

2011 Finance Legislative Update

(as of July 11, 2011)

The following provides a summary of new local government finance-related legislation (plus a few other bills of general interest to local governments and public authorities). It is not a complete compilation of all legislation passed by the General Assembly during this legislative session. For information on other Acts and more detailed information about the State Appropriations Act visit the following websites:

- North Carolina League of Municipalities-- <http://www.nclm.org/programs-services/publications/bulletins/2011/Pages/default.aspx>
- North Carolina Association of County Commissioners-- <http://www.ncacc.org/legislativeinfo.htm>
- School of Government Legislative Resource Page-- <http://dailybulletin.unc.edu/summaries11/>

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Property Taxation

S.L. 2011-9 (HB 123): Business Entity Ownership Requirements for Present-Use Valuation

This Act amends G.S. 105-277.3 to modify the ownership requirements by business entities of land that is subject to present-use valuation. To qualify for the present-use valuation the land owned by a business entity must have been owned by the business entity, a member of the business entity, or another business entity whose members include a member of the business that currently owns the land for four years immediately preceding January 1 of the year for which the benefit is claimed. Land owned by a trust must be owned by the trust or by one or more of its creators for the four years immediately preceding January 1 of the year for which the benefit is claimed.

S.L. 2011-30 (SB 107): Reduce Property Tax for Improved Property in Roadway Corridors

This Act amends G.S. 105-277.9 to specify that unimproved real property within a transportation corridor is taxable at 20 percent of the appraised value.

The Act also provides that if the real property located within a transportation corridor is improved—with a building or other structure located on the property—the property is taxable at 50 percent of the appraised value, if it has not been subdivided. (This provision sunsets on July 1, 2021.)

S.L. 2011-274 (HB 350): Modify when Land Used for Conservation Purposes Excluded from Property Tax Base

This Act amends G.S. 105-275 to provide that real property that is owned by a nonprofit corporation or association organized to receive and administer lands for specified conservation purposes and that produces no income or produces income that is incidental to and not inconsistent with the purpose or purposes for which the land is held and used is subject to a tax deferral. The taxes that would otherwise be due on the land are a lien on the real property. The deferred taxes for the preceding five years are due and payable when the property loses its eligibility for deferral as a result of a disqualifying event. The Act provides that the lien is extinguished if the property is sold or transferred to a local, state, or federal government unit for conservation purposes or if it is subject to an easement recorded at the time of sale that requires perpetual use of the land for one or more of the authorized purposes.

S.L. 2011-322 (SB 118): Expand Definition of Services that may be provided in a Business Improvement District (Municipal Service District for Downtown Revitalization)

G.S. Ch. 160A, Article 23 authorizes municipalities to create special tax districts to levy additional taxes on properties located within the districts in order to fund additional

services and projects in the districts. Among the authorized purposes for which districts may be created are for downtown revitalization (commonly known as business improvement districts or BIDs).

This Act purports to expand the already extremely broad authority to provide and fund projects and services within a BID. It provides a non-exclusive list of activities for which BID tax proceeds may be spent, including (1) improvements to water, sewer, stormwater, electric, and gas infrastructure, street lighting, streets and sidewalks; (2) construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities; (3) construction of public buildings, restrooms, docks, visitor centers, and tourism facilities; (4) improvements to reduce the incidence of crime in the central city; (5) improvements to relieve traffic congestion in the central city and improve pedestrian and vehicular access; (6) providing city service or functions in addition to or to a greater extent than those provided for the entire city; and (7) sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area.

S.L. 2011-238 (HB 896): Facilitate Electronic Listing of Personal Property for Property Tax Purposes

This Act authorizes the Department of Revenue to establish, after consultation with counties, standards and requirements for electronic listing of personal property. A board of county commissioners may, by resolution, provide for electronic listing of personal property in accordance with these standards.

S.L. 2011-375 (SB 537): Increase In Rem Foreclosure Fee

This Act increases the administrative fee imposed on taxpayers subject to In Rem foreclosure for failure to pay local property taxes to \$250 (was \$50).

Other Revenue Sources

S.L. 2011-18 (HB 92): Repeal Local Land Transfer Tax Authority

Pursuant to the Medicaid funding reform legislation enacted in 2007, counties were authorized to impose a local land transfer tax of up to 0.4 percent on instruments conveying interests in real property located in the county, if approved by the county's voters. Although several counties placed the issue on the ballot over the past couple of years, none received voter approval to levy the tax.

This Act repeals counties' authority to levy the land transfer tax. That means that counties no longer have the option to put this issue before the voters.

S.L. 2011-122 (HB 571): Prepaid Wireless Service and 911 Fund

Effective July 1, 2013, the Act amends G.S. 62A-43 to specify that the same monthly 911 service charge that is assessed on an active voice communications service connection also is assessed on a prepaid wireless communications service retail transaction (currently 70 cents). A seller of prepaid wireless telecommunications service must collect the 911 service charge from the consumer and remit the proceeds to the Department of Revenue, less an administrative allowance of 5 percent. The Act specifies the procedures for remittance and limits the liability of the prepaid wireless service providers. (The act allows service providers to retain the full amount of the service charge proceeds for a three-month period after the provision goes into effect.)

The Act also amends G.S. 62A-44(b) which directs the distribution of 911 service charge proceeds. It specifies that the monies collected on prepaid wireless communications service retail transactions may not be allocated to reimburse CMRS providers, but may be allocated to primary PSAPs.

The Act prohibits the state or local governments from imposing any other tax, fee, surcharge, or other charge on any provider, seller, or consumer of prepaid wireless telecommunications service for 911 funding purposes.

S.L. 2011-296 (HB 384): Register of Deeds Fee Increases

Effective October 1, 2011, the Act increases the fees assessed for registering or filing various instruments with the office of the register of deeds. The fee increases expire July 1, 2013.

S.L. 2011-330 (SB 267): Revenue Technical Bill

Among other things, this Act makes a few modifications to sales and use tax authority refund allowances for certain entities.

- It allows a related member of a motorsports team or sanctioning body to seek a sales and use tax refund.
- It exempts from the general sales and use tax rate the rental of an accommodation arranged or provided to a person by a school, camp, or similar entity where a tuition or fee is charged to the person for enrollment in the school, camp, or similar entity.
- It eliminates geo-thermal heat pumps from the list of energy star qualified products subject to a sales and use tax holiday.
- It extends the sales and use tax refund allowance for fuel purchases by interstate passenger air carriers above a certain threshold dollar amount until January 1, 2013.
- It extends the sales and use tax refund allowance for motorsports teams or a motorsports sanctioning body until January 1, 2013.

The Act amends G.S. 105-228.37, with respect to the procedures for awarding a refund for an overpayment of the state's real estate transfer tax (collected by counties). It specifies that a board of county commissioners must hold a hearing on a request for a refund. Within 60 days after a request for a refund has been filed, and at least 10 days before the hearing, the board must notify the taxpayer in writing of the time and place of the hearing. The hearing must be held within 90 days after the request was filed (unless the taxpayer and board agree to a later date). The board must make a decision within 90 days after conducting the hearing. If the board decides that a refund is due, it must refund the overpayment and any applicable interest to the taxpayer and inform the Department of Revenue of the refund. If the board finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may request a review from the Department of Revenue. The Act also amends G.S. 105-228.38 to specify that the amount of the tax proceeds that the county's finance office must remit to the state is less the amount of taxes refunded.

The Act amends G.S. 105-330.4 with respect to motor vehicle property taxes, to provide that tax payments submitted by mail are deemed to be received as of the date shown on the postmark affixed by the US Post Office. If not date is shown on the postmark, the tax is deemed to be received when the payment is received in the office of the tax collector. The burden of proof is on the taxpayer to show that the payment was timely made.

The Act amends G.S. 105-333 to exempt providers of mobile telecommunications service from the definition of a public service company.

The Act amends G.S. 105-467(a) to limit the transactions to which the Article 39 local sales and use tax applies. (Note that the other local sales and use taxes also apply to most of these transactions.) The tax applies to the following:

- A retailer's net taxable sales and gross receipts that are subject to the general rate of sales tax imposed by the State under G.S. 105-164.4.
- The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but is exempt from the State sales and use tax pursuant to G.S. 105-164.13B.
- The sales price of a bundled transaction that includes food subject to tax, if the price of the food exceeds 10 percent of the price of the bundle.
- The sales price of bread, rolls, and buns that are sold at a bakery thrift store and are exempt from State tax under G.S. 105-14.13(27a).

S.L. 2011-378 (HB 662): Counties Collect Fee to Recover Costs of Electronic Monitoring of Offenders

This Act authorizes a county that provides the personnel, equipment, and other costs of providing electronic monitoring as a condition of an offender's bond or pretrial release to collect a fee from the offender that is the lesser of either the amount of the jail fee authorized by G.S. 7A-313 (currently \$5 per 24 hour period) or the actual costs of providing the electronic monitoring. A county may not collect the fee from an offender who is indigent and entitled to court-appointed counsel.

S.L. 2011-145 (HB 200): State Appropriations Act – Acquisition of Delinquent Tax Lands from Counties for Demonstration Forests

Section 13.25(o): The Act implements a policy and plan for the acquisition and control of State forests and State recreational forests. It authorizes counties to turn over to the Department of Agriculture and Consumer Services title to certain tax-delinquent lands that are acquired by the counties under tax sales. Counties must provide the Department, upon written request, a complete list of all properties acquired by the county under tax sale and which remain unredeemed for a period of at least two years. The Department may acquire any of the properties from a county that are suitable to be used as a demonstration forest by paying to the county the amount of taxes due (without penalties).

S.L. 2011-145 (HB 200): State Appropriations Act – Funding Local Government Commission and Department of Revenue's Local Government Division

Section 27.1 amends G.S. 105-501(b) to modify the statutory deductions from the Article 42 local sales and use tax proceeds. The effect of the modification is to convert the Department of Revenue's Local Government Division and the Department of State Treasurer's Local Government Commission to receipts-supported entities.

For FY 2011-2012, the following deductions will be made from each monthly distribution:

- The Department of Revenue's cost for the preceding month for the Local Government Division and the Property Tax Commission, *plus*
- The Department of State Treasurer's costs for personnel and operations of the Local Government Commission, *plus*
- One-twelfth of the costs of the following for the preceding fiscal year of the following:
 - The School of Government for operating a training program in property tax appraisal and assessment
 - The Department of State Treasurer's costs for personnel and operations of the Local Government Commission; and
 - 70 percent of the expenses of the Department of Revenue in performing the duties imposed under Article 2D of Chapter 105.

Beginning in FY 2011-2012, deductions will no longer be made to cover the Department of Treasurer's costs for personnel and operations of the Local Government Commission from the previous year.

S.L. 2011-145 (HB 200): State Appropriations Act—Powell Bill Funds

Section 28.10 amends G.S. 136-41.1(a) to split the Powell Bill fund allocation to eligible municipalities into two separate distributions. (Currently the full distribution is allocated to municipalities on or before October 1 each year). As amended, one-half of the

appropriated funds will be distributed on or before October 1. The remaining funds will be allocated on or before January 1.

Note that pursuant to G.S. 136-41.3, a municipality that receives Powell Bill funds may not accumulate an amount greater than the sum of the past 10 allocations. Now that there will be two allocations per year, a municipality only will be able to accumulate 5 years' worth of Powell Bill funds (instead of 10 years' worth). The Act amends G.S. 136-41.3 to direct the Department of Transportation to adopt a policy to allow small municipalities to apply to the Department to be allowed to accumulate up to the sum of the past 20 allocations.

The Act also provides that no municipality may receive Powell Bill funds unless the municipality maintains public streets that are within its jurisdiction and that do not form part of the State highway system. Any previously allocated funds to municipalities that are now ineligible to receive Powell Bill funds that remain unexpended and unencumbered must be reallocated to eligible municipalities.

S.L. 2011-391 (HB 22): Technical Changes to State Appropriations Act—Powell Bill Funds

This Act amends Section 28.10(c) of the State Appropriation Act to provide that municipalities made ineligible to receive funds have until June 30, 2012 to spend previously allocated funds, after which the funds will be reallocated to eligible municipalities.

S.L. 2011-145 (HB 200): State Appropriations Act—Jail Fees

Section 31.26 amends G.S. 7A-313 to increase the fee imposed on a person lawfully confined in jail awaiting trial to \$10 per 24 hour period (was \$5).

Elections

S.L. 2011-31 (HB 21): Administration of Municipal Elections by County Boards of Elections

This Act specifies that all municipal elections must be conducted by county boards of elections and repeals the authority of municipalities to create municipal election boards.

Public Enterprises

S.L. 2011-84 (HB 129): Broadband Limitations

In 2005, the North Carolina Court of Appeals held that municipalities are authorized to provide broadband services pursuant to their authority under the public enterprise statutes

to own or operate cable television systems (G.S. 160A-311(7)). (Note that counties do not have this authority.) This Act places significant limitations on that authority.

- The new limitations apply to “a city-owned communications service provider” which is defined as a city that provides cable, video programming, telecommunications, broadband, or high-speed Internet access service to the public, for a fee, using a wired or wireless network. A municipality is not considered to be a service provider for purposes of the act if it does any of the following:
 - Provides any of the above-listed communications services free to the public;
 - Provides communications services within the municipality for the municipality’s internal governmental purposes (or in another government entity that has an interlocal agreement with the municipality to provide communications services for internal government services), including sharing data or voice between government entities for internal governmental purposes
 - Provides for remote reading or polling of data from utility or parking meters, or the provisioning of energy demand reduction or smart grid services for an electric, water, or sewer system

- The Act requires a city-owned communications service provider to meet a series of requirements, including the following (this is not a complete list of the requirements):
 - Comply with all the laws and regulations that are applicable to private companies providing the same communications services.
 - Account for the services in a separate enterprise fund and prepare and publish an independent annual report and audit in accordance with GAAP that reflect the fully allocated cost of providing the communications services.
 - Provide the communications services only within the municipality. A municipality is not able to serve any customers outside its territorial boundaries, even customers in its ETJ. Furthermore, a municipality may not require any residents within its territory to subscribe to its communications services.
 - Provide access to private communications service providers to rights-of-way, poles, or conduits owned, leased, or operated by the municipality according to the same terms and conditions as that given to a city-owned communications service provider.
 - May not subsidize the provision of communications services with funds from other noncommunications services, other revenue sources, including revenue from other public enterprise activities.
 - May not price its communications services below the cost of providing the service, including all direct and indirect costs (plus imputed costs such as local, state, and federal taxes that the municipality would have to pay if it was a private company).

- Remit to the municipality's general fund an amount equivalent to all taxes or fees a private communications service provider would be required to pay the municipality or county.
- Hold at least two public hearings before offering to provide communications services.
- Hold a voter referendum before borrowing money or entering into a lease-contract to finance the municipality's communications services. (The voter approval requirement does not apply to issuing non-general obligation debt for repair, rebuilding, replacement, or improvement, of an existing communications network, or related equipment.)
- Pay an amount equal to applicable taxes to the county and state.
- May not receive sales and use tax refunds, except to the extent authorized for a private communications services provider.
- Must first solicit proposals from private businesses to enter into a public/private partnership to provide the communications services.

There are a few important exceptions to the new limitations. Specifically, most (or, in some cases, all) of the new limitations do not apply to the following:

- A municipality that is providing communications services in an unserved area—defined as a census block in which at least 50 percent of the households either have no access to high-speed Internet service or have access to high-speed Internet service only from a satellite provider. (A municipality must follow a detailed procedural process with the North Carolina Utilities Commission to certify that an area is “unserved.”)
- A municipality (or joint agency) that is providing communications services as of January 1, 2011. Thus, the act grandfathers current municipal communications service-providers, but service provision must be limited to *one or more* of the following:
 - The communications services are provided only within the corporate limits of the municipality.
 - The communications services are provided only to customers of the service as of April 1, 2011.
 - The communications services are provided only in certain designated service areas.

S.L. 2011-212 (SB 320): Selling, Leasing, Discontinuing Water and Wastewater Treatment Systems

Under current law, a municipality that owns or operates certain public enterprises (water, sewer, cable television, stormwater, gas, and electric systems) must obtain voter approval to sell, lease, or discontinue the enterprise services (unless the transfer is to another government entity).

Effective January 1, 2012, a municipality may sell, lease, or discontinue water treatment systems, water distribution systems, or wastewater collection and treatment systems

without first holding a voter referendum. (A municipality may hold a referendum on this issue, but it is not required.)

Note that S.L. 2011-84 (HB 129) (summarized above) eliminates the voter approval requirement for a municipality selling or discontinuing communications services (such as broadband and cable television).

S.L. 2011-255 (SB 676): Private Wells

This Act amends G.S. 87-97 to specify that a county, through its local health department, that implements a private drinking water well permitting, inspection, and testing program may not unduly delay or refuse to permit a well that can be constructed or repaired in compliance with the applicable state law and rules. It also specifies that a local health department may not deny a permit for a well on the basis of a local government policy that discourages or prohibits the drilling of new wells.

S.L. 2011-374 (HB 609): Water Supply Reservoirs and Other Water Supply Resources

This Act directs the Department of Environment and Natural Resources (DENR) to cooperate with local governments to identify water supply needs and projects to meet those. It authorizes DENR to enter into agreements with local governments to:

- Assist in the assessment of alternatives for meeting water supply needs
- Develop estimates of the costs of the proposed new water supply projects
- Apply for state and federal permits for the development of regional water supplies

The Act authorizes DENR to assist a local government in identifying the preferred water supply alternative(s) that will provide for the long-term water supply needs and meet certain, specified criteria. DENR also may provide technical assistance to a unit of local government in obtaining federal permits for the preferred water supply alternative identified by DENR's analysis

The Act authorizes one or more water systems to establish a water supply planning organization to plan for and coordinate water resource supply and demand on a regional basis.

The Act designates preservation of property for establishing clean water supplies as one of the purposes for which the state's Clean Water Management Trust Fund monies may be used.

The Act amends GS 143-355(l) to require each unit of local government to include in its local water supply plan a plan for the reduction of long-term per capita demand for potable water. It also amends GS 143-355.4(b) to require a local government to implement a consumer education program that includes information on measures that

residential customers may implement to reduce water consumption as a condition of eligibility for state water infrastructure funds.

The Act amends G.S. 159-52(a) to allow the Local Government Commission to consider whether a unit has prepared a local water supply plan in determining whether or not to approve the issuance of general obligation bonds to finance a water system.

S.L. 2011-145 (HB 200): State Appropriations Act--DWRP

Section 12.11A: This Act authorizes an “investor-owned” private drinking water corporation to apply for a loan or grant from the Drinking Water Reserve Fund.

S.L. 2011-391 (HB 22): Technical Changes to State Appropriations Act—Clean Water Management Trust Fund

This Act amends Section 13.26(c) of the State Appropriations Act to appropriate \$11,250,000 to the Clean Water Management Trust Fund to be allocated as follows:

- \$3,000,000 for administrative costs
- \$1,500,000 for State matching funds for the Readiness and Environmental Protection Initiative
- \$6,750,000 for wastewater projects, water quality restoration projects, minigrants, conservation easements, and stormwater projects.

Public School Finance

S.L. 2011-145 (HB 200): State Appropriations Act--PSBCF

Section 2.2(c): The Act diverts all of the corporate income tax proceeds that are statutorily allocated to the Public School Building Capital Fund to fund direct state appropriations to public schools for FY 2011-2012 and FY 2012-2013.

Section 5.4: The Act appropriates \$100,000,000 from the Education Lottery Fund to the Public School Building Capital Fund. Modifying the statutory distribution formula, the Act specifies that all funds will be allocated to counties on the basis of average daily membership (ADM) for FY 2011-2012. (A county and its local school administrative unit(s) may jointly apply to DPI to use the county's allocation to pay for school construction projects and to retire indebtedness incurred for school construction projects only. No county matching funds are required.)

Section 7.29: The Act amends G.S. 115C-84.2 to expand the public school calendar to provide for a minimum of 185 days (was 180 days) and 1025 hours (was 1000 hours) of instruction. The State Board of Education may grant a local board of education a waiver to use up to five of the instructional days as teach workdays.

S.L. 2011-164 (SB 8): Remove Cap on Charter Schools

This Act repeals the 100-school cap on the number of charter schools authorized in the State. It also repeals the 5-school limit on the number of charter schools that may be located in a local school administrative unit. It also increases the allowable percentage increase in annual enrollment in a charter school to 20 percent (was 10 percent). And, it authorizes the State Board of Education to adopt criteria for adequate performance by a charter school.

The Act does not require (or authorize) counties to directly fund operating or capital expenses of public schools. (Charter schools receive a proportional share of the local current expense appropriations made to a local school administrative unit by the county.)

Note, however, that a group of North Carolina charter schools, students, and parents from several counties have filed a lawsuit challenging the constitutionality of the State's system for funding public charter schools differently than traditional public schools. The plaintiffs are seeking equal access to capital outlay funds from state and local governments that are set aside for school buildings, buses, and equipment, and that are currently available only to traditional public schools. The case is currently on appeal from a dismissal of the plaintiffs' claims by a superior court judge. The North Carolina Court of Appeals heard oral arguments in February 2011 but has not issued a decision yet. If the court rules in favor of the plaintiffs, it may have significant implications for counties—possibly requiring them to provide funding to charter schools for capital outlay on the same basis as they provide funding to local school administrative units. (The case is Sugar Creek Charter School, Inc. v. State of N.C.)

S.L. 2011-234 (SB 243): Extend Capital Lease Authority for Schools

In 2006, the General Assembly authorized local school administrative units to enter into capital leases of real or personal property for use as school buildings or school facilities. See G.S. 115C-531. A capital lease is a form of debt financing where the local school administrative unit leases a newly constructed or existing facility for a period of up to 40 years and then takes ownership of the property at the end of the lease term. The legislation also authorized build-to-suit capital leases. See G.S. 115C-532. The authority was set to sunset on July 1, 2011.

This Act sets a new sunset date of July 1, 2015.

S.L. 2011-241 (SB 125): Regional Public Schools

This Act authorizes local boards of education to jointly establish regional schools, which are public schools that are not subject to all the same laws and regulations as local school administrative units. The schools must establish certain enrollment criteria. The criteria may give priority to first generation students and must include the following: demonstrated academic achievement, demonstrated student interest in attendance, and documented parental support for student attendance.

Counties are not required (or authorized) to directly fund the operating expenses of regional schools. A local school administrative unit must allocated to a regional school an amount equal to the per pupil amount of all money appropriated to the local current expense fund for the local school administrative unit. (Supplemental tax revenue is transferred to the regional school only if the child enrolled in the regional school resides in the tax district.)

The Act does not provide for any mechanism to finance capital expenditures of a regional school. Counties are required to fund capital outlay expenses of local school administrative units, but likely are not required to fund any additional capital outlay expenses necessitated by the creation of a regional school.

Local Governmental Employees' Retirement System

S.L. 2011-208 (HB 263): Survivor Benefits—Local Governmental Employees' Retirement System

This Act allows members of the Local Government Employees' Retirement System to designate a new spouse as survivor under G.S. 128-27(g) if the member's previously designated spouse predeceased him or her or if the member remarried before the enactment of S.L. 2010-72. The new nomination must be made within 90 days of the effective date of the Act.

S.L. 2011-294 (HB 376): Local Government Employees' Retirement System Technical Changes

Among other things, retroactively effective July 1, 2009, this Act amends G.S. 128-24 to specify that the Board of Trustees of the Local Governmental Employees' Retirement System is allowed, but not required, to assess a penalty on any employer who fails to report within 90 days of the end of each month in which a beneficiary is reemployed. The act also allows the Board to reduce the penalty if an employer provides clear and convincing evidence that the failure to report resulted from a lack of oversight or some other event beyond the employer's control.

The Act amends G.S. 228-21(19) to specify that a retirement allowance may only be granted upon the retirement of a member and that in order for a member's retirement to become effective in any month, the member must render no service, including part time, temporary, substitute, or contractor service, at any time during the month immediately following the effective date of retirement.

And the Act amends G.S. 128-26 to specify that when a member who has been on military leave returns to work within two years after the member's earliest eligibility for separation or release from military service, then the member's employer must remit to

LGERS all the employer contributions for the full period of that member's military service.

S.L. 2011-371 (HB 538): Law Enforcement Officers Creditable Service—Local Governmental Employees' Retirement System

This Act amends G.S. 128-27(c) to specify that a law enforcement officer that becomes incapacitated for duty due to injuries incurred while in the performance of his or her duties, and meets all the other requirements for disability retirement benefits, is eligible for those benefits even if he or she does not meet the creditable service requirement.

Fiscal Management

S.L. 2011-209 (SB 309): Soil and Water Conservation District—Special Reserve Funds for Conservation Easements

The Act authorizes a soil and water conservation district's (district) governing board to establish and maintain a special revenue fund to maintain conservation easements. Monies in the fund may be expended to, among other things, cover travel costs to and from conservation easements, cover remote monitoring, and cover education efforts about maintaining the conservation easements.

To establish the special revenue fund, the district's governing board must adopt a resolution or ordinance that identifies the specific expenditure items related to conservation easement maintenance that monies in the special revenue fund will be used to fund. It also must identify the approximate time period for which the fund will be established, the approximate amounts that will be accumulated in the fund, and the sources from which the monies will be derived. The district's governing board may amend the resolution or ordinance at any time to include additional expenditure items related to conservation easement maintenance.

The district's governing board must authorize any withdrawals from the special revenue fund and the monies must be used for a purpose specified in the resolution or ordinance that created the fund. If a soil and water district's budget ordinance is adopted by the county board of commissioners, the county board of commissioners also must approve of any withdrawal from the fund.

S.L. 2011-145 (HB 200): State Appropriations Act: Community College Investment Authority

Section 8.20: The Act amends G.S. 115D-58.6 to authorize community colleges to specify that monies deposited in an official depository may be in the form of certificates of deposit or any other forms of time deposit that are approved for county governments. It further provides that investments must be secured as provided in G.S. 159-31(b).

The Act authorizes a community college to invest all or part of its cash balances, subject to whatever restrictions and directions the board of trustees imposes. It authorizes a community college to purchase, sell, and exchange securities on behalf of the board of trustees, provided that investments are managed such that they can be converted into cash when needed. The Act also specifies that the form of investments must be one or more of the following:

- Investments authorized by G.S. 159-30(c). The investment securities may be bought, sold, and traded by private negotiation.
- Investments established or managed by an investment advisor who is registered and in good standing with either the Securities and Exchange Commission or the North Carolina Secretary of State, and is a member of the Securities Investor Protection Corporation.
- Monies in an endowment fund may be invested pursuant to G.S. 147-69.2
- Local funds may be deposited with the State Treasurer for investment as special trust funds pursuant to G.S. 147-69.3

The Act also directs the board of trustees to appoint an Investment Committee to manage the investment of community college funds.

Employment

S.L. 2011-263 (HB 36): Counties and Cities Must Use E-Verify

Effective October 1, 2011, the Act requires all counties and municipalities to register and participate in the federal E-Verify program to verify the work authorization of new employees hired to work in the United States. E-Verify is an Internet-based system operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees and/or employees assigned to a covered federal contract. (The program basically allows an employer to electronically verify the information provided by an employee on the employee's I9 form.)

Note that all counties and municipalities must participate in the program, regardless of each unit's number of employees or whether those employees are temporary or permanent, part-time or full-time. Local governments are not obligated, however, to verify that private employers with whom they contract, such as vendors or construction contractors, comply with the E-Verify requirement.

To enroll in E-Verify, visit the following website-- <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>. The United States Citizenship and Immigration Services (USCIS) also provides a detailed reference guide to the E-Verify program-- <http://www.uscis.gov/USCIS/Verification/E-Verify/Publications/Guides/guide-enrollment.pdf>.

**S.L. 2011-391 (HB 22): Technical Changes to State Appropriations Act—
Community College Salaries**

Amends Section 29.8(a) of the State Appropriations Act to allow the North Carolina Community College System to increase the salaries of its employees if the increase is funded from local funding sources.

Debt Collection

S.L. 2011-365 (HB 339): Add Housing Authorities to State Debt Set-Off Program

Effective October 1, 2011, this Act amends G.S. 105A-2 to add Housing Authorities to the entities authorized to participate in the State's set-off debt collection program. A housing authority only may use the program to collect debt owed after a final judgment in favor of the housing authority.

Public Records

**S.L. 2011-54 (SB 182): E-mail Addresses of Persons Subscribing to Local
Government E-mail lists are Open to Public Inspection but not Copying**

This Act extends G.S. 132-1.13 to all units of local governments. G.S. 132-1.13 specifies that when a unit of local government maintains an e-mail list of individual subscribers, the unit is not required to provide a copy of the list pursuant to a public records or other request. The list must be made available for public inspection, though. G.S. 132-1.13 also provides that a unit of local government may use an e-mail list of individual subscribers only for the purpose for which it was subscribed or to notify subscribers of an emergency to public health or safety.

S.L. 2011-321 (SB 98): 911 Call Transcripts or Altered Voice Reproduction

This Act amends G.S. 132-1.4(c) to specify that the "natural voice" of a person that makes a 911 or other emergency call to public law enforcement agencies is not a public record. It allows the contents of 911 and other emergency phone calls to be released in the form of a written transcript or altered voice reproduction.

Annexations

S.L. 2011-396 (HB 845): Reform Involuntary Annexation Laws

This Act sets forth new process requirements and limitations on municipal-initiated (involuntary) annexations. For a detailed description of the Act's provisions see the School of Government's Legislative Resource Page, at <http://dailybulletin.unc.edu/summaries11/>.

S.L. 2011-363 (HB 168): Prohibit Involuntary Municipal Annexation of, and Exercise of Municipal Extraterritorial Jurisdiction over, Property Used for Bona Fide Farm Purposes

This Act amends G.S. 153A-340(b) to clarify the definition of what constitutes a property being used for bona fide farm purposes. It also amends G.S. 160A-36, G.S. 160A-48, and G.S. 160A-58.54 to specify that property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation may not be annexed without the written consent of the owner or owners of the property.

The Act also provides that property located within a municipality's extraterritorial jurisdiction that is used for bona fide farm purposes is exempt from the exercise of the municipality's extraterritorial jurisdiction.

S.L. 2011-57 (HB 171): Municipality Prohibited from Petitioning Itself for Annexation

This Act amends G.S. 160A-58.1, G.S. 160A-58.7, and G.S. 160A-31 to specify a municipality has not authority to adopt a resolution or petition itself for annexation of property it does not own or have any legal interest in.

Miscellaneous

S.L. 2011-299 (HB 687): Fees Imposed on Cities and Counties Acting Outside the Scope of their Authority

Effective October 1, 2011, this Act authorizes a court to award reasonable attorneys' fees and costs to any party who successfully challenges a municipality's or county's actions if the court finds that the municipality or county acted outside the scope of its legal authority. A court must award attorneys' fees if it finds the municipality's or county's actions constituted an abuse of discretion.

S.L. 2011-192 (HB 642): Justice Reinvestment Act of 2011

Among other things, this Act establishes the Statewide Misdemeanant Confinement Program to provide for the housing of misdemeanants from all counties serving sentences

imposed for between 90 and 180 days in local confinement facilities. It authorizes the Department of Correction (DOC) to enter into voluntary contractual agreements with counties to provide housing for misdemeanants serving between 90 and 180 days (other than those serving a sentence for impaired driving). It directs the DOC to work with the NC Sheriffs' Association to establish a program for housing the misdemeanants and to contract with the Sheriff's Association to provide a service that identifies space in local confinement facilities that is available to house the misdemeanants. It authorizes the custodian of a local confinement facility to request a judicial order to transfer a misdemeanant housed pursuant to the Statewide Misdemeanant Confinement Program to a facility operated by the DOC if the misdemeanant poses a security threat, requires certain medical or mental health treatment, or if the local confinement facility cannot reasonably accommodate the misdemeanant. The Act specifies that the costs of housing and caring for the misdemeanants, and administering the program, be covered by state funds, not local funds. It establishes the Statewide Misdemeanant Confinement Fund to pay for the program. The program will be funded from increased court fees that are included in the State's budget. Payments to counties will come from the Sheriff's Association.

The Act also amends G.S. 15A-1343 to allow a court to impose on an offender, as a condition of community or intermediate probation, submission to a period or periods of confinement in a local confinement facility for up to 6 days per month any three separate months during the period of probation. A probation officer also may impose this condition on an offender sentenced to community or intermediate punishment if the offender has violated his or her probation.

S.L. 2011-264 (HB 916): Statewide Expansion of 1915(B)/(C) Waiver

This Act expands the 1915(b)/(c) waiver program statewide and further consolidates Local Management Entities. It specifically provides that counties are not financially liable for waiver cost overruns.

S.L. 2011-145 (HB 200): State Appropriations Act—Study Regional Consolidation of Transit Systems

Section 28.21 directs the Department of Transportation to study the feasibility and appropriateness of developing regional transit systems to (1) provide increased mobility between existing transit systems within one county and between counties; (2) improve planning and coordination to better meet public demand; (3) maximize funding; (4) develop centralized professional staff. The results of the study must be reported by March 1, 2012.

New Incorporations

S.L. 2011-110 (SB 431): Town of Fontana Dam

S.L. 2011-114 (HB 292): Town of Rougemont (subject to successful voter referendum)

S.L. 2011-166 (HB 237): Town of Castle Hayne (subject to successful voter referendum)