, this means that such information is not subject to the requirements of the public records law, G.S. Chapter 132, including the state's records retention and disposition rules.

Public enterprises are defined in G.S. 153A-274 and 160A-311 for counties and cities respectively. (The new statute also applies to "other public entit[ies] providing utility services.") They include, for example, water and sewer, electric distribution, and solid waste collection systems. Billing information in connection with the ownership or operation of a public enterprise is defined as "any record or information, in whatever form, compiled or maintained with respect to individual customers by any owner or operator of a public enterprise . . . relating to services it provides or will provide to the customer."

The statute specifies that public enterprise operators may release billing information as necessary (1) with respect to bonds or other obligations associated with the systems, (2) to maintain the integrity and quality of services provided by the systems, and (3) to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties. Given the placement of these new provisions in the statute, however, it is probable that a local government may release this information at other times as well. That is, the statute does not prohibit the release of this information but simply makes it exempt from automatic public access.

Sensitive public security information. In the wake of the September 11 tragedy, some officials realized that many public buildings in North Carolina were vulnerable to attack because the building plans and diagrams of infrastructure facilities were readily accessible. S.L. 2001-516 (H 1284), Section 3, adds new G.S. 132-1.6 in response to this concern. Section 132-1.6 removes from the definition of *public records* information containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities. The statute notes, however, that public records do include information relating to the general adoption of public security plans and arrangements. They also include budgetary information concerning either the authorization or expenditure of public funds to implement those plans and arrangements or for the construction, renovation, or repair of public buildings and infrastructure facilities.

These records, like EMS trip tickets and public enterprise billing information, are removed completely from the public records definition in G.S. 132-1(a). As noted earlier, this means that they are not subject to any requirements governing public records, such as the state's records retention and disposition rules. In all of these cases, it is perhaps questionable whether this result concerning preservation of records was intended by the General Assembly. This provision applies to public records in existence on or after January 4, 2002.

Open meetings proposals. Two significant proposals to amend the open meetings law, G.S. Chapter 143, Article 33C, were introduced this session. Both failed, in large part because of a variety of concerns expressed to numerous legislators by county and city clerks and other local officials. House Bill 514 would have required that all public bodies make recordings of all closed sessions of official meetings. It was defeated on third reading on the House floor. House Bill 1225 would have dramatically reduced the scope of closed sessions that could be held based on the attorney-client privilege exception to the open meetings law. Basically, in cases where the client

was a public body, pending litigation would have been the only subject that could have been discussed under the exception. House Bill 1225 was defeated in a House committee.

Streets and Highways

Transportation planning. S.L. 2001-168 (S 731), discussed in detail in Chapter 15, “Land Use, Community Planning, Code Enforcement, and Transportation,” revises and updates the process in G.S. 136-66.2 for development of coordinated local transportation plans. Four changes of special interest are noted here. Most importantly, the act bases the extent of Department of Transportation (DOT) involvement in transportation plan development on the extent of local land use planning. In addition, S.L. 2001-168 requires that local transportation plans take into consideration all transportation modes, including the street system, transit alternatives, bicycles, and pedestrians. The plans are also required to consider operating strategies and other strategies. As well, comprehensive transportation planning must take place through a metropolitan planning organization, if one exists. Finally, even though counties in North Carolina have not been involved with road maintenance since the 1930s, the act allows each county to develop, with DOT cooperation, a comprehensive transportation plan using “the municipal procedures” (presumably meaning the procedures that municipalities currently follow in developing their transportation plans). These and other provisions of S.L. 2001-168 apply to plans adopted after June 7, 2001, the act’s effective date.

Extraterritorial road improvements in larger cities. S.L. 2001-261 (S 408) amends G.S. 160A-296 to authorize cities with a census population of 250,000 or more to make roadway improvements in their extraterritorial jurisdictions. They may acquire land and open new streets and alleys, as well as improve existing facilities. A city making such improvements must first enter into a memorandum of understanding with the North Carolina DOT for the provision of maintenance.

County road-naming procedures. S.L. 2001-145 (S 380) adds additional formalities to G.S. 153A-239.1(a), the statute that governs how counties assign road names. Most important is a provision specifying that street names must be assigned pursuant to a procedure established by county ordinance. Before the ordinance establishing the procedure to assign or reassign names may be adopted, a public hearing must be held. Notice of the hearing must be published in a newspaper of general circulation in the county at least ten days before the day of the hearing. Finally, counties may initially assign names to new roads by recordation of an approved subdivision plat without following the statutory procedure.

Transporter plates. The provisions of new G.S. 20-79.2(d) allow a county to obtain one “transporter plate” from the state free of charge. Such a license plate is used to transport motor vehicles as part of a county program to receive donated motor vehicles and make them available to low-income individuals. The new statute is set out in S.L. 2001-147 (S 942).

Expanded use of red light cameras. S.L. 2001-286 (S 243) adds the municipalities in Union and Wake Counties, as well as three other cities, to those that may use automatic red light cameras at intersections as a means of catching people who run red lights. Thirteen municipalities were previously covered by the enabling statute, G.S. 160A-300.1, a codified local act. Perhaps reflecting a concern about individuals’ procedural rights, the authorizations in the new law for Wake County’s municipalities and for the city of Concord contain detailed guidelines and procedures. These two new authorizations also prohibit the municipalities from making money on red light tickets by requiring that the *clear proceeds* (defined in the act) from the issued citations go to the schools.

Utilities

Water and sewer authorities. Under the terms of S.L. 2001-224 (S 432), all local governments that join water and sewer authorities after they are created are now prohibited from appointing any authority members (with the exception of one unnamed authority). Authorities are generally established by local governments under G.S. Chapter 162A, Article 3. Previously, one

method (the G.S. 162A-3 method) for establishing authorities allowed local governments that joined the authority after its creation by other local governments to appoint authority members, while the other technique (the G.S. 162A-3.1 method) did not.

S.L. 2001-224 also contains changes to G.S. Chapter 162A, Article 1, that allow two unnamed authorities to have nonprofit water corporations and the State of North Carolina as members. Finally, the act specifies that the creation under G.S. Chapter 162A, Article 1, on or after July 1, 2000, but before June 15, 2001, of any water and sewer authority that would have been permitted under the amended Article 1 is validated and confirmed as to the membership of nonprofit water corporations.

Sewer cleanouts. S.L. 2001-296 (H 824) amends G.S. 87-10(b1) to require public utility contractors constructing residential and commercial sewer lines to install a cleanout at the junction of the public sewer line and each house or building sewer line. (The cleanout provides access to the sewer line for clearing blockages.) The cleanout must be located at or near the property line, must terminate at or above the finished grade, and must be an extension of the public sewer line. This act became effective October 1, 2001, and applies to the installation of residential and commercial sewer lines on or after that date.

Miscellaneous

Public health nuisance abatement liens. Expenses that a city incurs in the abatement of a public health nuisance are a lien on the land or premises where the nuisance occurred. They have the same priority as a tax lien and are to be collected in the same manner. S.L. 2001-448 (S 352) amends G.S. 160A-193 to provide that the expense of the action is also a lien on any other real property (except the person's primary residence) within the city limits or within one mile of the city limits that is owned by the person in default. However, this latter lien is inferior to all prior liens and is to be collected as a money judgment. The new provision does not apply if the person in default can show that the nuisance was created solely by another's actions. S.L. 2001-448 also adds similar provisions to G.S. 160A-432 with respect to removal or demolition of structures violating building laws, and to G.S. 160A-443(6) with respect to repairs, closing, removal, and so forth, of structures violating minimum housing ordinances. These latter provisions are discussed in detail in Chapter 15, "Land Use, Community Planning, Code Enforcement, and Transportation."

Municipal election boards. Most municipal election boards were abolished years ago, with cities generally relying on county boards of elections to conduct their elections for them. S.L. 2001-374 (S 16) eliminates all but four of the remaining city boards. It adds new G.S. 163-280.1 and amends G.S. 163-285 and 163-304 to accomplish this purpose. The only municipalities still conducting their own elections as of January 1, 2002, were Granite Falls, Morganton, Old Fort, and Rhodhiss.

County EMS services. Effective January 1, 2002, counties will have an explicit mandate to ensure that emergency medical services are provided to their citizens. This requirement is found in revised G.S. 143-517 [part of S.L. 2001-220 (H 452)], which updates the emergency medical services act.

Defense of soil and water conservation supervisors and employees. For a number of years, cities and counties have been able to defend their officers and employees and to pay damages resulting from suits against them on account of matters related to their employment or duty. S.L. 2001-300 (H 968), amending G.S. 153A-97 and 160A-167, clarifies that these governmental units may also provide for the legal defense of any soil and water conservation supervisor and any local soil and water conservation employee, whether the employee is a county employee or an employee of a soil and water conservation district. It also clarifies that boards of county commissioners and city councils may appropriate funds to pay claims made or civil judgments made against such supervisors or employees, when the claim is made or the judgment is rendered as damages on account of acts done or omissions made, or allegedly done or made, in the scope and course of the person's employment or duty.

Interference with emergency communication. S.L. 2001-148 (S 1004) will be of special interest to law enforcement and EMS departments. It revises G.S. 14-286.2 to add the offense of

intentionally interfering with a communications instrument, and it updates the penalty for intentionally interfering with an emergency communication. Under the new provision, a person who interferes with a communications instrument or other emergency equipment with the intent to prevent an emergency communication is guilty of a Class A1 misdemeanor. The statute makes it a Class A1 misdemeanor as well for a person intentionally to interfere with an emergency communication, if he or she knows it is an emergency communication and he or she is not also making an emergency communication. A detailed and helpful definition of *intentional interference* has been added to the law, along with an expanded definition of *emergency communication*. S.L. 2001-148 became effective December 1, 2001, and applies to offenses committed on or after that date.

Liens for medical services. S.L. 2001-377 (S 780) should make it easier for local governments involved with health operations to collect some of the medical expenses owed to them by patients who have been awarded damages by third parties. Specifically, it deletes a filing requirement in G.S. 44-49 that was formerly imposed on counties, cities, hospitals, doctors, and others who sought to recover amounts they were owed for treatment and the like by someone who had been awarded damages for personal injury in court or in a settlement. Instead of a claim of lien first having to be filed with the clerk of court within a specified time, the law now specifies that the lien attaches when the person's attorney is given, on request, an itemized statement, hospital record, or medical report for use in negotiating, settling, or trying the personal injury claim and a written notice of the lien claimed. The act also amends G.S. 44-50 to place restrictions on the disbursement of the funds the person received in the lawsuit until the liens have been paid. This act became effective October 1, 2001, and applies to liens perfected on or after that date.

Changes affecting markings and plates for local government vehicles. Section 6.14 of S.L. 2001-424 consolidates and revises two types of laws. It repeals G.S. 14-250 and otherwise revises the statutes dealing with identification markings on county and state vehicles. It also addresses private license plates and driver's licenses that are used with publicly owned vehicles (primarily vehicles involved in undercover law enforcement work). S.L. 2001-424 is discussed in detail in Chapter 19, "Motor Vehicles." Two points of special interest to local governments are noted here.

First, under new G.S. 20-39.1(c), a motor vehicle used by a county for transporting day or residential facility clients of area mental health, developmental disabilities, and substance abuse authorities no longer has to have a permanent license plate that might potentially lead to client embarrassment or to a breach of confidentiality. Instead, the Commissioner of Motor Vehicles may now provide counties with private license plates for publicly owned or leased vehicles used for this purpose. A *private license plate* is one that would normally be issued to a private party and therefore lacks any markings indicating that it has been assigned to a publicly owned vehicle.

Second, new G.S. 20-39.1 creates a category of private license plates called *confidential license plates* that are available to local as well as state and federal law enforcement agencies. These plates are intended for public vehicles that are primarily used for transporting, apprehending, or arresting alleged federal or state lawbreakers in cases where personal safety questions or surveillance or undercover work are involved. The plates have confidential registration files that are not public records within the meaning of G.S. Chapter 132 and therefore are not subject to the requirements of that chapter. The act makes clear that this same records confidentiality rule also applies to fictitious license plate records. Fictitious plates existed under prior law.

Traffic stop data. S.L. 2001-424, Section 23.7, amends G.S. 114-10(2a) to add to those required to compile statistical data concerning their traffic stops county law enforcement officers and municipal law enforcement officers from larger jurisdictions (those employed by police departments either in cities with 10,000 or more people or where there are at least five full-time sworn officers for each 1,000 in population, as determined by the Division of Criminal Statistics of the Department of Crime Control and Public Safety). Only some officers are required to provide the data each year: the division will publish a list by December 1 each year indicating which officers will have to compile the information during the following calendar year.

Significantly, the fifteen items of information to be compiled include information about the race or ethnicity of the persons stopped. Presumably this information is compiled so that possible “racial profiling” can be identified. The data collected on all items is to be reported to the Division of Criminal Statistics.

Data collection will be designed to maintain anonymity for individual local officers. Each officer will have an identification number, and the correlation between numbers and officers’ names will not be a public record.

This section became effective September 26, 2001. However, the Division of Criminal Statistics and local law enforcement agencies had a bit of time to prepare for its implementation, since it only applies to actual law enforcement actions occurring on or after January 1, 2002.

ABC store interlocal agreements and local government special event permits. An act affecting ABC stores and another ABC law change of special interest to local government officials are noted here. Consult Chapter 7, “Alcoholic Beverage Control,” for detailed coverage of this subject.

S.L. 2001-128 (H 446) amends G.S. 18B-703 to permit interlocal operating agreements for ABC stores. Under the act, two or more governing bodies of counties and/or municipalities with ABC systems may enter into a written agreement for one or more of their ABC stores to be controlled and operated by the local ABC board specified in the agreement. Such agreements are subject to the approval of the state ABC Commission.

S.L. 2001-262 (S 823), Section 9, amends G.S. 18B-1002(a)(5) to add local governments to the coverage of this “one-time permit” statute, thereby saving them some money. Permits issued under this provision cost \$50, while comparable permits previously obtained by local governments cost \$400. Under G.S. 18B-1002(a)(5) as amended, a permit to serve wine, beer, and liquor at a ticketed fund-raising event may be issued to a local government. A new permit is needed for each event. Issuance of the permit also allows the issuance of a purchase-transportation permit under G.S. 18B-403 and 18B-404 and the use for culinary purposes of liquor lawfully purchased for use in mixed beverages.

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