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## Local Government and Local Finance

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The 1999 session was perhaps as notable for the changes that did not occur in the local government area as for those that did. But a large number of authorized studies, such as those in the areas of tax policy [S.L. 1999-395, Part III (H 163)] and smart growth [Section 16.7 of S.L. 1999-237 (H 168)], and bills that remain eligible for consideration in the 2000 “short” session [for example, legislation to provide for a constitutional amendment to limit legislative sessions (S 9), reform of local taxation of rental cars (S 1076), and increased penalties for cockfighting and related activities (H 959)] mean that the next year or two may present some interesting challenges and opportunities. Three of the most important acts passed were S.L. 1999-434 (S 222), which makes it easier for local governments to accept electronic, including credit card, payments for taxes and other bills; S.L. 1999-458 (H 964), which makes several changes in the procedures by which most new municipalities will be incorporated and in the procedures all new towns must follow to obtain state-shared revenues; and S.L. 1999-366 (S 708), which authorizes counties to engage in a broad range of housing programs.

This chapter deals with a broad range of bills of general interest to local government officials. For a more complete picture of legislation affecting cities, counties, and other local governments, also see Chapter 3 (Alcoholic Beverage Control), Chapter 5 (Community Development and Housing), Chapter 8 (Elections), Chapter 9 (Elementary and Secondary Education), Chapter 10 (Environment, Natural Resources, and Solid Waste), Chapter 11 (Health), Chapter 13 (Land Records and Registers of Deeds), Chapter 14 (Land Use Regulation, Planning, Code Enforcement, and Transportation), Chapter 16 (Local Taxes and Tax Collection), Chapter 17 (Mental Health and Related Laws), Chapter 19 (Public Personnel), Chapter 20 (Public Purchasing and Contracting), and Chapter 23 (Social Services).

## **Local Finance**

### **Electronic Payments to State and Local Governments**

S.L. 1999-434 amends both G.S. Chapters 147 (state agencies) and 159 (local governments) relating to the acceptance of most forms of electronic payments. Previously both state agencies and local governmental units (including hospitals) could accept credit cards, under certain conditions, and charge the taxpayer or customer the discount rate or service fee charged by the issuing bank (as opposed to passing such costs along to the taxpayer or consumer). The changes in these statutes focus primarily on terminology and the way in which discount rates/service fees may be funded.

First, single references to “credit cards” have been updated to include terms related to electronic payments, specifically “charge cards,” “debit cards,” and “electronic funds transfers.” The other major change involves the discount rate and/or other service fees charged by issuing banks. State agencies and local governments now have the ability to pass such fees along to taxpayers or consumers who are paying electronically or to absorb such costs as part of the operating costs of the entity.

Finally, this bill creates the Office of Information Technology Services, a division of the Department of Commerce, to strengthen the overall management of information technology in state government by enhancing accountability and improving efficiency.

### **County Bonds for Land Purchases**

G.S. 159-48(c), which provides authorization for counties to borrow money and issue general obligation bonds for particular purposes, was amended by S.L. 1999-378 (H 1084), allowing additional purposes for the borrowing or issuing of bonds. Counties may now borrow or issue bonds to provide land for present or future county corporate, open space, community college, and public school purposes. This change gives counties increased flexibility in issuing bonds to acquire land.

### **Provision of Affordable Housing by Counties**

S.L. 1999-366 amends G.S. 159-48(c) to authorize counties to participate in providing affordable housing for low- and moderate-income persons. As part of their efforts, counties may enter into bonded indebtedness to finance the costs of providing housing projects for persons of low and moderate income. Such projects may be owned by a county, redevelopment commission, or housing authority. A project may provide housing for persons at other income levels if at least 40 percent of the units in the project are exclusively reserved for low- or moderate-income persons. Also such funds may be used to provide loans, grants, interest supplements, and other programs of financial assistance (but not rent subsidies) to persons of low and moderate income.

### **Additional Financing Opportunities for Hospitals**

S.L. 1999-386 (H 1120) gives public hospitals authority to engage in installment purchase financing and to issue revenue anticipation notes. The act amends G.S. 160A-20 to include public hospitals among the entities that may enter into installment purchase contracts. It also amends G.S. 159-170 to allow public hospitals to issue revenue anticipation notes. In both cases a public hospital is specifically defined as “a nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39.” G.S. 159-39 defines a public hospital as follows:

1. a hospital operated by a county, city, hospital district, or hospital authority; or
2. a hospital owned by a county, city, hospital district, or hospital authority and operated by a nonprofit corporation or association, a majority of whose board of directors or trustees are appointed by the governing body of a county, city, hospital district, or hospital authority; or

3. a hospital on whose behalf a county or city has issued and has outstanding general obligation or revenue bonds or to which a county or city makes current appropriations (other than appropriations for the cost of medical care to prisoners and indigents).

Also, in both cases, approval for the financing must be obtained from the city, county, hospital district, or hospital authority that owns the hospital. However, these governmental entities can only withhold approval for one of the following reasons:

1. The contract would cause the city, county, hospital district, or hospital authority to violate a covenant of an existing financing agreement.
2. The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank eligible indebtedness under federal tax laws.
3. Entering into the contract would materially adversely affect the credit ratings, or the future financing abilities, of the city, county, hospital district, or hospital authority.

The provisions also clearly state that the public hospital must have an ownership interest in the property being financed through an installment purchase transaction. Similarly revenue anticipation notes may only be issued if the public hospital has the legal authority to collect and pledge such revenues for the repayment of the notes.

### **Budgeting and the Ratio of Property Tax Collections**

Currently local governmental entities are prohibited from budgeting estimated property tax collections that exceed the percentage of the levy actually received in cash by June 30 of the preceding fiscal year. S.L. 1999-261 (S 484) amends G.S. 159-13A(b)(6) by adding language that adjusts this rule as it relates to the budgeting of the registered motor vehicle tax. Specifically the calculation for the anticipated *levy* of the motor vehicle tax should be based on the nine-month period ending March 31 of the previous year. The anticipated *collections* realized in cash for the motor vehicle tax should be based on the twelve-month period ending June 30 of the previous fiscal year. S.L. 1999-261 became effective July 1, 1999, and is applicable to budget ordinances for fiscal years beginning on that date.

### **Duty of County Commissioners to Fund Elections**

S.L. 1999-424 (H 1072), Section 3(a), makes explicit a duty that has probably been assumed by most county boards of commissioners for many years. Specifically the board of county commissioners is required to provide reasonable and adequate funds for the legal functions of the county board of elections, including reasonable and just compensation of the director of elections. These requirements are codified in new G.S. 163-37.

### **Additional Collateral Options for Official Depositories**

G.S. 159-31 requires local governments and public authorities to designate at least one official depository. In addition all funds on deposit in the official depository must be secured by deposit insurance, surety bonds, or investment securities. S.L. 1999-74 (S 417) simply allows letters of credit issued by the Federal Home Loan Bank also to be a form of security that these official depositories may use to secure these governmental deposits.

### **County Reductions in Appropriations to Mental Health Authorities**

S.L. 1999-202 (S 1122) amends G.S. 122C-115(d) to give counties the ability to reduce their appropriations to area mental health authorities by the amount previously appropriated for any one-time, nonrecurring special needs. Otherwise counties are still prohibited from reducing county appropriations for current operations as well as for ongoing programs and services.

## Studies

**Tax Structure Study.** S.L. 1999-395 establishes the North Carolina Tax Policy Commission, which is charged with undertaking an extensive review of the entire state and local taxation structure in North Carolina. The study is to establish “principles of taxation upon which a sound State and local tax structure should be built for the 21<sup>st</sup> century.” To achieve this goal the fifteen-member appointed commission will study every aspect of taxation at both the state and local level, such as the income tax, sales tax, property tax, and the like. Taxation rates, costs of implementing taxes, tax burdens on individuals and businesses, as well as the overall principles of taxation, will be studied. The commission will also make extensive comparisons to other state and local governments in the nation. The findings and recommendations of the commission, due no later than March 1, 2001, could have a long-range impact on the taxation structure in place in North Carolina.

**Transportation Finance Study.** The 1999 Appropriations Act [S.L. 1999-237, sec. 27.2 (H 168)] establishes a Blue Ribbon Transportation Finance Study Commission charged with reviewing a full spectrum of issues involving the state’s financing of highways and other forms of transportation.

## Local Acts: Investments and Various Fees

**Special Investment Authority for Durham and Pitt Counties.** G.S. 147-69.2 establishes special investment authorizations for certain funds and systems in North Carolina. This statute, which allows a broader variety of investment options, is in addition to the general investment guidelines that must be followed for local governmental entities under G.S. 159-30. S.L. 1999-101 (S 653) authorizes the Durham County Community Health Trust Fund to invest its funds in accordance with G.S. 147-69.2. Pitt County received extensive funds from its transfer of Pitt County Memorial Hospital, and S.L. 1999-48 (H 847) effectively extends this authorization to them as well. However, both Durham County and Pitt County only have the authority to invest the specifically mentioned funds in accordance with this statute. All other funds of the respective counties are still subject to the general investment guidelines found in G.S. 159-30.

**Fire Protection Fees.** Following a trend begun in the 1998 session, Brunswick and Gates counties obtained local acts involving the establishment of fire protection fees. Union County, meanwhile, was affected by a minor amendment to an existing fire protection fee act.

S.L. 1999-323 (H 651) authorizes Brunswick County to create a fee-supported fire district for insurance grading purposes. Such a district may only be created, however, if the county receives one of the following:

1. a written request signed by at least two-thirds of the board of directors of a local fire department that contracts with the county to provide fire protection, or
2. a petition signed by 15 percent of the residential freeholders living in an area of the county.

This act also includes guidelines for establishing the district, its governing committee, its fee structure, and its policies for annexation of areas to the district.

S.L. 1999-242 (H 900) authorizes Gates County to impose fees for fire protection services. Such fees are not to exceed the costs of providing the services, and the act specifically identifies fee maximums per class of property. The fire protection fees may be billed and made payable in the same manner as property taxes.

Union County has an existing statute [G.S. 153A-236(c)] authorizing the assessment of fire protection fees. S.L. 1999-39 (H 797) amends this statute by exempting the North Carolina Department of Transportation (NCDOT) for real property held exclusively for highway use.

**Septic System Inspection Fees Treated as Taxes.** S.L. 1999-288 (H 638) deals with, among other things, fees collected by Gates and Hertford counties for the inspection of provisionally approved septic tanks or other innovative septic tank systems. As has been done in North Carolina with some other fees in the past, the act authorizes treating inspection fees like property taxes. They may be billed and payable in the same manner as property taxes, and if delinquent, they may

be collected in the same manner as delinquent taxes. If the ordinance provides for such collection, the fees are a lien on the real property described on the bill that includes the fee. These provisions apply to fees imposed for inspections performed on or after July 14, 1999.

## Local Government

### Incorporation and Annexation

**Incorporation Procedures Revised.** S.L. 1999-458 makes significant changes in the way most municipal incorporation proposals will be handled and the services and taxes that new towns will likely provide. It modifies the rules followed by the Joint Legislative Commission on Municipal Incorporations (G.S. Chapter 120, Article 20) as well as certain tax and other statutes. This legislation was supported by both the League of Municipalities and the Association of County Commissioners and was offered in reaction to the large number of new towns proposed in recent years, many of them at least in part designed to avoid annexation of an area by a nearby municipality.

For many years there has existed a Joint Legislative Commission on Municipal Incorporations, to which any legislator was entitled to send a proposal to incorporate a new town for study and evaluation. Referral of incorporation bills to the commission has been, and still is, voluntary, and the legislator and legislature may choose to follow or disregard the commission's findings. In recent years, however, both the House and the Senate have adopted rules requiring referral of incorporation proposals to the commission, and all four of the incorporation acts passed this session had been referred to the commission.

S.L. 1999-458 makes several changes in the commission's process, most of them designed to help insure that petitions for incorporation involve "real" towns intent on providing services. First, however, the act eases one of the incorporation standards. It drops the requirement that the commission may not make a positive recommendation to the General Assembly concerning incorporation unless the entire area proposed for incorporation meets the applicable "urban purposes" development criteria under North Carolina's annexation law.

Next, S.L. 1999-458 adds a requirement that the petition filed by those seeking the incorporation of the proposed municipality must contain statements that the municipality will have a budget ordinance with an ad valorem tax levy of at least five cents on the \$100 valuation on all taxable property within its corporate limits, and that it will offer four out of a list of eight services by the first day of the third fiscal year following the incorporation's effective date. The list includes police protection, fire protection, solid waste collection or disposal, water distribution, street maintenance, street construction or right-of-way acquisition, street lighting, and zoning. Previously the statutes included a similar list of eight but with a requirement that two services be offered. As under the prior law, the commission may not make a positive recommendation unless the area to be incorporated submits a plan for providing a reasonable level of municipal services, and that plan is now based on the four services proposed.

To qualify for providing police protection, the new city must propose either to provide that service or to have it provided by contract with a county or another municipality that proposes to be compensated for providing supplemental protection. This requirement implies that simply asking the sheriff to continue to patrol within the town would not be enough, but asking the sheriff to increase patrols in return for an extra payment each year would qualify as providing police protection.

The minimum tax rate and service provision requirements are a reaction to the practice in some newly incorporated towns of simply collecting state-shared revenues, such as sales and utility franchise taxes, without directly imposing a tax burden on their citizens through property or business license taxes. Some of these towns also do not directly provide services beyond those that their citizens received prior to incorporation, such as private garbage collection, volunteer fire service, county sheriff protection, and perhaps county water service. The municipalities choose

instead to allow their bank accounts to grow, as they save, perhaps, for a large future project, such as a community center. To their critics, such towns are municipalities on paper only or "paper towns."

The requirement to provide four municipal services will not likely impose much of a burden on most newly incorporated North Carolina towns, which can take advantage of the widespread, statutorily approved practice of contracting for services. All North Carolina municipalities are entitled, under G.S. 160A-20.1, to contract with and appropriate money to any person, association, or corporation to carry out any public purpose in which the city is authorized by law to engage. Indeed small towns commonly provide many services by contract, for example, garbage collection through an arrangement with a private hauler, street maintenance through a contract with the NCDOT, or fire protection through an arrangement with a local volunteer fire department. The only limitation on such contracts under the incorporation commission law is the requirement noted above that some sort of payment arrangement (no dollar amount is specified) be made for police protection.

S.L. 1999-458 also provides several revenue inducements that strongly encourage newly incorporated local governments to keep their services and property taxes in place once they are enacted. It has been the case for many years that cities can only receive street maintenance or "Powell Bill" funds if they adopt an annual budget and levy a five cents per \$100 valuation property tax. More recently, newer municipalities have also been required as a condition for receiving Powell Bill money to continue to provide the two services that they were required to have when they went through the incorporation commission process. S.L. 1999-458 specifies that municipalities that are incorporated with an effective date on or after January 1, 2000, must meet the regular Powell Bill requirements (budget, five-cent tax levy, and so forth) and must also show that funds have been appropriated for at least four of the services listed in the act in order to receive Powell Bill funds.

More significantly, receipt of other state-shared revenues is also tied to provision of services and levy of property taxes for municipalities incorporated with an effective date on or after January 1, 2000. They are prohibited from receiving any local option sales tax revenue, beer and wine tax funds, or funds from utility gross receipts taxes if they are disqualified from receiving Powell Bill money (that is, if they do not levy a five-cent property tax and provide at least four services). These new municipalities are also prohibited from receiving any of these other state-shared revenues unless a majority of the mileage of their streets is open to the public. This last requirement, which becomes effective with respect to distribution of funds on or after July 1, 1999, was prompted by the proposed and actual incorporation of gated private communities.

Note that while the revenue inducements noted above create strong incentives for newly incorporated towns to provide services and levy taxes, they do not create legal mandates. In North Carolina, each municipal and county governing board is free under the statutes to set its own property tax rate (with a few exceptions spelled out in specific city charters) and to determine what services it will provide. Once a newly incorporated town has fulfilled its pledge to the incorporation commission by adopting an annual budget with a five-cent tax rate and provision for four services, it is probably free in subsequent years to choose a different level of taxation and services. If the town's governing board wishes to forego state-shared revenues, lower the tax rate to two cents or zero, and provide less than four services, it is probably free to do so.

Additional requirements imposed by the act as conditions for a positive recommendation from the Commission on Municipal Incorporations relate to population density and the fiscal impact of the incorporation on neighboring communities. The commission is not to make a positive recommendation unless the proposed municipality has a population density, either permanent or seasonal, of at least 250 persons per square mile, and coastal areas no longer have an exception to the requirement that 40 percent of the area either be developed or be dedicated as open space. In addition the commission must in its report indicate the impact on other cities and counties "of diversion of already levied local taxes or State-shared revenues from existing local governments to support services in the proposed municipality."

When a new city or town is incorporated, the amount of such state-shared revenues as local option sales taxes and beer and wine tax receipts that other local governments in that county

receive may change. That change may not be significant, however, if the new town's population is small and its tax rate is low. The amount of another state-shared revenue source, utility franchise taxes, is based on energy consumption within a municipality and is not affected by a new incorporation. It is not clear how already levied local taxes would be diverted and what the effect of such a diversion would be.

In general S.L. 1999-458 became effective August 13, 1999. Its substantive provisions [other than the repeal of G.S. 120-169.1(a)] do not apply to any community that first filed a petition with the commission prior to July 20, 1999, or to the communities of Gray's Creek in Cumberland County and Union Cross in Forsyth County if either community files a petition with the commission before July 1, 2002.

The impact of the new requirements that petitioners must meet to receive a positive recommendation from the Joint Legislative Commission on Municipal Incorporations depends, of course, on whether an incorporation proposal goes through the commission and whether the General Assembly follows the commission's recommendations. The impact of the revenue and taxation incentives of S.L. 1999-458, on the other hand, will be much broader and should result in a higher level of property taxation and service provision by most towns in North Carolina that are incorporated in 2000 and beyond.

**Incorporations and Mergers.** Four acts to incorporate new towns passed during the 1999 session. St. James, S.L. 1999-241 (H 863), is located in Brunswick County and will operate under the council-manager plan. Of particular interest in its charter is a provision that forbids the town from becoming involved in planning or land use regulation (including building inspection) activity before December 31, 2009. Brunswick County will provide such functions and regulation until that time.

Bermuda Run, S.L. 1999-94 (S 691), in Davie County, is formed by the simultaneous dissolution of the Bermuda Run Sanitary District and is another council-manager jurisdiction. The new town is notable in that it is not allowed to annex property without the vote or consent of a majority of the residents of the property being annexed, and the town's property tax rate may not be increased above fifteen cents per \$100 of valuation without the residents' voted consent.

Rimertown, S.L. 1999-284 (S 694), in Cabarrus County, and Mineral Springs, S.L. 1999-175 (S 314), in Union County, are both incorporated subject to voter approval. If approved, each town will operate under the mayor-council form of government.

Two mergers of municipalities also were approved this session. Under S.L. 1999-66 (H 221), effective July 1, 1999, Long Beach and Yaupon Beach in Brunswick County officially became the town of Oak Island. S.L. 1999-9 (S 43) provides for Alexander Mills to be consolidated into Forest City if Alexander Mills' voters approve a referendum to that effect no later than May 31, 2000.

#### **Clarify Time for Action on Remand after Court Review of Annexation Ordinances.**

After a court reviews a challenge to an annexation ordinance and makes its decision, it may remand the ordinance or annexation report to the city council for further action. S.L. 1999-148 (S 77) provides that the municipality has ninety days to act following entry of the order embodying the court's instructions.

## **Property Transactions**

**Notice of Owner's Rights in Notice of Quick Take Condemnation Action.** During this session, H 644 was introduced by legislators who wanted to make certain that persons whose property was being taken for public use through a "quick take" procedure clearly understood their legal rights. Under quick take a public entity takes immediate ownership of the property, and the amount owed in payment to the former private owner is determined later in court. During the session, procedural and other concerns that some public condemnors had about the original bill led to the compromise that was enacted as S.L. 1999-410.

Under the act the public condemnor's notice to property owners in quick take actions must be printed in at least twelve-point, bold, legible type with words such as "Notice of condemnation" appearing conspicuously on it. The notice must include a plain-language summary of the owner's

rights, including the right to commence an action for injunctive relief and the right to answer the complaint after it has been filed. The notice must also include a statement advising the owner to consult with an attorney regarding the owner's rights. Finally, the act provides that the owner is not entitled to relief because of any defect or inaccuracy in the notice unless he or she was actually prejudiced by the flaw and is otherwise entitled to relief under law.

**County Help with Community College and Public School Construction Financing.**

During the last several years a number of local bills were enacted to marry the statutory authority of counties to finance the acquisition of real and personal property and the construction of improvements on real property with the statutory authority of school boards and community college boards of trustees to provide the buildings and equipment needed for educational purposes. S.L. 1999-115 (H 239) goes a step further by giving statewide authorization for financing and other types of advantageous property transactions between boards of county commissioners and community college boards of trustees, so long as the financing obligations are a county's responsibility.

The applicable new statutes are G.S. 153A-158.2 and 115D-15.1, and several conditions are imposed on each arrangement. First, the board of trustees of the community college within the county must request the board of county commissioners to acquire the property interest. Second, a public hearing must be held, and third, the State Board of Community Colleges must approve the actions of the board of trustees. At the end of the financing period, or if none, the construction period, the property belongs to the community college.

In connection with the passage of S.L. 1999-115, several local acts, but not any actual agreements, are repealed, effective January 1, 2000. The act applies to agreements entered into on or after May 28, 1999.

In addition to this statewide act, S.L. 1999-65 (S 709) makes Mecklenburg County and its public school system the seventy-sixth county with similar local authority under G.S. 153A-158.1.

**Commissioner Consent to Property Acquisition.** Under G.S. 153A-15(c) the county commissioners in four-fifths of North Carolina's counties must give their consent before any other local government may acquire property located in that county. S.L. 1999-6 (H 37) adds Lenoir and Wayne counties to the list, bringing the total to 82 of 100 counties. It is common for the General Assembly to make laws applicable statewide when over half the counties in the state ask to be made subject to them. Nevertheless, this has not occurred in the case of the commissioner consent statute, despite a prediction in this chapter of the legislative summary as early as 1993 that it soon might.

## Housing

**Counties May Provide Affordable Housing.** S.L. 1999-366 adds an important new statute, G.S. 153A-378, which authorizes counties to engage in a variety of activities to help provide low- and moderate-income housing for their citizens. This act demonstrates that in recent decades North Carolina counties have come to share many powers and responsibilities formerly associated more closely with municipalities. Provision of adequate housing is of course both a rural and an urban issue.

Specifically counties may now (in addition to their powers under G.S. 153A-376 and -377):

1. Engage in and appropriate and expend funds for residential housing construction (new or rehabilitated) for the purposes of sale or rental to persons and families of low to moderate income. The governing board has specific authority to contract for this service.
2. Acquire real property by voluntary purchase to be developed or used by the county to provide this affordable housing.
3. Convey property by private sale to any public or private entity that provides affordable housing to low- or moderate-income persons. The county may establish procedures and standards for this action. The conveyance must include covenants or conditions that assure that the property will be developed by the entity for sale or lease to persons of low or moderate income.

4. Convey residential property by private sale under county procedures and standards to persons of low and moderate income in accordance with G.S. 160A-267 and any terms and conditions that the county commissioners may determine. The G.S. 160A-267 private sale procedure is usually not available for real estate conveyances.

In addition S.L. 1999-366 authorizes counties to use property tax funds from the up to \$1.50 per \$100 levy to undertake housing programs for low- and moderate-income persons as provided in G.S. 153A-378.

Finally, as discussed in the finance section of this chapter, the act amends the General Obligation Bond Act to authorize issuance of bonds to finance the cost of providing housing for persons of low or moderate income.

**Housing Authority Must Have Assisted Person as Member; Maximum Size Increased.**

S.L. 1999-146 (H 951) makes two changes affecting the structure of housing authorities in North Carolina. First, it requires, for both city or county and regional authorities, that at least one of the appointed housing authority commissioners be a person who is directly assisted by the authority. Second, it increases the maximum size of a city or county housing authority from nine to eleven commissioners.

The “assisted commissioner” requirement was already the law for city and county authorities in fifty-three counties. Most (though not all) of the forty-seven counties not covered previously by the law have small populations, and the new act contains an exception that perhaps recognizes this reality. Appointment of an assisted commissioner is not required if the authority operates less than 300 public housing units, the authority provides reasonable notice to its resident advisory board(s) of the opportunity to serve as a commissioner, and within a reasonable time after the board(s) received the notice, the authority has not been notified of any such person’s intention to serve.

Two other provisions of S.L. 1999-146 are worthy of note. First, an assisted commissioner does not continue to serve in that capacity after he or she ceases to receive assistance. Second, the act continues for local boards and adds for regional boards the current law’s prohibition of assisted commissioners voting on matters affecting their official conduct or their own individual tenancy.

**Housing Authority Exempt from Real Estate Licensure.** Public housing authorities are regularly engaged in leasing the property they manage, and they might also occasionally be involved in selling some of their real estate. S.L. 1999-409 (H 438) makes clear that the requirements of the real estate licensure law, G.S. Chapter 93, do not apply to any housing authority organized under G.S. Chapter 157 or its regular employees when they are performing acts authorized in Chapter 93 as to any property owned or leased by the authority. The exception does not apply to persons or business entities that contract with an authority to sell or manage property the authority owns or leases.

## Public Records

**CD-ROM Records in Court and Possibly as Permanent Copies.** Advances in technology have led to new methods of storing records. S.L. 1999-131 (S 1021) recognizes permanent, nonerasable or alterable, computer-readable media such as CD-ROMs as sufficiently reliable that they can be admitted into evidence in court. The act also offers the possibility that CD-ROMs might be kept as permanent records in many cases, but only with the express approval of the Department of Cultural Resources under guidelines issued by the department.

Specifically S.L. 1999-131 amends G.S. 153A-436 and 160A-490, applicable to photographic reproduction of county and city records respectively, to make those sections apply to records stored on CD-ROMs and other such media. The provisions do not apply to magnetic tape, CD-R, or CD-RW. S.L. 1999-131 also amends G.S. 8-34 and 8-45.1, which apply to records in a wide range of government offices, and G.S. 8-45.3, which applies to records of the Department of Revenue. In all cases nonerasable, computer-readable storage media cannot be used “for preservation duplicates, as defined in G.S.132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department.”

**Electronic Signatures and Records.** Other technological changes affecting public records involve electronic signatures and electronic records. In an act that may be of interest to local governments as a possible harbinger of things to come, S.L. 1999-247 (H 957) authorizes an electronic or facsimile signature by a physician signing a death certificate when specifically approved by the State Registrar and allows the creation and maintenance of electronic medical records.

### **Police Power**

**Sedimentation Pollution Control Act of 1973 Changes.** S.L. 1999-379 (H 1098) makes several changes that will affect local governments that enforce the Sedimentation Pollution Control Act, G.S. Chapter 113A, Article 4, through local ordinances. Similar changes are made for enforcement at the state level. A local government must now condition approval of a draft erosion control plan upon the applicant's compliance with federal and state water quality laws, regulations, and rules, and it must forward to the Director of the Division of Water Quality a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract. The maximum civil penalty for a violation is now set at \$5,000 (rather than \$500 as it formerly was in many cases), and a penalty may be assessed from the date of the violation rather than the date the notice of the violation is served. S.L. 1999-379 also adds to G.S. 87-10(b) a requirement that the general contractor's examination include the applicant's knowledge of the sedimentation act and the rules adopted pursuant to it.

**Nuisance Statutes Revisions.** S.L. 1999-371 (S 929) makes several revisions to the public nuisance laws found in G.S. Chapter 19. These statutes deal with maintaining places for gambling, prostitution, illegal alcohol or controlled substance use, and the like, and the revisions generally have the effect of strengthening and clarifying those statutes. Three changes should be of particular interest to local officials.

A city, a county, or a private citizen may already maintain a civil action in the name of the state to abate and enjoin the maintenance of a nuisance. Under S.L. 1999-371 the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law enforcement agency with jurisdiction is specifically authorized, upon request of a county, municipality, sheriff, or chief of police, to investigate alleged public nuisances and make recommendations regarding actions to abate them. Second, S.L. 1999-371 clarifies that no legal action may be maintained against any public official or public entity or its employees or agents for investigating or maintaining an action for abatement of a nuisance. Third, the act adds breach of the peace as defined in the statute to the offenses that can constitute a nuisance and lead to the penalties under the act.

**Littering Law Strengthened.** S.L. 1999-454 (H 222) strengthens the penalties for violating North Carolina's littering statute, G.S. 14-399. While littering and beautification of public property are of concern to cities and counties, G.S. 14-399 generally takes the place of local ordinances on the subject. Under S.L. 1999-454 the fine is increased to a range of \$250 to \$1,000 for first offenses and \$500 to \$2,000 for subsequent offenses within three years involving 15 pounds or less of noncommercial litter, and a range of \$500 to \$2,000 for violations involving 15 to 500 pounds of noncommercial litter. In addition the act requires specified types of community service for any person who violates G.S. 14-399 in an amount exceeding 500 pounds or in any quantity for commercial purposes or who discards litter that is a hazardous waste.

**Personal Watercraft Safety Laws Strengthened.** The safety of boaters is a concern of local governments that include significant bodies of water within their borders. S.L. 1999-447 (H 1209) seeks to improve boating safety by regulating personal watercraft, sometimes called jet skis, more stringently. The act makes the regulatory statute, G.S. 75A-13.3, apply statewide. It allows local governments, marine commissions, and local wake authorities with statutory authority under G.S. 160A-176.2 (a local act allowing a number of coastal municipalities to regulate and control personal watercraft operation) or any other law authorizing such regulation to adopt more stringent (but not more lenient) regulations than the provisions of G.S. 75A-13.3, or to regulate aspects of

personal watercraft operation not covered by it. Whenever a local unit does so, it must conspicuously post signs reasonably calculated to provide notice to personal watercraft users of the stricter regulations.

The act imposes a minimum age requirement of sixteen for operation of personal watercraft, with an exception for twelve- to sixteen-year-olds who are either accompanied by a person eighteen or older or who have taken a boating safety education course. S.L. 1999-447 also requires insurance for jet ski rental companies (with violators guilty of a Class 2 misdemeanor and subject to up to a \$1,000 fine), strengthens rules about the required types of flotation devices and about water skiing from personal watercraft, and adds additional “rules of the road” for jet ski operation.

**Local Acts.** S.L. 1999-181 (H 426) and S.L. 1999-182 (H 514), both effective January 1, 2000, authorize the municipalities of Greensboro (both acts), High Point (first act), Rocky Mount (first act), Wilmington, Greenville, Huntersville, Matthews, and Cornelius (all second act) to use photographic images as prima facie evidence of a traffic violation. They join Charlotte and Fayetteville, which previously were granted this authority, codified in G.S. 160A-300.1.

S.L. 1999-181 and -182 also make two important modifications in the enabling statute that apply to Charlotte and Fayetteville as well. They specify that any traffic control photographic system installed on a street or highway must be identified by appropriate advance warning signs conspicuously posted not more than 300 feet from the system’s location. The signs must be consistent with a statewide standard that the DOT is to adopt in conjunction with the authorized local governments. The acts also specify that no insurance points as authorized by G.S. 58-36-65 are to be assigned to the vehicle owner or driver for a violation detected by a photographic system.

S.L. 1999-58 (H 776) authorizes Roanoke Rapids to send an annual notice to chronic violators of the city’s overgrown vegetation ordinance, alerting them that the city will, without further notice, remedy any ordinance violations during the calendar year of the notice and that the expense of the action will become a lien on the property to be collected as unpaid taxes. *Chronic violators* are property owners on whose property the city took remedial action under the ordinance at least three times in the previous calendar year.

S.L. 1999-64 (S 652) amends G.S. 14-111.2 and 14-111.3 to add Durham to those counties in which it is a misdemeanor to obtain ambulance services without intending to pay for them (now forty-two counties) or to make unneeded ambulance requests (now nineteen counties).

## Traffic Regulation in Counties and Municipalities

Four laws enacted this session deal with traffic regulation. Interestingly two of the four laws apply to counties as well as to cities. Even though counties do not construct or maintain roads in North Carolina, county sheriff departments (and county police departments in a few counties) play an important role in law enforcement.

**Permission to Preempt Traffic Signals in Emergency Situations.** Emergency vehicles are often in danger when they must proceed against the light through intersections. S.L. 1999-310 (S 527) should help reduce this hazard somewhat. It amends G.S. 20-169 to authorize local authorities to pass ordinances authorizing law enforcement, fire, ambulance, and rescue squad emergency vehicles to preempt any traffic signals on city streets or state highways within the local authority’s boundaries. NCDOT approval is required for state highways, and NCDOT must respond to approval requests within sixty days. Presumably a city would have to pass an ordinance that applied to city or county vehicles operating within city limits, while a county would have to pass an ordinance applying to vehicles operating outside municipal limits.

**Respecting Funeral Processions.** S.L. 1999-441 (H 247) codifies “rules of the road” for funeral processions in North Carolina in a new statute, G.S. 20-157.1. Importantly for local governments, the act specifies that to the extent that a local ordinance directly conflicts with any part of G.S. 20-157.1, the local ordinance controls. A violation of the new statute does not constitute negligence per se, nor is it to be considered a moving violation for purposes of provisions G.S. 58-36-65 or 58-36-75 of the insurance law.

Among the rules codified in G.S. 20-157.1 are the following. The lead vehicle in a funeral procession is to comply with all traffic-control signals, but once that vehicle has lawfully passed

across an intersection, all vehicles in the procession may proceed through the intersection without stopping, but exercising reasonable care. Operators of other vehicles may not knowingly drive between vehicles in a funeral procession, or pass a funeral procession when driving in the same direction, unless there are two or more lanes of moving traffic in that direction. Vehicles proceeding in the opposite direction of a funeral procession may yield to the funeral procession by reducing speed or by stopping completely off the roadway so that operators of other vehicles proceeding in the opposite direction of the procession can continue to travel in their lane of traffic.

While S.L. 1999-441 acknowledges that state and local law enforcement officers may escort funeral processions in law enforcement vehicles, it does not include other provisions about officers' involvement that had been in the original bill because of concerns about their effect on the public duty doctrine.

**Transitways Permitted.** S.L. 1999-350 (H 1085) authorizes cities to designate one or more travel lanes on the streets or highways of the municipal street system as "transitways." The DOT is authorized to do the same for roads on the state highway system. Once a transitway is designated and has been appropriately marked with signs or other markers, it is reserved for publicly or privately operated transportation vehicles, such as buses or vans, as determined by the city having jurisdiction.

**Handicapped Parking and Signs Fines Increased.** S.L. 1999-265 (H 143) amends G.S. 20-37.6(f) to increase the penalties for parking in a handicapped space without authorized use of a designated plate or placard, obstructing a curb ramp or curb cut for handicapped persons, or failing to use proper signs to designate handicapped parking spaces. In each case the penalty is increased to at least \$100 but no more than \$250 from a range of \$50 to \$100. S.L. 1999-265 becomes effective January 1, 2000.

## Economic Development

**Urban Area Revitalization Service Districts Authorized.** S.L. 1999-388 (S 772) allows the creation of service districts for urban area revitalization projects in cities of more than 150,000. Such projects include the provision within urban areas, as defined in the act, of any service or facility that may be provided in a downtown area as a downtown revitalization project under existing law. S.L. 1999-388 gives North Carolina's larger cities a fair amount of flexibility to use service districts as an economic development and redevelopment tool in that a portion of a city can qualify for the urban area designation in any of several ways.

An urban area can be the central business district of a city, or it can be an area consisting primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses or any combination of them. It can be an area located along a major transportation corridor that apparently does not include any nearby residential parcels according to criteria specified in the act. Finally, it can be an area that has a major concentration of public or institutional uses as its center and focus.

**Alcoholic Beverage Sales in Urban Redevelopment Areas.** Officials in some North Carolina cities have expressed concerns about grocery or convenience stores that they perceive to be selling primarily alcoholic beverages. They see a connection between these sales and undesirable behavior in the surrounding neighborhoods, which they attribute to the detrimental effects of store patrons drinking nearby.

S.L. 1999-322 (S 812) addresses some of these concerns. New G.S. 18B-309 prohibits a food or retail business or eating establishment, as defined in the Alcoholic Beverage Control (ABC) law, that holds an ABC permit and is located in a part of a city that has been designated as an Urban Redevelopment Area under G.S. Chapter 160A, Article 22, from having alcoholic beverage sales in excess of 50 percent of the business's total annual sales. In addition G.S. 18B-309 establishes new monthly record-keeping requirements for such businesses concerning alcoholic beverage and other sales. If a permittee is found in violation of G.S. 18B-309, the state ABC Commission must suspend or revoke a permit issued by it.

Audits of a business's records may be conducted by the commission only upon the request of the city council, and a city may request an investigation of a particular business only once in each

calendar year. If a city requests an investigation, the commission is to report to the city council only the percentage of annual alcohol sales in proportion to the business's total annual sales.

## **Boards and Commissions**

**Appointment of Women to Statutorily Created Boards.** S.L. 1999-457 (S 333) states the General Assembly's intent to recognize the importance of gender balance in appointing members of statutorily created decision-making and regulatory boards, commissions, councils, and committees while at the same time declaring that selecting well-qualified candidates is the paramount consideration. To this end the act states that local "appointing authorities," such as city councils and boards of county commissioners, should, in appointing members to any such body, select from among the most qualified persons those whose appointment would promote membership that is proportional to the percentage that each gender represents in the population of the area represented by the body. Nothing in the act is to be construed to require an appointing authority to make an appointment or to remove an appointee on the basis of gender; its purpose is to "encourage gender equity," not "direct, mandate, or require such."

The act requires each appointing authority to designate someone to be responsible for retaining all applications for appointment to boards covered by S.L. 1999-457. This person is to ensure that information describing each applicant's gender and qualifications is available for public inspection during reasonable hours.

An annual report must be compiled by December 1 disclosing the number of appointments from each gender made during the preceding year, as well as the total number of appointments of each gender that have been made, expressed both in numerical terms and as a percentage of the total membership of the board, commission, council, or committee. If a county or city is the appointing authority, the report is to be filed with the clerk to the board of county commissioners or the city clerk and reported by December 1 to the county or city governing board and to the Secretary of State.

The act only applies to "statutorily created" boards, commissions, councils, and committees. Probably many fewer local boards are covered by the law than might appear at first glance. For example, zoning boards of adjustment and boards of equalization and review are set up by statute with detailed guidelines for their operation, while planning boards and recreation advisory boards may be of practically any size with any term of office desired by a city or county. The first two boards are probably covered by the act, while the last two may not be. Local officials should consult their attorneys to determine on a case-by-case basis the boards to which the law applies.

**Local Workforce Development Boards.** Section 16.15(b) of the 1999 Appropriations Act, S.L. 1999-237, establishes local Workforce Development Boards as part of the state's effort at workforce training and development under its new Commission on Workforce Development. Local elected officials are to appoint members of these boards in accordance with criteria established by the Governor and with provisions of the federal Workforce Investment Act. The local boards are to have a majority of business members and are also to include representation of workforce and education providers, labor organizations, community-based organizations, and economic development boards as determined by local elected officials. Board chairs are to be selected from among the business members. The boards' duties are set out in new G.S. 143-438.11(a).

## **Police and Fire**

Two acts passed this session involving law enforcement and fire departments and their personnel should be noted.

**Testimonial Privilege for Law Enforcement Communications with Peer Counselors.** S.L. 1999-374 (S 995) makes communications between law enforcement officers or their immediate families and peer counselors, necessary to enable the counselor to render counseling services, privileged for purposes of testifying in court. Thus the communications do not have to be disclosed except in certain instances. A peer counselor is someone who has received training to

provide emotional and moral support and counseling to law enforcement employees and their immediate families and has been designated by the sheriff, police chief, or other law enforcement agency head to counsel a client law enforcement agency. Disclosure is required under S.L. 1999-374 if the client or his or her estate's representative authorizes it, a court compels it as necessary to the proper administration of justice, or the privilege does not apply because of the peer counselor's particular role in the case, because the communications relate to a violation of criminal law, or because of other factors such as suspected child or disabled adult abuse or neglect.

**Volunteer Fire and Rescue Departments May Have Three Paid Members and Still Receive Grants.** S.L. 1999-319 (S 515) amends the statutes [G.S. 58-87-1(b) and -87-5(b)] that authorize the Department of Insurance to award grants to volunteer fire departments serving response areas of 6,000 or less in population, and to volunteer rescue or rescue/EMS units, to authorize awards if these organizations have paid members filling the equivalent of up to three full-time paid positions. Under previous law the limit was two paid members with no specific provision for full-time equivalency calculations.

### Studies of Importance to Local Governments

Many issues of importance, perhaps more than in most years, were deferred by this year's General Assembly for further study between sessions. Several of these are of importance to local governments. In addition to the transportation finance and taxation studies mentioned in the "Local Finance" section of this chapter, the following are some others of note.

**Smart Growth Commission.** Section 16.7 of S.L. 1999-237 creates the Commission to Address Smart Growth, Growth Management, and Development Issues. This thirty-seven-member commission, which includes four representatives each from the League of Municipalities and the Association of County Commissioners, will study a variety of growth-related topics. These include incentives to encourage local governments to develop and implement sound land-use management practices; planning and growth management goals and practices; funding requirements for implementation of comprehensive planning; and incentives to promote the continued use of farmlands for agriculture and the maintenance of the agricultural economy. The commission and its duties are described in detail in Chapter 14 (Land Use Regulation, Planning, Code Enforcement, and Transportation).

**Others, Including Roads.** Among the many studies that the Legislative Research Commission is authorized to undertake by S.L. 1999-395, the following may be of interest to local governments: a study of home rule for local governments as practiced in other states, possibly leading to something similar for North Carolina local governments; a study of the processes for conflict resolution between county commissioners and local school boards; and a study of municipal participation in state road funding. In addition the Joint Legislative Transportation Oversight Committee is authorized to study whether the state should pay for nonbetterment utility relocation costs when roads are constructed or improved and whether or not the state should accept and maintain subdivision roads and streets that do not meet state standards. Each of these could have financial implications for local governments.

Finally, a study authorized by S.L. 1999-436 (S 829) will be of interest to local governments along the Interstate 40 corridor in the eastern part of North Carolina. Among other things, S.L. 1999-436 directs the Joint Legislative Transportation Oversight Committee to study banning the erection of additional outdoor advertising along the portion of Interstate 40 from the Orange-Alamance County line to the Wilmington municipal limits. Pending the committee's report to the 2000 regular session of the 1999 General Assembly, the act imposes a moratorium on the erection of new outdoor advertising along that stretch of highway. The moratorium expires July 1, 2000.

### Miscellaneous

**Elections Law Changes.** Elections law changes affecting cities and counties are described in Chapter 8 (Elections). However, two acts in particular deserve the attention of local officials. S.L. 1999-227 (H 248) provides rules concerning precinct boundaries and municipal redistricting after

the 2000 Census and allows for delays in elections. S.L. 1999-426 (H 1074), Section 6, requires city councils in cities with municipal boards of elections to notify the State Board of Elections in writing of municipal board of elections appointments and to provide other information about the municipal board that the state board may require. The act requires municipal board members and elections officials to participate in training provided by the state board and requires the state board to provide the same training, materials, and assistance to municipal boards as to county boards. S.L. 1999-426, Section 6, also has emergency provisions for county boards to conduct municipal elections in certain instances. Section 6 becomes effective January 1, 2000, except that every city council with a municipal board of elections is to provide to the State Board of Elections by August 1, 1999, a list of the members and supervisor of the municipal board of elections in its municipality, along with addresses and telephone numbers.

**Building Inspection Contracts.** S.L. 1999-372 (S 966) amends G.S. 153A-353 and G.S. 160A-413 to authorize counties and cities, respectively, to enter into building inspection contracts with the employers of certified building inspectors. The employees of these companies are added to certain conflict of interest provisions of G.S. 160A-415 and 153A-355. The act provides that contracts with individuals who are not city or county employees or with the employers of such individuals may be entered into only for specifically designated projects. The act is described in detail in Chapter 14 (Land Use Regulation, Planning, Code Enforcement, and Transportation).

The authorization in S.L. 1999-372 is redundant of that in G.S. 153A-449 and G.S. 160A-20.1, which authorize counties and cities, respectively, to contract with and appropriate money to any person, association, or corporation in order to carry out any function that the county or city is authorized by law to engage in. It is unclear how this general authorization relates to the act's limitation of building inspection contracts to specific projects.

### **Change in County Form of Government**

S.L. 1999-37 (H 429) validates a voter referendum that approved changing the Madison County Board of Commissioners from straight four-year to staggered four-year terms, beginning in 2002. The staggering system will be established by electing commissioners that year to a combination of two- and four-year terms. In addition under S.L. 1999-37 the Madison County board expands from three to five members on the first Monday in December 2002.

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