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## Local Finance

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The principle lobbying efforts of the North Carolina Association of County Commissioners in the 2007 session focused on a single piece of legislation—a comprehensive Medicaid relief package in which the state incrementally assumes the full county Medicaid share and provides counties additional revenue-raising options, in exchange for a portion of the counties’ sales tax revenue. Municipalities did not fare as well in obtaining additional revenue sources to fund infrastructure projects but did succeed in protecting their share of the sales tax revenue.

In addition to the Medicaid reform legislation, the General Assembly made major changes in several other areas, including establishing a statewide solid waste management program, discussed both in this chapter and in Chapter 12, “Environment and Natural Resources,” consolidating state and local 911 services under a new state 911 Board, and authorizing local governments to both establish and participate in irrevocable trust funds for Other Post-Employment Benefits and Special Separation Allowance liabilities.

This chapter discusses much of the 2007 finance-related legislation important to local governments, although not all. Interested readers also should review Chapter 8, “Economic and Community Development”; Chapter 12, “Environment and Natural Resources”; Chapter 17, “Local Government”; Chapter 18, “Local Taxes and Tax Collection”; Chapter 22, “Public Employment”; and Chapter 23, “Public Purchasing and Contracting.”

### **Medicaid Relief and Local Option Taxes for Counties**

Due to the rising costs associated with Medicaid expenses, counties have been lobbying the legislature for a number of years to reduce or eliminate the county share of nonfederal Medicaid expenses. According to the North Carolina Association of County Commissioners, as of 2007, North Carolina was the only state that required counties to pay a fixed percentage of all Medicaid services costs. The legislature had responded to the intense lobbying pressure with a one-year cap on the counties’ Medicaid share in 2006. But, without further legislative action, counties were projected to spend more than \$517 million for the nonfederal share of Medicaid in the 2007–08 fiscal year, crippling some counties’ ability to fund other essential needs, such as public education.

The General Assembly adopted a permanent solution this session in the 2007 appropriations act, S.L. 2007-323 (H 1473), by phasing out the county share entirely over a three-year period. In

exchange for the state assuming this expense, the legislation also phases out the counties' authority to levy a half-cent local option sales and use tax—increasing the state sales and use tax by this amount—and imposes a one-year reduction in the allocation of funds to counties from the state's Public School Building Capital Fund. The comprehensive budget provision requires counties to hold municipalities harmless for the lost local sales and use tax revenue and requires the state to guarantee counties a certain return. Finally, it authorizes each county to levy either an additional one-fourth cent local option sales and use tax or a local land transfer tax of up to 0.4 percent, pending voter approval.

### **Phaseout of County Medicaid Share**

The county Medicaid share as of 2007 was 15 percent of the nonfederal Medicaid costs and Medicare Part D clawback payments. S.L. 2007-323 phases out the county Medicaid share over the next three years—with the state assuming 25 percent beginning October 1, 2007, 50 percent beginning July 1, 2008, and 100 percent beginning July 1, 2009. Counties will continue to pay any local administrative expenses associated with the Medicaid program.

### **One-year Average Daily Membership Fund Adjustment**

To defray the first-year costs to the state of assuming 25 percent of the county Medicaid share, the act amends G.S. 115C-546.2 to alter the average daily membership (ADM) distribution to counties from the Public School Building Capital Fund for fiscal year 2007–08 only. It reduces the amount of each county's distribution by the lesser of 60 percent of the expected ADM distribution or 60 percent of the amount of the county's Medicaid share assumed by the state. A county must make up for the reduction in ADM funds from the additional revenue it receives as a result of the state assuming a portion of its Medicaid payments. Specifically, in fiscal year 2007–08, a county must use for purposes set out in G.S. 115C-546.2(b) a portion of this revenue equal to the difference in what the county would have received in ADM funds under G.S. 115C-546.2(a) and what it does receive.

### **Phaseout of Article 44 Local Sales and Use Tax**

To defray the costs to the state of assuming the county Medicaid share in future years, S.L. 2007-323 reduces the G.S. Chapter 105, Article 44 half-cent local sales tax to a one-fourth cent tax and increases the state sales tax by one-fourth cent, effective October 1, 2008, and further reduces the Article 44 local tax by the remaining one-fourth cent and increases the state sales tax by one-fourth cent, effective October 1, 2009. From October 1, 2008, through September 30, 2009, the Article 44 one-fourth cent local tax will be distributed among counties on a point-of-origin basis, that is, with the proceeds allocated to the counties where the goods were delivered.

### **Distribution Change of Article 42 Local Sales and Use Tax**

When the second one-fourth cent of the G.S. Chapter 105, Article 44 local sales tax is repealed on October 1, 2009, the distribution formula for the Article 42 one-half cent local sales tax will switch from a per capita to a point-of-origin method. The distribution of the Article 39<sup>1</sup> one cent tax will remain on a point-of-origin basis and the distribution of the Article 40 one-half cent tax will remain on a per capita basis.

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1. References in this chapter to the G.S. Chapter 105, Article 39 one-cent local sales tax include the Mecklenburg County one-cent sales tax under 1967 N.C. Sess. Laws ch. 1096.

### **Municipal Hold Harmless Funds**

S.L. 2007-323, as amended by S.L. 2007-345 (H 714), enacts new G.S. 105-522, requiring counties to hold municipalities that are incorporated as of October 1, 2008, harmless for the phase-out of the half-cent G.S. Chapter 105, Article 44 local sales and use tax. The hold-harmless funds are paid to municipalities by the Secretary of Revenue each month from funds obtained by reducing the county's monthly allocation of the Article 39 one cent sales tax proceeds.

For the period after the first one-fourth cent of the Article 44 tax is repealed, October 1, 2008, through September 30, 2009, the hold-harmless payments are calculated as the equivalent of the revenue that would have been generated by the repealed one-fourth cent tax distributed per capita, less any actual distributions under the repealed tax. The calculations are as follows:

- 50 percent of the proceeds a municipality receives each month from the half-cent Article 40 tax (less revenue from the sale of food subject to the local tax only), *minus*
- the proceeds distributed to the municipality each month on a per capita basis from the repealed one-fourth cent Article 44 tax in October, November, and December 2008.

After the tax is completely phased out on October 1, 2009, the hold-harmless payments are calculated as the equivalent of the revenue that would have been generated by the repealed half-cent tax (distributed half per capita and half point-of-origin), less any actual distributions under the repealed tax, plus the impact on the municipality from the conversion of the Article 42 tax distribution from per capita to point-of-origin. The calculations are as follows:

- 50 percent of the proceeds a municipality receives each month from the half-cent Article 40 tax (less revenue from the sale of food subject to local tax only), *plus*
- 25 percent of the proceeds a city receives each month from the one cent Article 39 tax (less revenue from the sale of food subject to local tax only), <sup>2</sup> *plus*
- the difference between 50 percent of the proceeds a municipality receives each month from the half-cent Article 40 tax and 25 percent of the proceeds a municipality receives each month from the one cent Article 39 tax.

### **County Hold Harmless Funds**

The state must guarantee that each county will gain at least \$500,000 each fiscal year as a result of the state assuming the county Medicaid share.<sup>3</sup> Thus, for fiscal year 2007-08, if the amount of the county's Medicaid share paid by the state<sup>4</sup> minus the amount by which the county's Public School Building Capital Fund allocation is reduced does not equal or exceed \$500,000, the state must reimburse the county for the difference.

Thereafter, G.S. 105-523 requires the Department of Revenue to calculate the projected revenue loss to the county from the local sales tax changes and compare that loss with the amount of revenue a county gains from the state assuming the county's Medicaid payments. For the period after the first one-quarter cent of the Article 44 tax is repealed (October 1, 2008, through September 30, 2009), the state must reimburse the county for the absolute value of the difference if the amount of a county's Medicaid costs assumed by the state minus \$500,000 is less than the county's *repealed local sales tax amount*. A county's repealed local sales tax amount is calculated as the equivalent of the revenue that would have been generated by the repealed one-fourth cent tax distributed per capita, less any actual distributions under the repealed tax. The calculations are as follows:

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2. This amount will be reduced by any actual distributions from the repealed tax during October, November, and December 2009.

3. The \$500,000 guarantee, however, does not factor in the funds that a county must expend to hold municipalities harmless for the loss of local sales and use tax revenue beginning in October 2008.

4. The Secretary of Health and Human Services will certify to the Secretary of Revenue the amount of each county's Medicaid costs and Medicare Part D clawback payments assumed by the state.

- 50 percent of the proceeds a county receives from the G.S. Chapter 105, Article 40 local sales and use tax proceeds (less revenue from the sale of food subject to local tax only), *minus*
- the proceeds distributed to the county on a per capita basis from the repealed one-fourth cent tax in October, November, and December 2008.

After the Article 44 tax is completely phased out on October 1, 2009, the state must reimburse the county for the absolute value of the difference if the amount of a county's Medicaid costs assumed by the state minus \$500,000 is less than the county's *repealed local sales tax amount*. A county's repealed local sales tax amount is calculated as the equivalent of the revenue that would have been generated by the repealed one-half cent tax (distributed half per capita and half point-of-origin), less any actual distributions under the repealed tax, plus the impact on the county from the conversion of the Article 42 tax distribution from per capita to point-of-origin. The calculations are as follows:

- 50 percent of the proceeds a county receives from the half-cent Article 40 sales (less revenue from the sale of food subject to local tax only), *plus*
- 25 percent of the proceeds a county receives from the one-cent Article 39 local sales and use tax (less revenue from the sale of food subject to local tax only),<sup>5</sup> *plus*
- the difference between 50 percent of the proceeds a county receives each month from the half-cent Article 40 tax and 25 percent of the proceeds a county receives each month from the one cent Article 39 tax.

The state supplemental payments are made semiannually. The Secretary of Revenue estimates the hold harmless amount and sends each county 90 percent of the estimated amount with the March local sales tax distribution. The Secretary of Revenue determines the actual amount at the end of the fiscal year and remits balance to each county by August 15.

### **Transitional Hold Harmless Funds**

During the 2001 legislative session, the General Assembly repealed reimbursements that had been made to local governments by the state since the mid-1980s in compensation for the loss, through legislative action, of important local government revenue sources, including the removal from the property tax base of manufacturers', wholesalers', and retailers' inventories, the repeal of the intangibles tax, the expansion of the property tax homestead exclusion, and the repeal of the sales tax on food stamp purchases. In an effort to mitigate any adverse effect on local governments from the repeal of the reimbursements, the legislature authorized counties to levy the G.S. Chapter 105, Article 44 half-cent local sales and use tax and adopted a transitional hold-harmless payment provision in G.S. 105-521 to compensate any county that received less revenue from the new Article 44 tax than it would have received from the reimbursements during the 2002–03 fiscal year.

Effective January 1, 2008, S.L. 2007-323 makes conforming changes to the transitional hold-harmless funds calculation in G.S. 105-521 to account for the repeal of the Article 44 tax described above. Rather than calculating the hold-harmless amount by comparing each county's repealed reimbursement amount to the county's Article 44 sales tax share, the amended statute substitutes a proxy for the repealed Article 44 tax, called *replacement revenue*, for which local governments are being held harmless. It defines replacement revenue as

- 50 percent of the amount of the local one-half cent sales tax revenue distributed under G.S. Chapter 105, Article 40 (less revenue from the sale of food subject to local tax only), *plus*
- 25 percent of the amount of the local one cent sales tax revenue distributed under Article 39 (less revenue from the sale of food subject to local tax only).

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5. This amount will be reduced by any actual distributions from the repealed tax during October, November, and December 2009.

## Additional Local Option County Taxes

The state's assumption of the county Medicaid share provides needed relief to many of North Carolina's smaller and economically distressed counties. It alone, however, does not adequately address the needs of larger, growing counties. Thus, the Medicaid reform legislation also authorizes counties to adopt either up to a 0.4 percent land transfer tax (in 0.1 percent intervals) or an additional one-fourth cent local sales and use tax, the proceeds of which may be used for any public purpose. There is no requirement and, in fact, no authorization for a county to share the proceeds of either of these new revenue sources with municipalities.

A county must hold an advisory referendum on either additional revenue source and may hold a referendum on both at the same time. If the majority of those voting in the referendum vote for the levy of the local land transfer tax or additional local sales and use tax, the board of county commissioners may adopt a resolution levying the tax after providing ten days' public notice. (If both ballot measures are successful, a board of county commissioners may implement either but not both of the additional revenue options.) The levy of the land transfer tax may become effective no earlier than the first day of the second succeeding calendar month after the date the resolution is adopted. The levy of the additional sales and use tax may not become effective until the first day of the calendar quarter after the resolution is adopted and only after the county gives the Secretary of Revenue at least sixty days' advance notice of the new tax levy.

The adoption, levy, collection, administration, and repeal of the additional local sales and use tax must be in accordance with the G.S. Chapter 105, Article 39 local sales and use tax, except that the new tax will not apply to the sales price of food that is exempt from state tax.

The local land transfer tax applies to transfers of interests in real property located within the county. It is payable by the seller of the interest and applies to the consideration or value, whichever is greater, of the interest conveyed, including the value of any lien or encumbrance remaining on the property at the time of the conveyance. If the property is located in two or more counties, a transfer of an interest in the property is taxable only by the county in which the part with the greater value lies.

The legislation specifically exempts certain transferors, specifically governmental units and instrumentalities of governmental units. It also exempts certain conveyances of interests in real property to the same extent that they are exempt from the state land transfer excise tax—transfers that are required by operation of law; leases for a term of years; transfers by or pursuant to the provisions of a will, by intestacy, or by gift; transfers where no consideration in property or money is due or paid by the transferee to the transferor; transfers that are accomplished by merger, conversion, or consolidation; and transfers made by an instrument securing indebtedness.

Unlike the state land transfer excise tax, the local land transfer tax does not apply to contracts for the sale of standing timber, although it is unclear whether it applies to timber deeds. G.S. 105-228.30(a) authorizes the state land transfer excise tax and explicitly states that the tax "applies to timber deeds and contracts for the sale of standing timber *to the same extent as if these deeds and contracts conveyed an interest in real property.*" (emphasis added) The legislation authorizing the local land transfer tax does not include this provision. The provision was added to the state land transfer excise tax statute in 2000 in response to a 1999 decision by the North Carolina Supreme Court holding that contracts for the sale of standing timber are transfers of personal property, not real property.<sup>6</sup> Although the amendment to G.S. 105-228.30(a) suggests that both contracts for the sale of standing timber and timber deeds are conveyances of personal property, it is an open question in North Carolina whether timber deeds constitute conveyances of real property or personal property.<sup>7</sup> If timber deeds do, in fact, convey real property, they are subject to the local land transfer tax despite the absence of an explicit provision addressing timber deeds in the authorizing legislation.

The administrative provisions for the state land transfer excise tax, codified in G.S. 105-228.32 through G.S. 105-228.37, also apply to the local land transfer tax. A county may repeal or reduce the rate of the local land transfer tax by resolution, but the repeal or reduction

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6. *Fordham v. Eason*, 351 N.C. 151, 521 S.E.2d 701 (1999).

7. See DAVID M. LAWRENCE, LOCAL GOVERNMENT PROPERTY TRANSACTIONS IN NORTH CAROLINA 161–70 (2d ed. 2000).

may not become effective until the end of the fiscal year in which the repeal or reduction resolution is adopted.

## **Revenues**

### **White Goods and Scrap Tire Disposal Tax Programs**

The 2007 appropriations act, S.L. 2007-323, increases the allowable reimbursement to the Department of Revenue from the white goods and scrap tire disposal programs to cover administrative expenses, from \$225,000 to \$425,000 for each program. Although this change does not affect the distribution method of the tax proceeds to counties, it decreases the total amount available for distribution.

The General Assembly modified the allocation of the net proceeds of the scrap tire disposal tax in S.L. 2007-153 (S 1472), which increases the funds allocated to counties from 68 percent to 70 percent of the net proceeds.

### **State Sales and Use Tax**

The appropriations act eliminates the scheduled sunset of one-fourth cent of the state sales and use tax; the rate remains at 4.25 percent. As discussed above, the state sales and use tax rate is scheduled to increase to 4.50 percent October 1, 2008, and to 4.75 percent October 1, 2009.

### **Clean Water Grants**

Moneys are appropriated annually from the Clean Water Management Trust Fund to state agencies, local governments, and certain nonprofit corporations to finance high-unit-cost projects to clean up or prevent surface water pollution. A high-unit-cost project is defined as a project that results in an estimated average household user fee for water and sewer service in the area served by the project in excess of the high-unit-cost threshold, which is 1.5 percent of the median household income in an area that receives both water and sewer service or 0.75 percent of the median household income in an area that receives only water service or only sewer service.

S.L. 2007-185 (H 1370) amends G.S. 113A-254(d) to clarify that the high-unit-cost project threshold does not apply to planning grants and technical assistance grants made by the Clean Water Management Trust Fund for regional wastewater collection systems and regional wastewater treatment works. This change applies retroactively to applications for planning grants and technical assistance grants received by the Clean Water Management Trust Fund on or after January 1, 2007.

### **Solid Waste Management Fees**

Late in the session, the General Assembly passed two bills that authorize the Department of Environment and Natural Resources (DENR) to establish a statewide solid waste management program and make extensive changes to the way landfills are regulated. The legislation is summarized in its entirety in Chapter 12, "Environment and Natural Resources." The following two provisions relate directly to local government finance.

S.L. 2007-550 (S 1492) imposes a \$2-per-ton statewide excise tax on the disposal of solid waste. The tax is imposed on the following: (1) the disposal of municipal solid waste and construction and demolition debris in any landfill permitted under the state's solid waste management program, as set forth in Article 9 of Chapter 130A of the General Statutes and (2) the transfer of municipal solid waste and construction and demolition debris to a transfer station permitted under the state's solid waste management program for disposal outside the state. Municipal solid waste is defined as "any solid waste resulting from the operation of residential,

commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. It does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste, for management of that waste, or solid waste from mining or agricultural operations.”

The tax is payable by the owner or operator of each landfill and transfer station that is permitted under the state’s solid waste management program, and the tax proceeds must be remitted according to the provisions governing the payment of sales and use taxes set forth in G.S. 105-164.16. The owner or operator of the landfill or transfer station may add the tax to any charges made to a third party for the disposal of the waste. When the waste is delivered to the landfill or transfer station, the owner or operator must weigh and record the waste tonnage on a scale approved by the Department of Agriculture and Consumer Services.

The act, as amended by S.L. 2007-543 (S 6), mandates that the proceeds of the tax be used first to compensate certain qualifying applicants who submitted an application for a permit for a solid waste management facility prior to August 1, 2006, and whose applications would be denied under the provisions of the new legislation. Once those reimbursements are satisfied, the tax proceeds will be distributed as follows:

- the Department of Revenue may retain up to \$225,000 a year to cover its costs of collection;
- 50 percent of the net proceeds are allocated to the Inactive Hazardous Sites Cleanup Fund to be used by DENR to fund the assessment and remediation of pre-1983 landfills;
- 18.75 percent of the net proceeds are allocated to all cities in the state on a per capita basis, and 18.75 percent of the net proceeds are allocated to all counties in the state on a per capita basis, to be used solely for solid waste management programs and services; and
- 12.5 percent of the net proceeds are allocated to the Solid Waste Management Trust Fund to be used by DENR for grants to state agencies and units of local government to initiate or enhance local recycling programs and to provide for the management of difficult-to-manage solid waste, including abandoned mobile homes and household hazardous waste.

The legislation also amends the conditions under which local governments may impose fees for the availability of local solid waste disposal facilities. G.S. 153A-292(b) and G.S. 160A-314.1(a) authorize a county or city that operates one or more local solid waste disposal facilities as a public enterprise to impose a fee for the availability of the disposal facilities on all improved property that benefits from the disposal facilities. The statutory provisions previously exempted improved property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by the private contractor. Effective August 1, 2007, S.L. 2007-550 modifies the exemption to apply only if the private contractor’s disposal facility provides the same services as those provided by the local government’s disposal facilities. And, to the extent that the private contractor’s facility does not provide the same services provided by the local government’s disposal facilities, the legislation expressly authorizes a local government to impose an availability fee on improved property served by the private contractor to cover the costs of the additional services provided by the local government’s disposal facilities. The amendments to the public enterprise statutes were adopted specifically to allow local governments to obtain reimbursement for the costs of providing recycling services at disposal facilities, to the extent that these services are not provided at a private contractor’s disposal facility. The amendments are not limited to recycling services, though. They apply to any additional services provided at the local government’s disposal facilities.

The new legislation thus permits a local government to adopt a differentiated schedule of availability fees—at one rate for all improved property that is not served by a private contractor for the availability of solid waste facilities within the unit and at a different, presumably lower, rate on improved property that is served by a private contractor whose disposal facility does not provide all the services provided by the local disposal facilities, such as recycling services. A local

unit must ensure, however, that the availability fees imposed do not exceed the aggregate costs of providing the disposal facilities or the additional services, respectively. Furthermore, the act does not remove the prohibition on a city or county assessing any availability fee on unimproved property or on improved property served by a private contractor that does not use the local disposal facilities and that provides the same services as the local disposal facilities.

### **Statutory Fees**

The state appropriations act, S.L. 2007-323, increases a number of statutory fees, including various court fees and water quality permit fees. For a description of the fee changes, see Chapter 6, “Courts and Civil Procedure,” and Chapter 12, “Environment and Natural Resources.”

### **911 Charges**

Effective January 1, 2008, S.L. 2007-383 (H 1755) repeals Articles 1 and 2 of Chapter 62A of the General Statutes and replaces them with a new Article 3, establishing a consolidated system for administering both wireline and wireless 911 systems. Previously, the Wireless 911 Board administered a statewide wireless 911 system and local governments administered wireline 911 systems. The act creates a 911 Board and authorizes it to develop a comprehensive state plan for communicating 911 call information across networks and among public safety answering points (PSAPs)—defined as the public safety agencies that receive incoming 911 calls and dispatch appropriate public safety agencies to respond to the calls.

The act authorizes the 911 Board to levy a monthly service charge on each active voice communications service connection, defined as each telephone number assigned to a residential or commercial subscriber by a voice communications service provider, without regard to the technology deployed, which is capable of accessing the 911 system. It sets the monthly service charge at 70 cents, although the 911 Board is required to reduce the rate if it produces revenue in excess of the amount needed to ensure full cost recovery for voice communication service providers and primary PSAPs (the first point of reception of a 911 call). A voice communication service provider includes any entity that (1) transfers, conveys or routes real-time, two-way voice communications to a point or between or among points by or through any electronic, radio, satellite, cable, optical, microwave, wireline, wireless, or other medium or method, regardless of the protocol used; (2) has the ability to receive and terminate voice calls to and from the public switched telephone network; or (3) provides interconnected Voice over Internet Protocol (VoIP) services.

Any rate reduction must occur on July 1 of an even-numbered year, with at least ninety days’ notice to service providers. The act prohibits a local government from levying an additional surcharge or fee relating to the provision of 911 services.

The monthly service charge is collected by each voice communications service provider and remitted to the 911 Board on a monthly basis, less an administrative allowance equal to the greater of 1 percent of the amount of the service charge collections or \$50. Revenue from the monthly service charge will be credited to the 911 Fund, an interest-bearing special revenue fund within the State Treasury that is administered by the 911 Board. The 911 Board also may retain up to 1 percent of the revenue to cover administrative expenses. The remaining proceeds will be distributed according to the following formula:

- 53 percent of the monies remitted by commercial mobile radio service (CMRS) providers will be reimbursed to the CMRS providers that comply with certain statutory requirements, to cover the actual costs they incur in complying with the requirements of enhanced 911 service. A CMRS provider is an entity that is licensed by the Federal Communications Commission (FCC) to provide commercial mobile radio service or that resells commercial mobile radio service in North Carolina. CMRS is defined by federal law as an interconnected radio communication service carried on for profit between

mobile stations or receivers and land stations, and by mobile stations communicating among themselves.

- 47 percent of the monies remitted by CMRS providers and all monies remitted by all other voice communication service providers must be used to make monthly distributions to primary PSAPs and grants to PSAPs that comply with certain statutory requirements.

The money distributed to primary PSAPs is allocated according to the following formula:

- Each PSAP receives a base amount equal to the amount it received during fiscal year 2006–07 and deposited in the Emergency Telephone System Fund of its local governing entity.
- The 911 Board must designate a percentage of the remaining funds to be distributed to primary PSAPs on a per capita basis; the remaining funds will be allocated to the PSAP Grant Account to be distributed to eligible PSAPs in rural and other high-cost areas. If the Board does not designate an amount to be allocated to the PSAP Grant Account, all remaining funds will be distributed on a per capita basis. The Board may change its percentage designation once per calendar year.

In order to receive a distribution from the 911 Fund, each PSAP or its governing entity must comply with specified requirements. A county or municipality must provide the 911 Board with information about each PSAP located within its territory, as required by an FCC order. A participating PSAP must submit to the 911 Board an annual copy of its governing entity's proposed or approved budget detailing revenues and expenditures. A participating PSAP also must be included in its governing entity's annual audit and provide a copy of each audit to the 911 Board. Finally, a participating PSAP must comply with all requests by the 911 Board for financial information related to its operation.

The proceeds received by each PSAP are specifically earmarked to pay for (1) the lease, purchase, or maintenance of emergency telephone equipment, including necessary computer hardware, software, and database provisioning, addressing, and the nonrecurring costs of establishing a 911 system; (2) certain allowable expenses incurred for in-state training of 911 personnel regarding the maintenance and operation of the 911 system and, on a limited basis, certain expenses incurred for out-of-state training; (3) expenses incurred for training specific to the receipt of 911 calls but only for intake and related call taking quality assurance and improvement; and (4) charges associated with a service supplier's<sup>8</sup> 911 service and other service supplier recurring charges. The proceeds may not be used to pay for the lease or purchase of real estate, cosmetic remodeling of emergency dispatch centers, hiring or compensating telecommunicators, or purchasing mobile communications vehicles, ambulances, fire engines, or other emergency vehicles. The 911 Board may require a PSAP to refund any monies improperly spent, after notice and a hearing.

The finance officer of a PSAP must deposit the monies it receives from the 911 Fund in a special revenue fund designated as the Emergency Telephone System Fund. The finance officer may invest the money in the fund in the same manner as other money of the local government may be invested; any investment income earned must be credited to the fund.

Any funds remaining in the Emergency Telephone System Fund or required to be remitted by a service supplier to the local government for deposit in the fund before January 1, 2008, pursuant to the now-repealed Article 1 of Chapter 62A of the General Statutes must be transferred to the General Fund of the local governing entity and may be used for any lawful purpose. The act does not relieve a local governing entity from any obligation incurred prior to the effective date of the act for uses authorized by G.S. 62A-8.

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8. A service supplier is an entity that provides exchange telephone service to a telephone subscriber.

### **Video Programming Services Taxes**

During the 2006 legislation session, the General Assembly created a state cable franchising system and preempted local governments from entering into new franchise agreements with cable companies and assessing franchise fees. To replace the lost revenue, the state allocated a portion of the proceeds from three state taxes to local governments, based in part on the cable franchise revenue a local government certified to the Department of Revenue that it received during the first six months of fiscal year 2006–07. Several bills were introduced this session proposing modifications to the allocation of the tax proceeds, although none passed.

S.L. 2007-527 (S 540), however, authorizes a local government to correct any errors in its initial certification of cable television revenues. If a city or county determines that the amount of cable franchise tax it imposed during the first six months of fiscal year 2006–07 differs from the amount certified to the Secretary of Revenue by March 15, 2007, the city or county may submit a new certification revising the amount by April 1, 2008. The new certified amount will be used to adjust the local government's base allocation, which will serve as the basis for subsequent distributions.

### **Insurance Premium Tax and Volunteer Fire Department Payments**

During the 2006 session, the General Assembly simplified the additional tax on gross premiums for fire and lightning insurance coverage by combining the existing state and local taxes on this coverage and clarifying the types and percentages of premiums subject to the tax. It also established percentages for distribution of the proceeds under the combined tax that were proportional to the distributions under the separate state and local taxes.

Effective January 1, 2008, S.L. 2007-250 (S 238) reduces the tax on gross premiums on insurance contracts for property coverage from 0.85 percent to 0.74 percent. The act also alters the distribution of the tax proceeds by increasing the allocation to the Volunteer Fire Department Fund from 20 percent to 30 percent. Of the remaining funds, 25 percent must be credited to the Department of Insurance for distribution to local fire districts and 45 percent must be credited to the General Fund.

S.L. 2007-250 also alters the distribution to local fire districts of the funds credited to the Department of Insurance. Under the new distribution method, the Insurance Commissioner will allocate to each county the same amount it received in the previous fiscal year as a base figure, which, depending on the total amount available for distribution, will be increased or decreased proportionately based on relative populations. The Insurance Commissioner then will distribute each county's allocation to the fire districts located within the county, based on the relative tax values of the properties in each district.

### **Fiscal Modernization Extension**

During the 2006 session, the General Assembly established the Local Fiscal Modernization Study Commission, charged with studying and making recommendations on a variety of issues relating to state and local finances. S.L. 2007-169 (S 487) extends the reporting deadline for the commission from May 1, 2007, to May 1, 2008. It also authorizes the commission to make interim reports.

### **Illegally Levied Exactions**

S.L. 2007-371 (S 1152) amends G.S. 153A-324 and G.S. 160A-363 to impose a penalty on counties and cities, respectively, for exacting taxes, fees, or monetary contributions for development that are not specifically authorized by law. The act requires a county or city that is found to have illegally exacted a tax, fee, or monetary contribution for development or a development permit that is not specifically authorized by law to return the tax, fee, or monetary

contribution plus interest of 6 percent per year. Further information on this legislation can be found in Chapter 5, "Community Planning, Land Development, and Related Topics."

## **Financial Administration**

### **Public Agency Use of Electronic Signatures**

S.L. 2007-119 (S 211) amends G.S. 66-58.4 to allow public agencies to both use and accept electronic signatures. Public agencies are defined as every public office, public officer, or official (state or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.

### **Other Post-Employment Benefits and Special Separation Allowance Trust Funds**

S.L. 2007-384 (S 580) establishes the Local Government Other Post-Employment Benefits Fund (OPEB Fund) and the Local Governmental Law Enforcement Special Separation Allowance Fund (LESSA Fund) as trust funds under the management of the State Treasurer. Contributions to the OPEB and LESSA Funds are irrevocable, and assets of the funds, including contributions, interest, and other investment income, may be used only to provide benefits, respectively, to individuals who are former employees, or beneficiaries of former employees, of an entity that contributes to the OPEB Fund or to individuals who are former employees of a unit that contributes to the LESSA Fund.

A local government, a public authority, a local school administrative unit, or any other entity eligible to participate in the Local Government Employees' Retirement System may contribute to the OPEB Fund. Contributions to the LESSA fund are restricted to units of local government employing local law enforcement officers.

The act authorizes the State Treasurer to invest monies deposited in the OPEB or LESSA Fund in specified investment vehicles, including equity investments. The Treasurer may require a minimum deposit of up to \$100,000 and may assess a fee of up to 15 basis points as a condition of making the equity investments. Assets of the funds are not subject to the claims of creditors of any unit or other entity that contributes to the funds.

S.L. 2007-384 also authorizes a local government, a public authority, a local school administrative unit, or any other entity eligible to participate in the Local Government Employees' Retirement System to establish and fund an irrevocable trust for the purpose of paying other post-employment benefits for which the entity is liable. Likewise, it authorizes any unit of local government that employs local law enforcement officers to establish and fund an irrevocable trust to pay law enforcement special separation allowance benefits for which the unit is liable. The irrevocable trust must be established by a resolution or an ordinance that states the purposes for which the trust is created and the method of determining and selecting the fund's trustees. The resolution or ordinance may be amended, but an amendment may not authorize the use of monies in the trust for a purpose not stated in the initial resolution or ordinance establishing the trust.

A local government unit or another eligible entity that establishes a trust may not deposit money in the trust if the total amount held in the trust would exceed the entity's actuarial liability, determined in accordance with the standards of the Governmental Accounting Standards Board, for the purposes for which the trust was established. And monies in an irrevocable trust may be appropriated only for the purposes for which the trust was established and are not subject to the claims of creditors of the entity that established the trust.

Finally, the act allows state and local law enforcement officers to transfer certain employer and employee contributions from the Supplemental Retirement Income Plan to the retirement system.

### **Retirement Payments for Probationary Employees**

G.S. 128-26(q) currently allows members of the Local Governmental Employees' Retirement System to purchase credit for service spent in a probationary or employer-imposed waiting period and provides guidelines for purchase by the member or the member's employer. S.L. 2007-304 (H 1025) amends the statute to allow an employer that chooses to pay the cost of the probationary employment to pay in one of three ways: (1) in a lump sum; (2) by increasing its accrued liability contribution for the remainder of the accrued liability period; or (3) if the employer has satisfied its accrued liability contribution, by amortizing its portion of the full actuarial cost over a period not to exceed ten years.

### **Law Enforcement Special Separation Payment Allowance Payment Plan**

S.L. 2007-69 (H 328) amends G.S. 143-166.41(a) to provide that the special separation allowance for law enforcement officers will be paid in equal installments on the payroll frequency used by the employer. The statute previously required that payment be made in twelve equal installments. Although the intent of the bill likely was to require payments to retired law enforcement officers at the same frequency as active employees of the unit, the actual language in the bill does not designate a specific payroll frequency. Thus, to the extent that a unit maintains multiple payrolls at different frequencies, it likely may choose which payroll frequency to use for payment of the special separation allowance.

### **Fidelity Bond Requirement for Public School Finance Officers**

A school finance officer is appointed or designated by the superintendent of schools and approved by the local board of education. The duties of a school finance officer may be conferred on any officer or employee of the local school administrative unit or, upon request of the superintendent, with the approval by the board of education and the board of county commissioners, on the county finance officer. Each school finance officer must give a true accounting and faithful performance bond with sufficient sureties in an amount to be fixed by the board of education. Effective July 1, 2008, S.L. 2007-85 (S 772) amends G.S. 115C-442(a) to raise the minimum true accounting and faithful performance bond amount from \$10,000 to \$50,000. It also eliminates the maximum amount, which was previously set at \$250,000.

### **Register of Deeds' Pensions**

Each county must deposit a certain percentage of fees collected by registers of deeds under G.S. 161-10 with the State Treasurer to pay for a supplemental pension plan for eligible retired registers of deeds. S.L. 2007-245 (H 676) reduces the percentage of the fees remitted to the State Treasurer from 4.5 percent to 1.5 percent. The act also amends G.S. 161-50.4(b) to allow retiring registers of deeds to become eligible to receive a monthly pension from the supplemental fund in the month immediately following the effective date of their retirement, rather than having to wait until the January following their retirement and amends G.S. 161-50.5(a) to increase the maximum monthly pension payable to eligible registers of deeds from \$1,200 to \$1,500, not to exceed 75 percent of the register's latest salary including supplements. Finally, the act excludes from the calculation of the 75 percent salary figure any benefits from the Supplemental Retirement Plan (401(k) Plan) as a result of employer contributions.

## **Debt**

### **Project Development Financing**

S.L. 2007-395 (S 1196) makes three important modifications to the Project Development Financing Act. First, it amends G.S. 159-103(a) to add a few purposes for which project development financing debt instruments may be issued: (1) financing the capital costs of providing certain parks and recreation facilities, including land, athletic fields, parks, playgrounds, recreation centers, shelters, permanent and temporary stands, and lighting; (2) financing the capital costs of providing community colleges facilities, including buildings, plants, and other facilities, physical and vocational educational buildings, plants, and other facilities, including classrooms, laboratories, libraries, auditoriums, administrative offices, student unions, dormitories, gymnasiums, athletic fields, cafeterias, utility plants, and garages; and (3) financing the capital costs of providing school facilities, including schoolhouses, buildings, plants and other facilities, physical and vocational educational buildings, plants and other facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, gymnasiums, athletic fields, lunchrooms, utility plants, garages, and school buses and other necessary vehicles. It also clarifies that the proceeds of the project development financing debt instruments may be used for any service or facility to be provided in a municipal service district without having to actually create the district.

Second, the S.L. 2007-395 amends G.S. 159-103(a) to allow a city or a county to issue project development financing debt and use the proceeds for one or more of the specified purposes for which either unit of government may issue general obligation bonds. For example, as amended, G.S. 159-103(a) allows either a city or county to issue project development financing debt to fund the capital costs of providing streets and sidewalks even though, pursuant to G.S. 159-48(d)(5), only a city may issue general obligation debt to fund these projects.

Finally, the act eliminates the requirement that the base valuation be increased during each revaluation to reflect projected increases due solely to the revaluation of the property values of the district as they existed on the January 1 immediately preceding the effective date of the district. Thus, unless the unit amends its development financing plan to expand the district or remove property from the district, the base valuation will remain constant during the lifetime of the development financing district.

### **Installment Financing Authorizations**

S.L. 2007-229 (H 1132) amends G.S. 130A-45.3(a) and G.S. 160A-20 to authorize public health authorities to enter into installment finance contracts to purchase or finance real or personal property, according to the procedures set forth in G.S. 160A-20. Likewise, S.L. 2007-226 (H 401) amends the definition of a unit of local government in G.S. 160A-20(h) to include a county water and sewer district created under Article 6 of Chapter 162A of the General Statutes, thereby authorizing these county water or sewer districts to use installment finance contracts to purchase, finance, or refinance the purchase of real or personal property or to finance or refinance the construction or repair of fixtures or improvements on real property.

### **Resolution of Public School Funding Disputes**

G.S. 115C-431 authorizes a local school administrative unit to challenge its annual appropriation from the board of county commissioners and provides a detailed procedure for resolving these disputes—including joint negotiation meetings and, if those fail, mandatory mediation. If the funding dispute is not resolved through negotiation or mediation, the local board of education is authorized to file an action in superior court. The court is charged with making factual findings as to the amount of money necessary to maintain a system of free public schools

and the amount of money needed from the county to make up this total. The court must then issue a judgment ordering the board of county commissioners to appropriate a sum certain to the local school administrative unit and to levy such taxes on property as may be necessary to make up the sum. Either the local school administrative unit or the board of county commissioners may appeal the superior court's judgment.

Prior to the passage of S.L. 2007-92 (H 1519), if the appeal resulted in a delay beyond a reasonable time for levying taxes for the year, the judge was required to order the board of county commissioners to appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient when added to all other moneys available to the fund to equal the amount of the fund for the previous year. The new act amends G.S. 115C-431(d) to delete this requirement. (It, however, does not alter the requirement that if the mediation phase continues beyond August 1, the board of county commissioners must appropriate to the local school administrative unit moneys sufficient to equal the county's contribution to the current expense fund for the previous year.) Instead, it enacts a new provision ensuring that any appeal of a school funding dispute is not affected if the fiscal or school year in contention ends before the issue is resolved, but does not mandate that the commissioners provide any funds to the school unit prior to the resolution of the appeal.

The new provision prohibits a county from denying or reducing an appropriation to a local school administrative unit in subsequent years to offset the payment of any final judgment by the county in favor of the local school administrative unit. (A previous version of the legislation included a requirement that a county pay any applicable interest on the final judgment to the local school administrative unit; this requirement was eliminated from the final version.)

Finally, as a procedural matter, the act requires that if an appeal is taken from the judgment in the superior court, the notice of appeal must be provided in writing within ten days of the entry of the judgment.

*Kara A. Millonzi*