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Local Government and Local Finance

The principal concerns of local governments during the 2003 session were whether and to what extent the state's budgetary problems would affect those revenues the state collects and then distributes to local governments. As it turned out, the League of Municipalities and the Association of County Commissioners were successful in minimizing the impact of the state's budget troubles on local finance. Cities and counties were less successful in efforts pertaining to a different aspect of state-local relations. Legislation was proposed to reduce local governments' dependence on the General Assembly, but the bill made little progress. The proposed studies bill would have created a special commission to investigate and propose changes in state-local relations, possibly leading to greater flexibility for local governments. Unfortunately, when the studies bill was not able to survive the end-of-session turmoil, the opportunity for a comprehensive review of this vital topic died as well.

Local Finance

Local Government Revenues

The state budget. In 2001 the General Assembly repealed the statutes that appropriated so-called reimbursement moneys to local governments and instead authorized counties to levy an additional half-cent local government sales and use tax. (The reimbursements were state funds intended to compensate local governments for revenues lost when the General Assembly excluded certain categories of property from the local property tax base.) In substituting the new tax for the reimbursements, the General Assembly recognized that in a few communities the additional sales and use tax revenues would amount to significantly less than the reimbursement payments those communities had been receiving. Therefore the General Assembly enacted "hold-harmless" provisions that appropriate state funds to these communities to make up any shortfall resulting from the substitution. The 2001 legislation permitted counties to levy the new sales and use tax

beginning July 1, 2003; but the 2002 General Assembly accelerated that authority, permitting a county to levy the tax as early as December 1, 2002. The repeal of the reimbursement payments was accelerated as well. The hold-harmless provisions were not accelerated, however, and local governments were concerned that these payments might fall a victim to the General Assembly's need to balance the 2003–2005 state budget. Ultimately the hold-harmless provisions survived intact and were even slightly strengthened. The 2001 provisions directed the Secretary of Revenue to distribute hold-harmless payments by September 15 of each year; the state appropriations act [S.L. 2003-284 (H 397)] changes the distribution date to August 15, thereby benefiting local government cash flow. The appropriations act also states the General Assembly's current intention to continue distribution of hold-harmless payments through 2012.

As initially enacted the appropriations act did affect one category of state-shared revenues. It provided for shifts of money from the Wireless Fund (a state fund in which surcharges against wireless communication customers are placed to be distributed, in part, to local governments to pay the capital costs of 911 centers) to help balance the state budget. The act directed that all surcharges collected in 2003–2004 and \$25 million of 2004–2005 collections be transferred to the state's General Fund. The local government organizations, however, saw to it that these provisions were changed in a manner that protected local 911 centers. The Wireless Fund has on hand sufficient reserves—money earmarked for distribution to wireless service providers—to provide the funds needed to balance the state budget, thereby allowing new collections to continue to be distributed to local governments. A separate act, S.L. 2003-416 (S 97), permits the reserves to be used in this fashion.

A final set of provisions in the appropriations act, as modified by S.L. 2003-416, are intended to facilitate North Carolina's participation in the so-called streamlined sales tax, a multistate effort to harmonize state sales and use tax provisions and thereby facilitate collection of sales and use taxes on remote sales. One change concerns allocation of the proceeds of local sales and use taxes on food purchases. Half of these proceeds will be distributed among the one hundred counties on a per capita basis, while the other half will be distributed among the counties in proportion to the percentage of food tax collections in each county in 1997–1998, the last year such purchases were subject to both state and local sales and use taxes.

Sales tax on modular homes. S.L. 2003-400 (H 1006) levies a 2.5 percent sales and use tax on the sale of modular homes. This category of transaction is not added to the local government sales and use taxes, however. Rather, the act creates new G.S. 105-164.44G directing the Secretary of Revenue to set aside 20 percent of the proceeds of this new tax for distribution among the one hundred counties. One-half of this amount is to be allocated to the counties in proportion to the total local sales taxes collected in each county, and the other half is to be distributed to the counties on a per capita basis.

Fines, penalties, and forfeitures. Article IX, section 7, of the N.C. Constitution directs that the clear proceeds of all fines, penalties, and forfeitures be credited to county school funds. Generally these moneys are collected in criminal or civil proceedings before a court in a specific county, and that county's schools receive the moneys. Questions can arise, however, as to which county is the appropriate recipient for the proceeds of penalties or fines imposed by state administrative agencies. S.L. 2003-423 (S 965) proposes an amendment to this constitutional provision that would direct that the clear proceeds of all fines, penalties, and forfeitures collected by state agencies be placed in a statewide fund and subsequently appropriated by the General Assembly to the various school administrative units on a per pupil basis. The act puts the proposed amendment on the ballot of the November 2004 general election. If the amendment is approved, its provisions become effective January 1, 2005.

Economic development cooperation. A number of local governments have been interested in cooperating in the development of industrial parks and in attracting major industrial projects. However, the fact that any potential project will be located in one specific place and thus not all of the cooperating governments will have jurisdiction to levy property taxes on it has discouraged participation in such arrangements. Consequently local governments have been seeking methods through which they might share the tax base created by such projects. S.L. 2003-417 (H 1301) addresses this issue by providing that two or more local governments may cooperatively develop

an industrial or commercial park or site, agreeing that some or all of the property taxes generated by the park or site will be allocated among the participating governments. Such agreements may remain in place for as long as forty years.

Tourism grants. House Bill 1316 would establish a Travel and Tourism Capital Investment Program within the Department of Commerce, which would make grants to local governments for the creation or expansion of travel or tourism projects wholly or partly owned by the local government. The bill authorizes total annual grants of up to \$20 million, with the maximum single grant being \$2 million. It has passed the House and therefore is eligible for consideration in the 2004 session.

Capital Finance

Project development financing. For the third time in the last twenty years, the legislature has proposed an amendment to the state constitution to permit “project development financing” and enacts companion legislation to become effective if the voters approve the amendment. S.L. 2003-403 (S 725) creates the amendment that, if passed, would authorize a financing method of a type of what is nationally known as *tax increment financing* (TIF). This method provides a new way local governments can secure debt issued to finance public improvements intended to generate associated private development (for example, a city might use TIF bonds to finance a downtown parking deck in order to attract private investment that would fund the construction of new office buildings, hotels, or other commercial facilities). When proposing to use TIF, a local government delineates a project financing district that will include the site of the private development anticipated to result from the public investments and probably some surrounding territory as well. The current value of taxable property in the district is determined and becomes the base value of the district. Thereafter, each local government with jurisdiction over the district levies its normal property taxes against property in the district. The proceeds of the taxes on the base value of the district are turned over to each levying government. If there has been new development in the district since its creation, however, such that the actual value of property in the district is greater than the district’s base value, the taxes on that additional value (the *increment*) are placed into a special fund that will become the primary security for the TIF bonds. (The implementing legislation also allows local governments issuing TIF bonds to pledge as additional security revenues from nontax sources so that TIF bonds might carry the same sort of security that special obligation bonds do.)

The legislation permits cities to establish project financing districts within redevelopment areas and permits both cities and counties to establish such districts in areas that are “inappropriately developed” or “are appropriate for economic development.” Cities must notify counties of any project financing district proposals, at which point the counties, in turn, are authorized to veto the creation of any of these proposed districts.

The state constitution requires voter approval of any bonds that pledge a local government’s taxing power. The TIF bonds do not carry a general obligation pledge—bondholders cannot force a government issuing TIF bonds to levy taxes sufficient to retire the debt. The bonds do, however, carry a pledge of the proceeds of property taxes on specific property, and it is therefore possible that a court could hold that this new type of bond is indeed secured by a pledge of taxing power. The General Assembly could have enacted this legislation without a constitutional amendment and then awaited a test case to settle the issue, but it preferred to propose an amendment that clearly exempts TIF bonds from any requirement of voter approval. Thus the state’s voters will have the final say on this amendment in the November 2004 general election.

Technical bond amendments. The State Treasurer’s office proposed, and the General Assembly enacted, legislation clarifying a number of technical details involving local government debt. S.L. 2003-388 (S 679) makes two major clarifications of existing law. First, the act rewrites G.S. 160A-20, the statute authorizing local governments to use installment financings and certificates of participation (COPs), to allow the use of installment financing agreements and COPs to refinance existing obligations. The rewritten section also specifically authorizes debt service payment and debt service reserve funds and permits local governments to provide security

interests in such funds as an element of a financing. Second, the act establishes express authority for participation in interest rate swap agreements, a tool that is being used with increasing frequency by local governments to stabilize their interest obligations on outstanding debt.

Installment financing for school projects. Installment financing agreements, which are made pursuant to G.S. 160A-20, pledge the financed property as security for the debt. Thus, for example, an installment financing of a new jail pledges the jail as security, or the installment financing of a fire truck pledges the vehicle. This form of security has created a problem for school projects—the county does the borrowing but the school building is owned by the school board, and the county has no authority to give a deed of trust on another entity's asset. To deal with this problem, the General Assembly enacted G.S. 153A-158.1, which has permitted school units in specified counties to convey school property to a county or the counties themselves to purchase land for school facilities, thus making it possible for the county to provide the deed of trust necessary for an installment financing. The statute has never been statewide; instead, it has been added to over time until, at the beginning of the 2003 session, it included eighty-seven counties. By adding the remaining thirteen counties to the statute, S.L. 2003-355 (S 301) evidences the legislature's conclusion that this piecemeal process should end. Now, all one hundred counties may use installment financing for school projects.

Other capital financing legislation. S.L. 2003-259 (S 652) adds local airport authorities created by local act of the General Assembly to those entities that may borrow money pursuant to G.S. 160A-20. S.L. 2003-138 (H 864) makes a small amendment to G.S. 143-64.17B, which permits local governments and the state to enter into guaranteed energy savings contracts. The statute has required that the other party to the contract provide a 100 percent performance bond to the contracting government. The act removes the bond requirement and replaces it with a requirement that the other party provide security in the amount of 100 percent of the contract cost in a form acceptable to the Office of State Treasurer. This change affects contracts with both local governments and state agencies.

Senate Bill 137 proposes to include any project undertaken within and as part of a municipal service district among the purposes for which special obligation bonds may be issued. The bill also permits such service districts to be created to support transit-oriented development and allows them to be established within a quarter-mile radius of any passenger stop or station on a mass-transit line. Senate Bill 137 passed the Senate and remains in a House committee and therefore may be considered in the 2004 session.

Budgeting

When a county conducts a general reappraisal of real property (which is required at least every eight years), local governments within that county usually reduce their property tax rates because of the growth in their tax bases. In fact, though, local governments often effectively increase tax rates after a revaluation, because the reduction in tax rate is less than the growth in tax base. For a number of years, there have been proposals to require local governments to publicize the rate of tax on the reappraised tax base that would be revenue-neutral (that is, that would generate the same amount of revenue as the prior year's rate on the pre-reappraisal base). S.L. 2003-264 (S 511) places such a requirement in the Local Government Budget and Fiscal Control Act. The act requires each unit's budget officer to include in the proposed budget in any year in which there has been a general reappraisal of real property a "statement of the revenue-neutral property tax rate for the budget." That rate is calculated as follows:

1. Determine a rate of tax on the new tax base that would produce revenues equal to those produced for the current fiscal year.
2. Increase that rate "by a growth factor equal to the average annual percentage increase in the tax base due to improvements since the last general appraisal."
3. Further adjust the rate to account for annexations, deannexations, and so forth.

Here is an example of the required calculation: Assume that the current year's tax base was \$492.5 million, the current year's tax rate was 64 cents, and the amount of the levy was therefore \$3.152 million. Following revaluation the new tax base is \$577.3 million, and the levy necessary

to raise \$3.152 million is 54.6 cents. The average annual growth in tax base since the previous revaluation was 5.1 percent, and 105.1 percent of 54.6 cents is 57.4 cents. There were no annexations; therefore, 57.4 cents is the revenue-neutral tax rate for this unit.

A local government must prepare this revenue-neutral tax rate analysis for each separate levy it makes and includes in its budget. A county's analysis would thus include its general fund, any fire district taxes, any school supplemental taxes, and so on.

Expenditures

Bikeways. G.S. Chapter 136, Article 4A, establishes the North Carolina Bicycle and Bikeway Program within the state Department of Transportation. G.S. 136-71.12 has permitted cities and towns to construct and maintain bikeways using any available funds. S.L. 2003-256 (S 232) permits counties to do so as well.

Medicaid. Counties remain concerned about the increasing burden that Medicaid places on their budgets, as does the state. The appropriations act establishes the North Carolina Blue Ribbon Commission on Medicaid Reform, charging it to make a comprehensive review of the state's Medicaid program, including specifically "how to minimize the state and county share of Medicaid costs and maximize federal participation." The commission is to report to the General Assembly in 2004 and 2005.

Financial Administration

Credit card sales. S.L. 2003-206 (H 357) affects "persons" who own or lease cash registers and accept credit, charge, or debit card payments. Since local governments are, with increasing frequency, accepting payment by credit card for a variety of goods and services, this statute will apply to them as well. The act provides that it is an infraction to print a cash register receipt that includes more than five digits of the card account number or the card's expiration date. The statute applies to cash registers or other machines first used on or after March 1, 2004. The act also requires salespeople to sell only machines that comply with this new requirement, a provision that should facilitate compliance by local governments and other vendors.

Water and sewer authority use of debt setoff. G.S. Chapter 105A establishes the Setoff Debt Collection Act, under which state agencies and cities and counties can arrange to have sums owed to them deducted from income tax refunds otherwise payable by the state to the debtor. S.L. 2003-333 (S 529) extends the authority to use this debt collection method to water and sewer authorities, effective January 1, 2004.

Local Government

Regulatory Powers

State and local powers. Perhaps the most significant bill considered by the 2003 General Assembly involving the regulatory powers of local governments was one that did not pass. Senate Bill 160, which died in a Senate committee, would have, in its original form, clarified a confusing series of court decisions that have cast doubt over whether grants of legislative power to cities and counties should be construed broadly, despite plain language to that effect in G.S. 160A-4 and G.S. 153A-4, respectively. The bill would also have made it clear that cities and counties have "the authority and flexibility to adopt reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions" in carrying out their delegated powers. Third, the bill would have clarified (if clarification was needed) that if a city or county has multiple sources of authority to act, it may freely elect to use any or all of those sources, as long as proper procedures are followed.

Senate Bill 160 would have also responded to two North Carolina court decisions that involved local ordinances or regulations and were unfavorable to local governments. One recent

case found that the state had preempted local regulation of large-scale hog operations. In response the act would have provided that in order to preempt local regulation, the legislature must “expressly state” rather than just “clearly show” an intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation. The other case held that a local board of health had exceeded its rule-making power by basing a rule partly on nonhealth grounds. In response, S 160 would have specified that if a local board of health finds that a proposed local rule is required for public health reasons, the fact that the rule may also be partly based on nonhealth grounds does not invalidate the rule as one that exceeds the board’s rule-making authority. The bill would have authorized separability clauses in such rules and authorized judicial findings of separability. Furthermore, the bill would have defined board of health rules as county ordinances for purposes of the general ordinance-making power statute, G.S. 153A-121 (including preemption rules).

A committee substitute for S 160 emerged from the Senate Judiciary I committee and was referred to the Senate Finance Committee, where it remained at the end of the session. The committee’s version of the bill eliminated or modified some sections that were objectionable to various interest groups (for example, the preemption provisions and the provisions dealing with board of health powers were eliminated). The committee substitute also added a cautionary note indicating that G.S. 153A-4 and 160A-4 did not expand or restrict either the counties’ or cities’ powers to impose taxes or to finance public enterprises or the purposes for which regulations may be adopted pursuant to the laws governing planning and regulation of development. The committee substitute also added provisions concerning intergovernmental relationships (some of which were enacted through other bills) and made other minor changes.

The failure of S 160 led to proposals for two studies, but neither will be implemented because the legislature adjourned without passing this session’s studies bill. Senate Bill 34, The Studies Act of 2003, would have authorized the Legislative Research Commission to study “[r]epealing Dillon’s Rule *in certain circumstances* (S.B. 160—Clodfelter)” (emphasis added). (Dillon’s Rule is the principle of statutory construction that requires construing grants of legislative authority narrowly.) The second and more important provision, Part XXXXII of S 34, would have established a twelve-member Local Government Select Committee to investigate the relationship between the state and cities and counties “to the end of strengthening that relationship and increasing flexibility for cities and counties.” This would have been the first study committee or commission of its type established by the General Assembly in many years. This important committee was to be provided staff support, meeting space, and travel, per diem, and subsistence money. The committee would have examined and made recommendations on four topics:

1. funded and unfunded mandates imposed by the state and federal governments on cities and counties;
2. the ability of cities and counties to meet their responsibilities under their current structures;
3. the relationships between counties, between cities, and between cities and counties; and
4. consolidation of functions between these local governments in order to increase efficiency.

The committee was to have submitted its report, along with any legislative recommendations, to the General Assembly by December 31, 2004.

It is unclear what will happen next in this ongoing saga. The North Carolina Association of County Commissioners was studying issues relating to Dillon’s Rule and county authority prior to the legislative session. No doubt the association and its sister organization, the North Carolina League of Municipalities, will remain keenly attuned to developments in this area.

Fireworks rules. Probably in response to a recent deadly fire at an indoor concert in Rhode Island, the legislature passed S.L. 2003-298 (S 521), which creates new requirements for the use of pyrotechnics at concerts, particularly those held indoors, and tightens the existing requirements for the use of fireworks at public exhibitions. The act amends G.S. 14-410 to require specifically the issuance of fireworks permits when pyrotechnics are to be used at concerts, and it amends G.S. 14-413 to authorize boards of county commissioners to issue those fireworks permits. S.L. 2003-298 also creates a series of rules for the indoor use of pyrotechnics at concerts and public exhibitions. Boards of commissioners may not issue fireworks permits for such events unless the

appropriate fire marshal has certified that (1) adequate fire suppression will be used at the site, (2) the structure is safe for the use of the intended fireworks with the intended fire suppression, and (3) the building has adequate exits based on the size of the expected crowd. These indoor permit requirements also apply to those cities and their officials that are given the power to grant pyrotechnic permits by local act, to counties that have local acts authorizing issuance of fireworks permits by county fire marshals themselves, and to permits authorized by the state fire marshal in connection with state-sponsored events. Violation of the pyrotechnics article of Chapter 14 is a Class 1 misdemeanor if the exhibition is indoors; this change became effective December 1, 2003, and applies to offenses committed on or after that date. The remainder of the act was effective July 4, 2003, and applies to any permits granted on or after that date.

Taxicab drug tests. For many years cities have been allowed to license all vehicles for hire operated within their boundaries. S.L. 2003-65 (S 557) amends G.S. 160A-304(a) to allow cities to require applicants to pass a drug test (“substance abuse examination”) before obtaining a license to operate a taxicab.

Charlotte speed-measuring cameras experiment. Charlotte was the first city in North Carolina to try using electronic methods of traffic enforcement, being authorized a number of years ago by the General Assembly to use automatic cameras to detect red-light violations at major intersections. The use of these devices has been repeatedly upheld against court challenges and the technology is now employed by about a dozen North Carolina municipalities.

S.L. 2003-280 (H 1562) authorizes Charlotte to employ traffic-control cameras in a new experiment. Under the act, the city may adopt ordinances for the civil enforcement of certain traffic speed statutes by means of an automatic photographic speed-measuring system as part of a three-year pilot program operating at specified locations within the city. The act provides for various safeguards related to the accuracy of the equipment and the procedures to be followed in the equipment’s use. Citations under the program will be for noncriminal \$50 infractions, with the clear proceeds of amounts paid going to the county school fund. Violations do not result in the assessment of driver’s license or insurance points, and appeals are allowed. Standards for the equipment being used are to be established by the North Carolina Criminal Justice Education and Training Standards Commission and the state Secretary of Crime Control and Public Safety. S.L. 2003-280 became effective July 1, 2003, and expires June 30, 2006.

Liability for parking and traffic violations. It is often difficult to determine who is actually responsible for an empty vehicle cited for a parking violation. The same is true for citations resulting from speeding or red-light violations detected by means of photographic equipment (these citations are usually automatically mailed to the registered owner of the vehicle). In both cases the registered owner may not be the person who committed the offense and indeed may be completely unaware of the events that have transpired concerning the vehicle.

S.L. 2003-380 (H 786) creates what most people would consider an additional element of fairness in this type of situation. It provides that the owner of a vehicle is not liable for a parking violation or a civil speeding or red-light violation captured by photographic means if, within thirty days after notification of the violation, the owner files with municipality officials or agents an affidavit including the name and address of the person or company that leased or rented the vehicle (for parking offenses) or that had the care, custody, and control of the vehicle (for offenses involving speeding and running red lights). Previously this affidavit option was not available in cases involving parking tickets and owners had only twenty-one days to respond to citations issued as a result of photographic detection. The act also provides that an owner cannot be held responsible for the violation at all if he or she receives the notification of the offense ninety days or more after its occurrence. The owner is also not required, in this last situation, to provide the lessee’s, renter’s, or custodian’s name and address.

In addition, the amended statute now requires that owners seeking to avoid responsibility for a parking or traffic offense because of a vehicle’s theft must produce an affidavit supported by evidence of the theft, including insurance or police report information.

The provisions relating to parking amend G.S. 160A-301 and apply to all cities. The other provisions of SL 2003-380 apply only to those cities that have been given specific legislative

authority to use red-light cameras and photographic speed-measuring system equipment (in the latter case, only Charlotte).

Public Records and Open Meetings

Criminal records checks. The General Assembly enacted two bills authorizing criminal records checks for two categories of local government employees: S.L. 2003-214 (H 1024) permits cities to require applicants for any city job to submit to a criminal records check, while S.L. 2003-182 (S 708) permits criminal records checks to be made concerning any person applying for a paid or volunteer position as a firefighter. The personnel privacy statutes allow a variety of people, including employees, to have access to personnel files. These two acts, however, require that the information relating to criminal records checks be kept more confidential than other personnel records. Such information is intended for the exclusive use of the person or agency requesting the check and may not be made part of the regular personnel file nor released to anyone, including the applicant or employee.

Details of other aspects of these two acts can be found in Chapter 18, "Public Personnel."

Anti-terrorism plans. G.S. 132-1.7, enacted in the immediate aftermath of the September 11, 2001, terrorist attacks, has exempted from public access government documents that include specific details of public security plans and detailed plans and drawings of public buildings and infrastructure facilities. S.L. 2003-180 (S 692) adds a new subsection to the statute exempting from public access "plans to prevent or respond to terrorist activity, to the extent such records set forth vulnerability and risk assessments, potential targets, specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize" human safety or the safety of governmental structures or information storage systems. The act also amends the list of permitted purposes for which closed sessions can be held under the open meetings law. A public body may now hold a closed session to discuss and take action regarding plans to protect the public safety when it is threatened by existing or potential terrorist activity. A public body may also hold a closed session to receive briefings about actions being or to be taken to respond to such terrorist activities.

Airport billing records. The 2001 General Assembly exempted from public access public enterprise billing information. S.L. 2003-287 (S 537) excludes from the exemption the billing information for public airports, thereby making it once again open to public access.

Other public records legislation. S.L. 2003-353 (H 1114) creates new G.S. 115C-209.1 to exempt from public access most of the records associated with public school volunteers. Such legislation was necessary because volunteers with local governments generally are not employees and therefore the various personnel privacy statutes do not apply to records pertaining to the volunteers. House Bill 65 attracted a good deal of public attention early in the session, with its proposal to exempt from public access photographs made during autopsies. (The bill was occasioned by events following the death of NASCAR driver Dale Earnhardt.) The bill passed the House but has remained in a Senate committee. It is available for consideration in the 2004 session.

Government Property

Redevelopment property. The redevelopment law, G.S. 160A-514, generally requires that redevelopment property be sold by competitive means. There are exceptions, however, that allow private sale to governments, public utilities, and nonprofit entities, as long as the property will be used pursuant to the redevelopment plan. The provision allowing private sale to a nonprofit corporation has not, however, permitted doing so without full cash consideration. It has required that a committee of three professional appraisers agree upon the property's fair value and that the conveyance be for no less than that amount. S.L. 2003-66 (H 1065) permits a private sale of redevelopment property to a nonprofit pursuant to G.S. 160A-279, which provides for a simpler procedure (no public hearing required) and does not include a fair value requirement. Cities and counties frequently use G.S. 160A-279 to convey property to nonprofit entities and to accept as

consideration the nonprofit's promise to put the property to some public use. S.L. 2003-66 will now permit them to follow this procedure with redevelopment property as well.

Electronic auctions. Section 18.6 of the appropriations act enacts new G.S. 143-64.6 permitting any county, municipality, or other public body to dispose of surplus property through an electronic auction service. G.S. 160A-270(c) already allows public entities to sell property electronically, and that section (unlike the new one) sets out specific procedural requirements the entities must follow in doing so. It would seem odd if the new statute is intended to allow the use of electronic auctions without any procedural requirements, but otherwise it is entirely redundant. More usefully, Section 18.6 creates new G.S. 15-14.1 permitting sheriffs or police departments to sell stolen or abandoned property through electronic auction services. This new section specifically requires the sheriff or police department to comply with the publication and notice requirements in G.S. 15-12 through G.S. 15-14.

Fire helmets. S.L. 2003-145 (H 55) enacts two identical new sections—G.S. 153A-236 and G.S. 160A-294.1—that permit a county or city fire department to award a firefighter's fire helmet to the retiring firefighter or to the family of a deceased firefighter. Such an award or system of awards must first be approved by the board of county commissioners or city council, which is to determine the manner of setting the price at which the helmet or helmets will be conveyed. The statute says the price may be less than fair market value, but this statement may only be intended to suggest that the helmet may not simply be given to the firefighter or family.

Tort Liability

Regulation of skateboarding and similar "hazardous recreational activities." S.L. 2003-334 (S 774) provides that its intention is "to encourage governmental owners or lessees of property to make land available to a governmental entity for skateboarding, inline skating, and freestyle bicycling" (defined collectively by the act as "hazardous recreational activities"). The act seeks to accomplish this goal by (1) placing the risks involved in such activities specifically on the people engaging in them and (2) requiring participants to wear safety equipment.

First, under this act the assumption of legal responsibility for the known and unknown inherent risks taken by persons participating or assisting in these activities automatically occurs irrespective of the participant's age. Each participant is responsible for acting within the limits of his or her ability and the purpose and design of the equipment used; for maintaining control of his or her person and the equipment; and for not acting in any manner that may cause or contribute to death or injury of him- or herself or others, *regardless of whether the hazardous recreational activities occur on governmental property or elsewhere*. Failure to do any of these things is legal negligence.

Second, the act provides that no operator of a skateboard park may permit any person to ride a skateboard in it unless the person is wearing a helmet, elbow pads, and kneepads. The act also specifies that this requirement is satisfied for government-owned or -operated facilities that are designed and maintained for recreational skateboard use but are not regularly supervised, if (1) the governmental entity has adopted an ordinance requiring the helmet and pads, and (2) signs are posted at the facility affording reasonable notice of the equipment requirement and that any person failing to meet it will be subject to citation under the ordinance.

No governmental entity or public employee who has complied with these requirements is liable to anyone who voluntarily participates in hazardous recreational activities for any damage or injury to property or persons that arises from the person's participation in the activity and that occurs in an area designated for the activity. In addition, public entities that sponsor, allow, or permit these activities are not required to eliminate, alter, or control the risks inherent in these activities.

There are several things that S.L. 2003-334 specifically does *not* do.

- It does not grant permission for engaging in hazardous recreational activities on governmental property unless the government involved has designated the area for this purpose.

- It does not limit liability for gross negligence by a governmental entity or public employee that proximately causes an injury.
- It does not limit liability for failure of a governmental entity or public employee to guard against or warn of a dangerous condition of which a participant does not have and cannot reasonably be expected to have notice.
- It does not create a duty of care or basis of liability.
- It does not waive sovereign immunity.

S.L. 2003-334 also does not limit the liability of independent concessionaires or other persons or organizations, other than governmental entities or public employees, for injuries or damages suffered as a result of that party's operation on public property of equipment for hazardous recreational activities. This particular rule applies regardless of whether the person or organization has a contract with the government to use the property.

Finally, the fact that a governmental entity carries insurance that covers any activity subject to S.L. 2003-334 does not constitute a waiver of the liability limits under the act, regardless of the amount of coverage.

The act became effective October 1, 2003, and applies to activities engaged in on or after that date and to actions that arise on or after that date.

Self-funded risk programs. Catawba and Mecklenburg counties and the cities of Charlotte and Raleigh have, under the authority of local acts, used self-funded reserves instead of purchasing traditional insurance to insure against various county and city liabilities and have thereby partially waived governmental immunity. S.L. 2003-175 (S 647) carries this local experiment statewide by authorizing all counties and cities to take the same action. Specifically, the act amends G.S. 153A-435(a) and G.S. 160A-485(a) to provide that counties and cities, respectively, may adopt resolutions deeming the creation of a funded reserve to be equivalent under the cited county and city statutes to the purchase of insurance against specified risks of liability in tort. (The risks are described in the act.) However, adoption of the resolution only waives the local government's governmental immunity up to the amount of funds available in the reserve for the payment of claims, or the amount that the resolution specifies, whichever is less.

Miscellaneous

Incorporations. The General Assembly passed four municipal incorporation bills this session. Two municipalities were incorporated directly by the legislature, while two of the incorporations were made subject to the approval of the voters in the area of the proposed town. One of those votes failed and the other was scheduled for November 2003.

Mills River. S.L. 2003-242 (H 232) incorporates the Town of Mills River in Henderson County, effective June 24, 2003. The town operates with a five-member council, with the mayor chosen by the council from among its members at the council organizational meeting every two years. The mayor serves at the pleasure of the council; if the mayor's office becomes vacant, the council chooses a person from among its membership to serve the remainder of the unexpired term. Council members are elected for four-year staggered terms by the nonpartisan plurality method as provided in G.S. 163-292. Three members are elected from residence-only districts and two are elected at large; thus, although the candidates are nominated and elected by all of the town's voters, the district candidates must reside within their respective districts. Any council vacancy must be filled for the remainder of the unexpired term, notwithstanding G.S. 160A-63. The first town election, which set up a staggered council, took place at the regular municipal election time in 2003. The town will operate under the council-manager form of government. One unusual provision authorizes the town to reimburse the expenses of the entities sponsoring incorporation.

Misenheimer. S.L. 2003-268 (S 76) incorporates the Village of Misenheimer in Stanly County, effective June 26, 2003. The town's governing board consists of the mayor and a four-member village council, and the town operates under the mayor-council form of government. All five board members serve four-year staggered terms. The mayor is elected from among the council

members every two years at the council's organizational meeting and serves at the council's pleasure. As in Mills River, the council fills a vacancy in the office of mayor from among its membership for the remainder of the term. All council members are elected at large, using the nonpartisan nomination and election method specified in G.S. 163-294.

The act contains an important peculiarity, which may or may not have been a drafting error. S.L. 2003-268 calls for Misenheimer's elections to be held in even-numbered years, contrary to the uniform statewide rule under G.S. Chapter 163 providing for odd-numbered year elections for North Carolina municipalities, including elections held according to the nonpartisan nomination and election method. Assuming that the legislature intended for Misenheimer to hold its first election in 2004, the interim village council that it appointed will continue to serve until that time.

Sunset Harbor. S.L. 2003-317 (H 685) would have incorporated the Town of Sunset Harbor in Brunswick County. The incorporation was subject to a referendum, which was held on November 4, 2003, but the referendum failed. If it had been incorporated, the town would have operated under the mayor-council plan with a five-member board of aldermen and a mayor, all of whom would have been elected by the voters of the entire town for two-year terms (except that some of the members elected in the first election would have served four-year terms).

Cashiers. Had the voters of the Cashiers area approved, S.L. 2003-75 (H 790) would have repealed the 1927 charter of the inactive town by that name in Jackson County and would have incorporated in its place a new Village of Cashiers. The new village would have had a five-member council and a mayor and would have operated under the council-manager form of government. The incorporation referendum failed, however, in an election held on Tuesday, August 12, 2003, so no new village was created, and the charter of the old, inactive town was not repealed.

Sanitary district board salaries. For many years the maximum salary that sanitary district board members could set for themselves has been \$150 per month. S.L. 2003-185 (S 90) removes this restriction and authorizes the board itself to fix the compensation and allowances of the chairman and other board members by adoption of the annual budget ordinance. This change mirrors the statutory salary-setting provisions for city councils and boards of county commissioners.

Public financing of campaigns. Perhaps as a result of recent efforts of the Town Council of Cary to encourage public financing of city campaigns, S 760 was introduced this session. If enacted, it would amend G.S. Chapter 160A to authorize the governing bodies of counties with census populations over 80,000 and cities with census populations exceeding 40,000 to appropriate funds for a uniform program of grants to benefit the campaigns of candidates for county or city office, respectively, in those jurisdictions. However, the authorization is contingent upon four conditions.

1. The grants are available as a source of campaign financing only for candidates who demonstrate public support and voluntarily accept strict fund-raising and spending limits in accordance with a set of criteria created by the county or city.
2. The grant criteria are crafted to further the public goal of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, whether he or she is an incumbent, or party affiliation.
3. The grants can only be used for permissible campaign-related expenditures in accordance with State Board of Elections guidelines.
4. Unspent grants are returned to the local government.

Any county or city exercising this authority would be required to notify the State Board of Elections and the county board of elections. A city must notify the board of elections of any county in which it has territory.

As an incentive to candidates to use the grants, the grants would not be included in the definition of *contribution* found in G.S. 163-278.6(6) (part of the election law) and would not be subject to certain other contribution limitations and prohibitions. They would, however, have to be included in legally required campaign reports as if they were campaign contributions.

Senate Bill 760 passed the Senate and is therefore eligible for further consideration in the 2004 session.

Geographic place-names. According to the provisions of S.L. 2003-211 (H 483), boards of county commissioners may soon find the state and federal governments contacting them about renaming geographical locations within their boundaries. This act requires the North Carolina Secretary of State, pursuant to federal government guidelines and in consultation with the North Carolina Geographic Information Coordinating Council, to adopt procedures for changing geographical place-names that are “offensive” or “insulting.” The act does not define these terms, however, nor does it specify any standards for the council to use in determining how the two terms will be applied.

The act provides that the Geographic Information Coordinating Council’s procedures must include a notification to the board of county commissioners where the offensive or insulting place-name is deemed to exist that the council intends to apply to change the name. The board of commissioners then has ninety days in which to respond. The council cannot act to change a place-name until it reviews the county’s response or ninety days expires, whichever happens first. The council also must consider any resolutions passed by the commissioners regarding the changing of a geographical place-name in a particular county.

S.L. 2003-211 specifies that it is not to be construed to apply to place-names that are those of historic persons or events or to nonpejorative place-names. It specifically declares that geographical place or location names in North Carolina that contain the word “nigger” are offensive and insulting. The Council must notify the board of county commissioners of the county in which there are places or locations the names of which include this term that (1) the council is going to apply to the U.S. Bureau of Geographic Names to change the offensive name and (2) the board has ninety days to suggest a replacement name. The council will accept the board’s suggestion unless, by vote, the council deems the new name to be “offensive” or “insulting.” In that case, or if the county does not suggest a potential name, the council will apply to change the name to one chosen within its discretion.

HOV lanes. As North Carolina becomes more urbanized, some larger cities and the state Department of Transportation are becoming increasingly interested in the use of high occupancy vehicle (HOV) lanes to encourage carpooling and help reduce traffic congestion. Part of S.L. 2003-184 (S 38) amends G.S. 20-146.2(a) to further refine the rules for using HOV lanes. Of particular interest to local governments is a provision specifying that HOV lane restrictions do not apply to *emergency vehicles*, defined as any law enforcement, fire, police, or other government vehicle or any publicly or privately owned ambulance or emergency service vehicle operating in response to an emergency. The restrictions also do not apply to motorcycles or to vehicles designed to transport fifteen or more passengers, regardless of the actual number of occupants. The act also specifies that vehicles with more than three axles—for example, tractor-trailer trucks—may not travel in HOV lanes at all. The part of the act containing these new rules became effective December 1, 2003, and applies to violations that occur on or after that date.

Service districts. G.S. Chapter 153A, Article 16, Part 2, authorizes the creation of research and production service districts, a unique type of service district of which the only current example is the Research Triangle Park in Durham County. S.L. 2003-187 (S 214) adds provisions to this law outlining the conditions under which territory may be removed from such a district. In particular, the board of commissioners for the county within which the district is located must find that (1) the owners of the territory to be removed are considering residential uses for some of the removed land; (2) all of the real property owners in the territory being removed have petitioned for removal; and (3) the territory in question no longer requires the district’s services, facilities, or functions.

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