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Local Government and Local Finance

The principal lobbying efforts of the League of Municipalities and the Association of County Commissioners in the 2004 session focused on two pieces of legislation—one providing for compensation by local governments to owners of nonconforming billboards ordered removed and the other facilitating local government compliance with federal Phase II stormwater requirements. The resulting acts are discussed in Chapter 13, “Land Use, Community Planning, Code Enforcement, and Transportation,” and Chapter 9, “Environment and Natural Resources.” For information on other acts of interest to local governments, see Chapter 4, “Community Development and Housing”; Chapter 15, “Local Taxes and Tax Collection”; Chapter 18, “Public Employment;” and Chapter 19, “Purchasing and Contracting.” County officials should also consult the chapters addressing other topics related to county–state cooperation, such as human services, schools, elections, and the courts.

Transportation

Funding

S.L. 2004-124 (H 1414), the state budget act for the 2004–2005 fiscal year, contains the most important provisions adopted this session relating to transportation issues. Section 30.21(c) substantially amends G.S. 136-178 to expand the allowable uses of intrastate system funds, giving the North Carolina Board and Department of Transportation more flexibility in choosing projects that will benefit from the funds. Section 30.19 of the act amends G.S. 136-180(a) to revise descriptions of the Charlotte Outer Loop, the Raleigh Outer Loop, and the Wilmington Bypass for purposes of the Highway Trust Fund and to add the Gastonia Loop to the list of urban loop projects. Finally, Section 30.21(d) of the act provides that the new bridge to be constructed over Currituck Sound will be a toll bridge, amends G.S. 136-179 to add the Cleveland Shelby Bypass to the list of intrastate projects to be funded, and modifies the descriptions of the U.S. 321 and U.S. 421 intrastate four-laning projects.

Another act, S.L. 2004-168 (S 1089), amends G.S. 136-18 to specifically authorize the Department of Transportation (DOT) to enter into agreements to receive funds from municipalities, counties, governmental entities, and nonprofit corporations in order to advance the construction schedules of projects identified in the state’s Transportation Improvement Program (TIP). If the DOT

is required to repay the funds, reimbursement of all funds received by the DOT must be shown in the existing TIP prior to the DOT's receipt of the money. Reimbursement must be completed within seven years of the funds' receipt.

Public Transit Law Changes

Two laws affecting jurisdictions that operate public transit systems were passed during the 2004 session. S. L. 2004-26 (H 1373) makes assaulting a public transit operator, when the operator is discharging or attempting to discharge his or her duties, a Class A1 misdemeanor. (The offense had been a Class 2 misdemeanor.) The statute covers both public employees and private contractors who are employed as public transit operators. It became effective December 1, 2004, and applies to offenses committed on or after that date. S. L. 2004-82 (S 1086), effective July 1, 2004, contains a safety-related change applicable to public transit vehicles. It amends G.S. 20-130 to authorize (but not require) the use of amber, high mounted, flashing deceleration lamps on the rear of public transit vehicles.

License Plate Covers

In recent years a number of North Carolina cities have begun to enforce traffic signal laws using cameras that automatically take a photograph of the license plate of any car that runs a red light. In addition, Charlotte received legislative permission in 2003 to use cameras to capture speeders' license plates on film. Based on these developments, it was probably inevitable that people would devise ways to prevent fixed cameras from obtaining clear pictures of license plates, even if such plates remain visible to the naked eye. S. L. 2004-79 (H 26) amends G.S. 20-63(g) to address this issue. The act makes it an infraction for any motor vehicle operator willfully to cover or cause to be covered any part of a registration plate or its figures or letters by any device designed or intended to prevent or interfere with the taking of a clear photograph of the plate by a traffic control system using cameras. Violators are subject to an infraction penalty under G.S. 14-3.1 of not more than \$100. The act does not prohibit the use of transparent registration plate covers that are not designed or intended to prevent or interfere with the taking of such traffic control photographs. S.L. 2004-79 became effective October 1, 2004, and applies to acts committed on or after that date.

Other Legislation of Interest to Local Governments

Payments for Wetlands Mitigation in Low-Wealth Counties

S.L. 2004-188 (S 933), effective for land transfers made on or after July 9, 2004, specifies that local governments that condemn or purchase land, and state agencies that purchase land, for wetlands mitigation—that is, for the creation of new wetlands to replace those that have been destroyed—must in some instances pay the county in which the land is located for the resulting loss in property tax revenue. The rules also apply if the state acquires land by donation from a private mitigation banking company.

The payment in each case is based on the estimated amount of ad valorem taxes that would have accrued to the county in question for the next twenty years had the property in question not been acquired for wetlands mitigation. Payment is required if (1) the county in which the land is located is a low-wealth county—that is, it is designated as an enterprise tier one or tier two area under G.S. 105-129.3; and (2) the land being acquired is located in another jurisdiction from the acquiring governmental unit. Thus, in the case of a city or special district, the land must be located

outside the county in which the city or special district is located. In the case of state agencies, generally the land being purchased must be located in a different county from the one in which the wetlands permitted to be lost are located.

Authorization of Local Officials' Participation in State's Optional Retirement Plan

S.L. 2004-137 (S 1312) authorizes employees of counties, municipalities, other political subdivisions, and the North Carolina Community College System to participate in any 457 retirement plan adopted by the state on two conditions ("457 plans" are named for the section of the federal tax code authorizing them): the board of trustees of the North Carolina Public Employee Deferred Compensation Plan must consent to the particular local participation, and the proper governing body of the unit in which the employee is employed must also give its approval. The provision of the act authorizing employee participation in the plans if the proper consents are obtained becomes effective January 1, 2005. The remainder of the act became effective July 1, 2004.

Standards for Animal Shelters

S.L. 2004-199 (S 1225), Section 39, amends G.S. 153A-442 and 160A-493 to require that animal shelters operated by counties and municipalities, respectively, meet the same standards as animal shelters regulated by the North Carolina Department of Agriculture pursuant to its authority under G.S. Chapter 19A.

Fencing for Housing Authority Properties

While housing authorities are allowed to place fences around the properties they own, new G.S. 157-9(d), created by S.L. 2004-199, Section 40, imposes specific limits on the exercise of that discretion. It forbids authorities to erect or maintain around any lawfully occupied housing units any fence or gate structure that is electrified or that includes spikes or barbed wire.

Local Representation on Advisory Commission on Military Affairs

S.L. 2004-49 (S 1159) adds the executive directors of the North Carolina Association of County Commissioners and the North Carolina League of Municipalities as nonvoting, ex officio members of the North Carolina Advisory Commission on Military Affairs, created by Chapter 127C of the General Statutes.

Acts Creating or Affecting the Form of Local Governments

Incorporation of Wallburg. The 2004 session incorporated one new town. The charter for the Town of Wallburg in Davidson County is found in S.L. 2004-37 (S 1127). Wallburg will operate under the mayor-council form of government, with a nonvoting mayor and five council members elected by the nonpartisan plurality method in townwide elections for four-year terms. The act establishes staggered terms for the council members. The charter contains specific limits on Wallburg's annexation powers and provides that Kernersville and Winston-Salem may undertake satellite annexation of areas that otherwise qualify, even if those areas are closer to Wallburg than to the annexing city. In addition, the town council cannot increase the town's property tax rate more than \$.10 per \$100 valuation "above the ad valorem tax rate established on the date of incorporation [June 29]" without a vote of the people. S.L. 2004-37 appoints an interim town board and provides necessary transition procedures for budget adoption and tax collection.

Johnston and Wilkes County coroners. North Carolina's medical examiner system has made the position of county coroner something of an anachronism. This session, Johnston [S.L. 2004-18 (S 1125)] and Wilkes [S.L. 2004-51 (S 1158)] joined the long list of counties in

which the position has been abolished altogether. The Wilkes County act is effective upon the expiration of the term of the current coroner in the county, while the Johnston county act was effective when it became law.

Studies

The 2004 General Assembly authorized a large number of studies, and several of them should interest local government officials.

State-local relationships. Two studies involving state-local relationships are authorized (but not required) by the main studies act, S.L. 2004-161 (S 1152). Section 3.1 authorizes the Joint Legislative Growth Strategies Oversight Committee to study the delegation of authority to cities and counties, a topic the 2003 legislature addressed in S 160. The committee must report to the General Assembly prior to the committee's mandated dissolution on January 16, 2007.

Section 2.1(m) of the studies act permits the Legislative Research Commission (LRC) to study the relationship between the state and local governments with respect to the provision of services, a subject that has been of increasing concern to local officials. If this study is conducted, it must (1) address mandates the state has placed on local governments regarding the provision of services to state residents; (2) address funding sources for local governments, including a review of all state-to-local appropriations, all state-shared revenues, and all methods of raising revenue the state allows local governments; (3) compare the state-local relationship in North Carolina to that in other states, particularly with respect to the percentage of the cost of services other states bear; (4) compare local governments with regard to the burden of mandated programs on local budgets; and (5) compare the combined state-local tax burden on individuals and businesses in North Carolina to those of other states. The appointing authority must consider including local government representatives as appointees to the study committee.

Delivery of services to Hispanics. Section 2.1(g) of S.L. 2004-161 authorizes the LRC to study current state and local policies regarding the availability and delivery of government services to North Carolina's expanding Hispanic population as well as the issues confronted by governmental agencies in delivering those services effectively and by Hispanics in obtaining the services. A variety of factors, such as cultural differences and language barriers, may be considered. If the LRC undertakes this study, it must identify those issues that are best addressed at the local, state, and federal levels, respectively.

Other subjects that S.L. 2004-161 authorizes for study by the LRC include fire safety in local confinement facilities [Section 2.1(1)a.]; comprehensive statewide emergency communications planning [Section 2.1(i)]; light pollution [Section 2.1(1)c.]; towing laws, salvage laws, and lienholder notification when vehicles are abandoned or seized [Section 2.1(2)e.]; abandoned junk vehicles [Section 2.1(n)]; and soil and water conservation issues [Section 2.1(9)c.]. The act also authorizes the Joint Legislative Education Oversight Committee to study issues concerning school construction and school capacity (Section 13.14), the Revenue Laws Study Committee to study private activity bonds (Section 14.3), and the Department of Administration to study retainage from payment on public construction projects (Section 21.1). If the department conducts the retainage study, it must report its findings to the 2005 legislature when the session convenes.

Local Finance

The State Budget

The state appropriations act, S.L. 2004-124, contains two sets of provisions of interest to local government officials.

Hold harmless funds. In 2001 the General Assembly repealed the statutes appropriating 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 appropriating state funds to those communities to make up for any shortfall resulting from the substitution. In 2003 local governments were concerned that the payments might fall victim to the General Assembly’s need to balance the 2003–2005 state budget, but they survived intact. In fact, the 2003 appropriations act stated the General Assembly’s intention to continue distribution of hold-harmless payments through 2012. This year’s appropriations act went further and enacted into law a statement that the hold-harmless payments will indeed continue through 2012.

Local participation in the state health insurance plan. The appropriations act also gives local governments in five counties—Bladen, Cherokee, Rutherford, Washington, and Wilkes—the option of bringing their employees and retired employees under the State’s Comprehensive Major Medical Plan. The provisions are obviously experimental, as they expire on June 30, 2006.

Local Government Revenues and Borrowing

Local option sales and use taxes. For a number of years various counties have sought local acts authorizing additional local government sales and use taxes on a single-county basis; only Mecklenburg, however, has been successful, gaining the authority in 1997 to levy an additional half-cent tax earmarked for public transportation purposes. In this session, however, two more counties were able to obtain such authority. Gaston County [S.L. 2004-122 (H 1520)] was authorized to put before the county’s voters this fall the question of whether to levy an additional half-cent tax, with the proceeds being earmarked for economic development and tourism projects. The county’s voters, however, strongly opposed the tax. Had the tax been enacted, the county would have shared the proceeds with each of the cities and towns in the county, and the tax would have terminated after eight years. Dare County [S.L. 2004-123 (H 142)] was authorized to levy an additional one-cent tax, with the proceeds being earmarked for beach renourishment. (Through an error that occurred in the hectic last hours of the 2004 session, this act is not limited to Dare County; rather, it authorizes such a tax by any county, as long as the proceeds are used for beach renourishment. It is believed the error will be corrected as soon as the 2005 General Assembly meets.) As with Gaston County, this tax will terminate eight years after it is levied.

Service districts and special obligation bonds. S.L. 2004-151 (S 137) creates a new type of municipal service district and a new form of borrowing for projects within all municipal service districts. The new purpose for which service districts may be established is for “transit-oriented development projects.” These are projects taking place within *public transit areas*, defined as areas within a quarter-mile radius of any passenger stop or station located on a mass transit line. *Mass transit lines* are either rail lines, busways, or guideways dedicated to public transportation. (Such a busway must be almost fully dedicated to bus travel only; a busway does not qualify as a mass transit line if a majority of its length is also generally open to passenger cars and other vehicles more than two days a week.) A *transit-oriented project* is essentially any sort of project a city is authorized by law to undertake, as long as it is undertaken within the city’s public transit area. Such projects might include passenger stations and associated parking facilities, but they may also include other public facilities and the public share of a variety of public-private ventures.

One form of borrowing currently available to cities (and counties) is special obligation financing. This type of borrowing is secured by any revenue source available to the borrowing government, as long as that source is not a locally levied tax. (If a locally levied tax were pledged as security, the borrowing would become a general obligation.) Special obligation financing was originally restricted to solid waste projects; then, a few years ago, the legislature extended its uses to include the funding of water and sewer projects as well. S.L. 2004-151 further expands the purposes for which special obligation financing may be used to include the financing of any “service or facility . . . provided in a municipal service district.” Thus this type of financing can

now be used for any projects within the new sort of district authorized by this act and also for projects within the many downtown service districts that cities have created over the past thirty years. The new authority should therefore be an important tool for cities to use in their downtown revitalization efforts.

Service of process fees. G.S. 7A-311 establishes the uniform fees for the state's court system. One of the fees is imposed for service of civil process, with the proceeds being remitted to the county in which the action is brought. S.L. 2004-113 (H 918) raises this fee from \$5 to \$15. In addition, the act adds language to the statute directing counties to use at least half of the proceeds from the process fees "to ensure the timely service of process within the county, which may include the hiring of additional law enforcement personnel upon the recommendation of the sheriff." The new fee became effective September 1, 2004.

Finance Administration

Setoff changes. The Setoff Debt Collection Act (G.S. Chapter 105A) permits state agencies and most local governments to have sums owed to them deducted from income tax refunds otherwise payable by the state to the debtor. S.L. 2004-138 (H 1420) extends the authority to use this debt collection method to joint agencies set up by two or more local governments. H 1667 would have extended it to sanitary districts as well, but the bill did not pass.

S.L. 2004-21 (H 1497) sets a flat \$5 fee, to be collected from the debtor, when a debt is collected pursuant to the Setoff Debt Collection Act. The Department of Revenue had previously had discretion to set the amount of the fee.

State appropriations to local governments. S.L. 2004-196 (S 1008) regulates the expenditure of and reporting on state grants to non-state entities. Most of the act does not apply to local governments, but two provisions do. First, any non-state entities (including local governments) that receive funds by direct appropriation from the General Assembly are required to spend the moneys only for the purposes for which they were appropriated. Second, the Director of the Budget must report noncompliance with this requirement to the Attorney General if the noncompliance appears to be criminal or involve malfeasance, misfeasance, or nonfeasance.

Studies

S.L. 2004-161 authorizes or directs a large number of studies. Given the short time between adjournment of the 2004 General Assembly and convening of the 2005 General Assembly, many of the studies will not be conducted. Some, however, have reporting dates after 2005 and are therefore more likely to be undertaken.

Some of the studies involving local government finance are as follows:

- S.L. 2004-161 establishes a nineteen-member Local School Construction Financing Study Commission and directs it to examine the present system for financing school facilities and alternatives to that system. The commission must report its findings to the General Assembly no later than March 31, 2006.
- The act also creates a twelve-member Legislative Study Commission on a Twenty-First Century Revenue System and charges it to examine the entire state and local government tax system and recommend changes that would lead to a sound tax structure in the current economy. It, too, is to make its final report to the 2006 session of the General Assembly.
- The act authorizes the Revenue Laws Study Commission, an ongoing entity, to study (among other subjects) private activity bonds and sales and use tax exemptions.
- The act directs the Department of Health and Human Services to study the financing of mental health, developmental disabilities, and substance abuse services, including funding sources and alternative financing mechanisms. The department must report to various legislative bodies by July 1, 2005.

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- Finally, S.L. 2004-161 authorizes (but does not require) the LRC to study the feasibility of eliminating county financial participation in the Medicaid program, an expensive part of most county budgets. The commission may consider alternative funding methods as well as the effect of allowing counties to retain the contributions they typically make toward the program's administrative costs. In its report to the General Assembly, the commission must include a fiscal analysis of the impact on state revenue and Medicaid expenses estimated to result from eliminating county participation.

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