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Local Government and Local Finance

Local governments had four principal goals in the 1998 session of the General Assembly: enactment of a large state bond issue to support local water and sewer projects; for cities, enactment of annexation legislation that might, for a time at least, stop the legislative attacks on the state's annexation laws; and for counties, obtaining sales tax refunds for school purchases and an increase in the court fees that help to pay for court facilities. All four goals were realized. The General Assembly enacted the bond legislation, and the voters approved the bond issue on November 3. Annexation legislation also passed, although only time will tell whether passage has the desired outcome. School administrative units are now eligible for sales tax refunds for their purchases, and court fees were increased to support court facilities.

This chapter deals with local government legislation of a general nature and with acts affecting local government finance. Legislation affecting local governments is also discussed in Chapter 3 (Alcoholic Beverage Control); Chapter 4 (Children and Families); Chapter 5 (Community Development and Housing); Chapter 10 (Environment and Natural Resources); Chapter 15 (Land Use Regulation, Planning, Code Enforcement, and Transportation); Chapter 17 (Local Taxes and Tax Collection); Chapter 20 (Public Personnel); Chapter 21 (Public Purchasing and Contracting); and Chapter 24 (Social Services).

Annexation and Incorporation

Annexation

For the past three years, a committee of the Legislative Research Commission has worked during the period between legislative sessions, reviewing the state's involuntary annexation statute and debating whether it should be changed in significant ways. The first two committees proposed statutory changes that the League of Municipalities found too harmful to the statute, and the league successfully challenged those proposals once they reached the General Assembly. Last year, however, both the committee and the league were interested in developing a proposal that all sides could support, and the result was House Bill 1361. The bill worked its way through the legislature without substantive change and was eventually enacted as S.L. 1998-150; it became effective November 1, 1998.

In general, the intention of S.L. 1998-150 is to make annexation somewhat more difficult, largely by raising the standards an area must meet before it may be annexed (although one change makes certain annexations easier to do). In addition, the act makes new arrangements for agricultural land that is included in an annexation area and adds a procedural step, the public informational meeting, to the annexation process. Finally, the act clarifies a few minor matters and attempts to codify some of the case law interpreting the statute. The discussion below describes the significant changes effected by the legislation.

Changes in Annexation Standards. One standard by which an area may qualify for annexation is known as the *use and subdivision test*. Under this test, 60 percent of the lots and tracts in the area must be in an urban use (that is, industrial, commercial, institutional, governmental, or residential uses) and 60 percent of the residential and undeveloped acreage must be subdivided into lots comprising five acres or less. S.L. 1998-150 reduces the size of lots that meet the subdivision test from five acres to three. Thus, there will have to be a greater degree of subdivision in an area in order to meet this test than has been the case in the past.

A second urban development standard combines population density and subdivision: An area must have a resident population of at least one person per acre, and it must be subdivided so that at least 60 percent of the acreage is in lots or tracts of five acres or less and at least 65 percent of the lots and tracts are one acre or less in size. The new statute reduces the five-acre standard down to three acres, just as it did with the use and subdivision test.

A third standard looks only at population density: It has required an area to have a resident population of at least two persons per acre. The new statute increases the required density to 2.3 persons per acre.

Larger cities also have been able to include in their annexations so-called land connections, that is, undeveloped areas that lie in the midst of areas that are otherwise qualified for annexation. The new statute limits the size of these undeveloped areas to 25 percent of the total annexation area.

Finally, there was one change to the standards that should make it easier for cities to annex. Under the use and subdivision test, the state supreme court ruled that there had to be some residential or undeveloped property to which the subdivision test could be applied. That is, a city could not annex an area that was made up entirely of industrial, commercial, institutional, or governmental uses. The new statute essentially reverses that ruling. A city may now annex an area if *all* tracts in the area are used for commercial, industrial, governmental, or institutional purposes.

Annexation Boundaries. The annexation statutes have directed cities, to the extent possible, to use natural features, such as ridge lines and streams, as boundaries of annexation areas. (Originally, the statutes prohibited the use of streets as boundaries, but that prohibition was removed a few years ago.) The courts have made clear that cities did not have to use natural features, however, if doing so caused an area to no longer qualify for annexation; and as a result, natural features were not used as boundaries in many annexations. The new statute changes the rules entirely. It requires that the boundaries of an annexation area now follow either recorded property lines or streets, and it removes the language about doing so "where practical." Therefore, there can be no exceptions to this statutory requirement.

Farmland. One of the recurring complaints made about the annexation statute has been that it permitted a city to annex entirely rural areas (farms, forests, and the like). Under the new statute, it remains possible to annex areas that are in agricultural use or in forest, but the status of those areas within a city changes. The new statute includes special provisions that apply to any area that, on the effective date of annexation, qualifies for use-value taxation as agricultural land, horticultural land, or forestland. [In addition, these provisions apply to land in uses that would qualify for use value, except they have not been in those uses for long enough (that is, three years).]

If a city annexes an area that does qualify for use value (which will be called a *qualifying farm*), this area becomes part of the city for only two purposes: (1) establishing city boundaries from which future annexations may be made and (2) adoption and enforcement of regulations

under G.S. Chapter 160A, Article 19 (land use). Therefore, the city may annex urban areas lying beyond the qualifying farm, and the qualifying farm becomes subject to city zoning and subdivision regulation rather than remaining subject to county ordinances. Other than that, however, as long as the qualifying farm qualifies for use value, the city may not levy property taxes on it, nor is the area entitled to any city services.

Services. If a city does not provide police, fire, streets, or garbage collection within sixty days after the effective date of an annexation, the new statute permits a property owner to petition the Local Government Commission (LGC) for an abatement of property taxes. If the LGC finds that the services were not extended, it is required to order the city not to levy further ad valorem taxes on the property until the first fiscal year beginning after the city has begun providing the services. (The statute seems to intend also to allow the LGC to order the rebate of taxes already paid, although that is not clear.)

Procedures. The new statute requires a new event in the process of annexation: the *public informational meeting*. The statute has required that a city undertaking an annexation hold a public hearing on the annexation, between forty-five and ninety days after adoption of the resolution of intent. The new statute places this new public informational meeting between forty-five and fifty-five days after the resolution of intent and moves the public hearing to between sixty and ninety days. The notice of public hearing must include notice of the public informational meeting, and all time periods for publication of the notice that now refer to the public hearing will instead refer to the public informational meeting. At this meeting, the city must explain the report (which it still must also do at the hearing) and then must give citizens an opportunity to ask questions and receive answers. The questioners may include residents of the annexation area, property owners in the annexation area, and residents of the city.

The notice of the informational meeting and public hearing now must also include an explanation of owners' rights with respect to property subject to use-value taxation. In addition, in larger cities, the notice of the hearing must also include a notice of property owners' rights to request water and sewer extensions. Finally, when a city adopts a resolution of consideration, the city must include in the resolution "a statement notifying persons subject to annexation of their rights" as to use-value taxed property. Despite the use of the word "notifying," there is no requirement that the resolution of consideration be published or that persons within its area be otherwise notified of its passage.

The new statute requires that the annexation report include a "statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates." This statement must be delivered to the clerk to the board of county commissioners at least thirty days before the public informational meeting.

Appeals. The time for property owners to appeal an annexation has been extended from thirty to sixty days after adoption of the ordinance. In a related change, the earliest effective date for an annexation ordinance has been extended from forty to seventy days, to allow the additional time for a petition for review to be filed with the court. (This last change was only made with respect to cities of 5,000 or more; its omission from the statute for smaller cities appears to be inadvertent.)

If a court, after trial, determines that the city did not comply with the statute, the new statute permits the court to enter an order declaring the ordinance void if it finds that the ordinance cannot be corrected by remand. (The prior statute only permitted the court to remand the ordinance to the city council.)

Finally, it has sometimes happened that the petitioners and the city settle the appeal of an annexation by agreeing to delay the annexation for some number of years. Such an agreement has not been thought binding, however, unless it has been authorized by or incorporated in local legislation adopted by the General Assembly. The new statute does away with the need for legislative ratification. If the parties agree to a settlement and if the court also agrees, the statute provides that the settlement is binding without need for legislative approval.

Effective Date. S.L. 1998-150 became effective November 1, 1998, and applies to annexations for which the resolution of intent was adopted on or after that date.

Incorporation

S.L. 1998-150 (H 1361) also makes some changes to the standards under which the Joint Legislative Commission on Municipal Incorporations evaluates proposed incorporations of new towns. (Although this commission is directed to evaluate proposed incorporations and make a recommendation to the General Assembly, it has not been used in most incorporations. Instead, those incorporation proposals went directly to the legislature.) The League of Municipalities has been concerned that a number of recent incorporations were entirely defensive in nature, resulting in towns that provided few if any services and supported themselves entirely from state-shared revenues. The statutory changes made to the commission's standards are intended to lead to negative recommendations when such incorporation proposals come before the commission. The changes will be important, however, only if (1) the legislature starts to insist that proposed incorporations go to the commission and (2) the legislature starts to listen to the commission's recommendations. It is perhaps significant that most of the new towns incorporated in the 1998 session of the General Assembly were not submitted to the commission for its review.

Under S.L. 1998-150, an area may not receive a positive recommendation from the commission unless (1) the entire area proposed for incorporation would qualify for annexation under the involuntary annexation statutes and (2) the proponents of incorporation submit a plan for providing at least two of the following city services: police, fire, garbage collection, water, sewer, street maintenance, street lighting, citywide planning and zoning.

Newly Incorporated Towns (and One Unincorporated Town)

The 1998 General Assembly authorized the incorporation of six new villages or towns. They are Woodlawn (Alamance County); Cranberry (Avery); Oak Ridge (Guilford); and Hemby Bridge, Unionville, and Wesley Chapel (all in Union County). All of these towns except Wesley Chapel were incorporated subject to a referendum within the community, which was held at the November elections; and all but Woodlawn and Cranberry passed.

In addition, the legislature authorized a vote for splitting the town of Calabash, in Brunswick County, in half. The town had been enlarged a number of years ago, when the Carolina Shores subdivision was added to the older town of Calabash. The marriage never worked well, however, and in September the voters of the community approved a split and Carolina Shores' voters voted to establish their own town. So, where there was only one town, there are now two.

Finally, Sloop Point, in Pender County, asked that its 1995 incorporation charter be repealed, and the General Assembly agreed. The town was one of the smallest in the state (there are only about twenty permanent residents in the Sloop Point community), and it had not benefited from incorporation.

Local Government Finance

State Infrastructure Bonds

S.L. 1998-132 (S 1354) authorized two state bond referendums, which were held at the November 1998 election. Both proposals were approved by the voters. Under S.L. 1998-132, the state is authorized to issue \$800 million of clean water bonds and \$200 million of natural gas bonds. The proceeds of the clean water bonds will be used for grants and loans to local governments for water and wastewater projects. The proceeds of the natural gas bonds will be used to assist gas companies and other providers or would-be providers of natural gas in constructing facilities when those facilities would otherwise not be financially feasible.

Clean Water Bonds. Of the \$800 million in clean water bonds, \$500 million will be used for grants for the following projects:

- High-unit-cost wastewater projects [\$85 million for grants to local governments without investment grade bond ratings (from the North Carolina Municipal Council) and \$80 million for governments with stronger credit ratings].
- High-unit-cost water supply projects [\$85 million for grants to local governments without investment grade bond ratings (from the North Carolina Municipal Council) and \$80 million for governments with stronger credit ratings].
- State matching funds for federal water and wastewater funding (\$35 million).
- Clean water projects intended to serve industrial locations or expansions in economically distressed counties or in counties with populations below 50,000 (\$20 million).
- Supplemental or capacity grants made through the Rural Economic Development Center for local governments in rural counties, as defined in the act, using criteria that favor local governments in economic distress (\$60 million).
- Grants for unsewered communities with populations of less than 5,000 experiencing some economic distress (\$55 million).

The remaining \$300 million of clean water bond proceeds will be used for loans to local governments, in the same manner as the existing clean water loan programs. The act allocates \$150 million each to wastewater projects and to water projects; within each allocation \$140 million is for investment grade local governments and \$10 million for non-investment grade governments. In borrowing the money, a local government may pledge its faith and credit, making the loan a general obligation of the local government and requiring voter approval. In lieu of that, a local government may pledge water or sewer revenues, or any other revenues available to it that are not locally levied taxes; these sorts of pledges would not require voter approval.

Community College Leases and Installment Purchases

S.L. 1998-111 (H 1369) amends G.S. 115D-20 to make clear that community colleges may enter into lease purchase and installment purchase contracts. It then adds a new G.S. 115D-58.15 to regulate this power. In some cases, these contracts must be approved by the county commissioners of the county that primarily supports the college. If the source of funds for payment of the college's obligations under such a contract is county appropriations, and if the contract is either for more than \$100,000 or for more than thirty-six months, then the contract must be approved by the board of county commissioners. When it gives this approval, the county will be asked to acknowledge that the college expects to look to the county for the money necessary to pay the contract. The statute does not, however, *require* that the county provide the money to fund the college's payment obligations, because of constitutional concerns about such a requirement. It is nevertheless clear that the expectation is that the county will in fact provide the necessary moneys.

Installment Financing under G.S. 160A-20

Two acts authorized additional local government units to enter into installment financing contracts under G.S. 160A-20. S.L. 1998-70 (S 1289) extends this authority to regional public transportation authorities and regional transportation authorities, while S.L. 1998-117 (S 245) adds metropolitan sewerage districts and those sanitary districts created pursuant to G.S. Chapter 130A. In addition, the latter act expands the number of school units that may use G.S. 160A-20. The statute has been available to school units authorized to levy taxes, when they are located in a county with a population of at least 90,000. S.L. 1998-117 removed the population limitation. There are two school units in the state that have taxing authority: the city administrative units in Mooresville and in Roanoke Rapids. The effect of the last change is to allow both of them to use installment financing.

Local Government Commission Approval of Financing

One of the linchpins of local government finance in North Carolina is approval of local government borrowing by the state's Local Government Commission. This approval requirement,

in place since the Great Depression, protects both local governments and investors from a local government's borrowing a greater amount than it can comfortably pay back. There have, however, been a few types of financing that were not subject to LGC approval, and S.L. 1998-222 (S 873) intends to bring those under the commission's umbrella. The statute adds a new section, G.S. 159-153, which requires LGC approval any time a local government (1) incurs indebtedness, (2) enters into any type of financing arrangement that is similar to direct borrowing, or (3) approves or otherwise participates whenever another entity, acting on the local government's behalf, incurs indebtedness or approves or otherwise participates in a financing arrangement similar to direct borrowing.

A primary purpose of the statute is to require LGC approval of so-called 63-20 financings. Under this form of financing (which gets its name from IRS Revenue Ruling 63-20), a nonprofit corporation borrows money to construct a facility. If the corporation agrees to convey the facility, at no cost, to a government once the debt is repaid, and if that government formally approves the financing, then the interest on the debt is exempt from federal income tax. Under the Internal Revenue Code, the debt is considered to have been incurred *on behalf of* the local government. This is true whether the facility is a traditional government project (such as a courthouse) or a private project (such as a manufacturing facility or a continuing care retirement facility). The statute also will require LGC approval for some kinds of housing projects done with the approval of local housing authorities; and it appears to cover financing pursuant to G.S. 160A-19 (taking the form of leases), if that financing extends for five years or more and requires payment in excess of the dollar thresholds applicable to installment financing under G.S. 160A-20.

S.L. 1998-222 becomes effective March 1, 1999, and applies to debt and financing arrangements incurred, entered into, approved, or participated in on or after that date.

County Assistance for School Building Projects

S.L. 1998-33 (H 1278), S.L. 1998-48 (H 1284), and S.L. 1998-201 (S 1312) add Alamance, Alexander, Caldwell, Catawba, Cumberland, Davidson, Davie, Durham, Gaston, Henderson, Hoke, Lenoir, Lincoln, Mitchell, Robeson, Wayne, and Wilkes counties to the coverage of G.S. 153A-158.1, which now allows seventy-five of North Carolina's 100 counties to acquire property for and construct schools on behalf of their local boards of education, thereby facilitating financing and other arrangements for these projects.

Local Government Revenues

Sales Tax Earmarking for Counties

North Carolina local governments receive the proceeds of three separate local sales and use taxes that together total 2 percent: a 1 percent tax, dating from the early 1970s; a .5 percent tax, authorized in 1983; and a second .5 percent tax, authorized in 1986. Since their inception, the two .5 percent taxes have been subject to partial earmarking, with counties required to expend part of the proceeds from these taxes for school capital outlay. (Cities were formerly required to expend a portion of their share on water and sewer capital outlay, but that earmarking has expired.) The earmarking on the 1983 tax was due to expire after fifteen years. S.L. 1998-186 (S 1150) extends the earmarking requirement with respect to the 1983 tax and the 1986 tax. It requires that at least 30 percent of a county's proceeds from the 1983 tax be used for school capital outlay for twenty-eight years after the tax was first enacted in that county and that at least 60 percent of the 1986 tax be used for school capital outlay for twenty-five years after that tax was first enacted in the county. Thus the earmarking on the two .5 percent taxes now extends until at least 2011.

Court Facilities Fees

Section 29A.12 of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), increases each of the various court facilities fees by \$6, thereby increasing the amount of revenue that is available to counties to assist them in providing court facilities. As noted earlier, obtaining an increase in the court facilities fees was a key legislative goal of North Carolina's counties. This section becomes effective February 1, 1999, and applies to fees assessed or paid on or after that date.

Sales Tax Refunds for Schools

Although G.S. 105-164.14 has made counties eligible for refunds of sales taxes paid by their contractors on county construction projects, it has excluded school administrative units from that authority. Therefore, school units have been unable to claim sales tax refunds on school construction projects under the exclusive control of the school board, even if county moneys were being used to pay for the construction. In recent years, many counties and school boards have been able to work around this problem indirectly. If the county was one of those listed in G.S. 153A-158.1, which permits a school unit to convey property to a county and a county to construct school buildings, the school board could place its school construction projects under the partial control of the county. In those circumstances the Department of Revenue was willing to refund the sales taxes paid as part of the project. But not all counties were subject to G.S. 153A-158.1, and so not all counties were able to use this method of receiving a refund.

The 1998 Appropriations Act, S.L. 1998-212 (S 1366), finally rectifies the problem. It amends G.S. 105-164.14 and includes school administrative units among the entities eligible for sales tax refunds. Therefore, counties and school boards will no longer need to use the provisions of G.S. 153A-158.1 to recover sales taxes paid on construction projects. (It will still be necessary to use that statute if the county wishes to finance the school projects through an installment financing.) It should also be noted that the inclusion of school units in the sales tax refund statute means that they will receive refunds on all their purchases, not just on those associated with construction projects.

Franchise Taxes on Natural Gas Companies

For a half century, cities have been receiving a share of the state utility franchise tax levied on companies "engaged in the business of furnishing piped natural gas." S.L. 1998-22 (S 1327) changes the form of state taxation of these companies and provides for the continuing distribution of part of the proceeds to cities. Natural gas companies, along with electric power companies and telephone companies, have been liable for two taxes on the sale of their products or services: a sales tax of 3 percent (or less in certain circumstances) and a franchise tax of 3.22 percent of gross receipts. Thus the total tax paid by natural gas companies has been slightly more than 6 percent of gross receipts. The franchise tax has been the one shared with cities, at a rate of 3.09 percent of the company's gross receipts inside each city. Effective July 1, 1999, these two taxes will be repealed and replaced with a single excise tax on piped natural gas. Rather than a flat tax, based on gross receipts, this new tax will be based on the volume of therms received by the end user, and the rate of tax will decline as the volume of therms increases. The total amount of tax paid under the new tax is intended to be the same, statewide, as the total amount paid by gas companies under the two existing taxes.

The act provides that each city will receive one-half of the amount of the new tax paid on sales made to customers within that city. Statewide, this means that cities as a whole will receive about the same amount under the new tax regime that they have been receiving from utility franchise taxes paid by natural gas companies. (The distribution will continue to be made quarterly.) The amount to which each city is entitled, however, might well be less or more than the amount it has been receiving from the franchise tax. This is because the straight 3.09 percent franchise tax is replaced by a tax that features a rate that declines for major users of gas; whether

the amount that will be received by any particular city is more or less than it has been will depend on the nature and usage of gas customers in that city.

Prodded by the League of Municipalities, the General Assembly recognized that the change in form of taxation could have a negative effect on individual cities, and therefore the legislation includes provisions to assure that each city in the state is held harmless. Under these special provisions, the Department of Revenue must determine the amount each city receives in gas utility franchise tax proceeds in each of the four quarters of 1998–99. That amount becomes the city's *benchmark amount*. In 1999–2000, each city is entitled to receive its benchmark amount under the new tax regime, and no city may receive more than its benchmark amount until all cities have received that minimum. The legislation directs the Revenue Laws Study Committee to monitor the effect of the change in the taxation of natural gas during 1999–2000 and make any appropriate recommendations to the 2000 session of the General Assembly.

White Goods Tax

In 1993, the General Assembly enacted a tax on the sale of white goods and directed that the proceeds from the tax be used to help meet the cost of disposing of these major appliances. The original tax was set to expire in 1998. S.L. 1998-24 (S 124) extends the sunset on the white goods tax until July 1, 2001, and lowers the tax from \$5 to \$3 for white goods sold on or after July 1, 1998. S.L. 1998-24 also modifies slightly distribution of proceeds from the tax. The share going to the state's Solid Waste Management Trust Fund is increased from 5 percent to 8 percent, and the share going to county governments (on a per capita basis) is reduced from 75 percent to 72 percent; 20 percent continues to go to the White Goods Management Account. In addition, the legislation sets out with more particularity the purposes for which counties may spend the tax proceeds: capital improvements directly necessitated for disposal of white goods, such as concrete pads for loading white goods, equipment for moving white goods and for extracting freon, and storage sheds for the equipment; operating expenses for disposing of white goods; and the costs of cleaning up illegal white goods disposal sites. S.L. 1998-24 also requires counties to include some very specific information about their white goods disposal programs in the Annual Financial Information Report (AFIR) they submit to the State Treasurer: (1) tonnage of white goods scrap metal collected; (2) revenue credited to the white goods account; (3) expenditures from the white goods account; (4) designated and undesignated fund balances in the white goods account; and (5) a comparison of the amount of white goods tax received during the fiscal year with the amount of undesignated fund balance in that account at the end of the fiscal year. Finally, if the amount of a county's undesignated fund balance in the white goods account calculated in the AFIR is more than 25 percent of the amount of tax received during the year, that county is not eligible for distribution of white goods disposal tax until the amount of fund balance falls below that threshold amount. Any amount not distributed to a county under this requirement will be placed in the White Goods Management Account, which can then be used to make grants to other local governments. In this way the proceeds can be directed at those counties with greater need for assistance in disposing of white goods. This new provision becomes effective January 1, 1999.

911 Charges to Wireless Telephone Users

S.L. 1998-158 (S 1242) establishes a system under which wireless telephone users will be assessed a 911 charge of the same sort commonly assessed against users of traditional telephones. The legislation creates the Wireless 911 Board (which includes representatives of local government) and directs that it levy a monthly Enhanced 911 charge on each wireless telephone in North Carolina. The resulting revenues will be split on a 60-40 basis between the companies providing wireless telephone service and the public agencies operating Enhanced 911 systems. Half of the 40 percent going to public agencies will be distributed on an equal basis for each agency, and the other half will be distributed according to the population served by each agency. Public agencies will receive these distributions monthly. Eligible 911 agencies may use these

revenues only to pay the capital costs associated with an Enhanced 911 system or for telephone bills associated with the system.

Local Government Expenditures

Autopsy Fee Increased

Counties are required to pay a fee under G.S. 130A-389(a) for autopsies or other studies performed on deceased county residents at the request of specified public officials. Section 29A.10 of the 1998 Appropriations Act, S.L. 1998-212 (S 1366), increases this fee from \$400 to \$1,000. This provision becomes effective January 1, 1999, and applies to autopsies or other studies performed on or after that date.

Other Legislation Affecting Local Governments

Regulation of Sexually Oriented Businesses

S.L. 1998-46 (S 452) enacts a number of provisions that confirm the authority of counties and cities to regulate both the location and the operation of sexually oriented businesses and that except such regulations from state preemption.

First, the act enacts a new statute, G.S. 160A-181.1, that confirms the regulatory power of local governments. It specifies the following types of permitted regulations (without limitation as to regulations not listed):

- restrictions on location (limitations to certain districts and minimum separations from sensitive land uses and from similar businesses);
- operating regulations, including time; open booth requirements; advertising and noise; age of patrons and employees; separation of patrons and performers; and clothing restrictions for masseuses, servers of alcoholic beverages, and performers;
- registration requirements for owners and employees with criminal records and prohibitions vis-à-vis those with convictions for offenses reasonably related to operation of such businesses.

Businesses can be licensed under the regulations authorized above and made to pay fees to cover the costs of the regulations. The new section also specifically permits moratoria while a local government undertakes the studies necessary to protect the constitutionality of such regulations and specifically permits amortization of existing businesses not in conformance with the regulations.

Second, the legislation amends the alcoholic beverage control (ABC) laws to specify that they do not preempt local regulations undertaken pursuant to new G.S. 160A-181.1. Thus, getting an ABC permit will not allow a sexually oriented business to operate in defiance of local regulations.

Third, the same provisions concerning preemption are enacted with respect to state laws on obscene literature, indecent exposure, and adult establishments.

Fourth, the adult bookstore law is amended to include specified electronic materials within the term of adult “publications” and to make it more difficult for a bookstore to avoid characterization as an adult bookstore by having lots of innocent, but never read, materials in the store.

Finally, sexually oriented businesses in violation of local regulations are defined as nuisances under G.S. Chapter 19, allowing the procedures of that statute to be used to enforce the regulations.

Economic Development

S.L. 1998-55 (S 1569) makes a number of amendments to the William S. Lee Quality Jobs and Business Expansion Act, the law that creates state income tax incentives for economic development. The primary purpose of the 1998 amendments is to deliver on the state’s promises

made to attract the Federal Express facility to Greensboro and the Nucor steel plant to Hertford County. There is one provision of general effect on cities, however. S.L. 1998-55 permits the designation of "development zones," within which greater state tax incentives will be available. A development zone is an area within a city of 5,000 or more, inclusive of one or more census tracts or blocks, with a population of at least 1,000 and at least 20 percent of that population below the poverty level. The zone is designated by the Secretary of Commerce, upon the request of a local government or of a taxpayer. If the area qualifies, it does not appear that the Secretary has any discretion in making the designation. The zone is treated as an enterprise Tier One area for certain of the state tax credits. (A Tier One area is generally an area within the state's poorest counties; taxpayers located within such an area qualify for the highest level of state economic development tax credits.) In order to qualify for these benefits, the city in which the zone is located must develop a plan for improving the zone and establish a committee to oversee the strategy.

Juvenile Crime Prevention Councils

S.L. 1998-202 (S 1260) reforms North Carolina's juvenile justice system. As part of this reform, boards of county commissioners are required to establish juvenile crime prevention councils, either singly or in partnership with other counties. Establishment of such a council will be a prerequisite for a county receiving funding for juvenile court services and delinquency prevention programs. The councils, in partnership with the state, will plan for various community-based programs for juveniles who are at risk of delinquency or who have been adjudicated undisciplined or delinquent. They will take the place of community-based alternatives (CBA) advisory boards, and will focus on prevention of juvenile crime as well as treatment of juvenile offenders.

The councils will include up to twenty-five members, serving staggered two-year terms. Each must have representation from local government (including among others a county commissioner; the sheriff and the county manager or their designees; and the health, mental health, and social services directors or their designees); from local public and private agencies serving juveniles and their families; from the business community; and from other groups or categories. More details concerning the formation and activities of these councils are provided in Chapter 13 (Juvenile Law).

The law governing juvenile crime prevention councils is codified as Article 3C, Part 6, of Chapter 147 of the General Statutes. It becomes effective January 1, 1999.

Transportation Finance

The 1998 Appropriations Act, S.L. 1998-212 (S 1366), establishes a Blue Ribbon Transportation Finance Study Commission. It charges this commission with studying the methods of financing highway construction and maintenance and public transportation, directing that an interim report be made next summer and a final report by March 1, 2000. Obviously such a study might have implications for local government, and the legislation recognizes that fact by requiring that the commission's membership include at least one elected city official and one elected county official.

Transportation Planning and Decision Making

S.L. 1998-169 (H 1304) is mainly concerned with restructuring the state Board of Transportation, but the act includes one new provision of interest to local governments. Before the board may take action on a specified range of transportation projects, it must seek the opinion of each county or city affected by the project. The local governments have forty-five days in which to adopt resolutions stating their views on the project, and the board is required to consider (but not necessarily follow) those views. The new requirement applies to the board's approval of the Transportation Improvement Program and any amendments to it; approval of the Secondary Roads Paving program and any amendments to it;

public service road projects, small urban projects, contingency projects, and spot safety projects, when any of those projects exceed \$150,000; and individual applications for access. This new requirement becomes effective January 1, 1999.

Automobiles for Work First Participants

S.L. 1998-195 (S 1202) amends the property disposal statutes to authorize cities and counties to convey surplus automobiles to public or private entities that will in turn convey them to Work First participants selected by the county department of social services under rules adopted by that department. The receiving entity must be one that is eligible to receive funds from the city or county. It may make the conveyance to the participant subject to satisfactory completion of the Work First program requirements and may keep a security interest in the vehicle until that occurs. The transfer to the participant may be at no charge, and the participant may be required to pay for the license, tag, and title.

Discharges in the Neuse and Tar-Pamlico River Basins

S.L. 1998-138 (S 1373) and S.L. 1998-221 (H 1402) disapprove administrative rules of the Environmental Management Commission that imposed certain requirements on the Tar-Pamlico and Neuse river basins, respectively, and will be of special interest to local governments concerned with wastewater discharges in those basins. These acts are discussed in detail in Chapter 10 (Environment and Natural Resources).

Electronic Signatures

S.L. 1998-127 (H 1356) authorizes local governments to enter into contractual and other transactions involving the use of electronic signatures, which are identifiers or authentication techniques used in electronic records and intended to have the same force and effect as manual signatures. While this legislation is of special importance to those involved in governmental contracting, it also authorizes the use of electronic signatures for other data transmissions between public agencies and other agencies and entities. These changes are codified primarily in new Article 11A of G.S. Chapter 66, which becomes effective January 1, 1999. (The Secretary of State is authorized to adopt rules prior to that date to become effective on January 1 or later, to implement the new article.) S.L. 1998-127 is discussed in more detail in Chapter 21 (Public Purchasing and Contracting).

Local Changes Affecting County Governance

“Meck Neck” Transfer. S.L. 1998-15 (S 1222) transfers an area known as “Meck Neck” from Mecklenburg County to Iredell County, based on an agreement previously entered into by the two counties. Guidelines for the transfer are specified in the act. This land is adjacent to Iredell County and has been separated by water from Mecklenburg County since the construction of Lake Norman many years ago. The transfer had been sought by many residents of the area because of the inconvenience caused by their geographic isolation from Mecklenburg County’s offices and facilities. S.L. 1998-15 became effective July 1, 1998.

Abolition of County Coroners. With the advent of the state’s medical examiner system, the position of coroner has become increasingly rare in county government. During the 1998 legislative session, the General Assembly abolished the coroner’s position in four additional counties: Ashe, Gaston, Martin, and Rockingham. S.L. 1998-90 (H 1256) and S.L. 1998-145 (H 1613). This change became effective in Rockingham County on September 15, 1998, and becomes effective in the other three counties on the expiration of the terms of the current coroners.

Cabarrus/Concord Initiative and Referendum Repealed. In 1997, Cabarrus County and the city of Concord were given broad authority to allow referendums and citizen initiative

petitions on public questions. This authorization was short-lived, however. Concerns about the use of these powers led to their repeal in S.L. 1998-62 (H 1352), effective on and after March 1, 1998.

Studies

The following studies, among others, should be of special interest to local government officials.

Nonbetterment Costs. Section 27.13 of S.L. 1998-212 (S 1366) requires the Joint Legislative Transportation Oversight Committee to study the statutory requirement that the Department of Transportation pay in certain instances the nonbetterment costs for relocating water and sewer lines within existing state highway rights-of-way when necessary for state highway improvement projects. The committee must report the results of this study to the General Assembly by December 31, 1999.

Emergency Management and Disaster Studies. Section 19.7 of S.L. 1998-212 directs the Joint Legislative Corrections and Crime Control Oversight Committee to study the state and local assistance funding eligibility criteria that requires local governments to have a full- or part-time emergency program manager. In its deliberations about this requirement, the committee must consider matters such as the burden placed on local governments to maintain such a position and other specified options for organizing emergency management at the local level. The committee must report its findings and recommendations to the 1999 General Assembly.

Section 19.9 of S.L. 1998-212 requires the Department of Crime Control and Public Safety to study the feasibility and advisability of establishing a disaster mitigation and relief fund to provide disaster relief and recovery grants to local governments and others that are adversely affected by natural or man-made disasters. It must make recommendations concerning such a program to specified officers and committees of the General Assembly by March 1, 1999, and send a written copy of its report to the legislature's Fiscal Research Division by that date.

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