

DRAFT

Local Act to Enact Charter

And to

Enact Continuation and Transition Provisions

July 28, 2000

A BILL TO BE ENTITLED
AN ACT CREATING THE MERGED CITY-COUNTY OF DURHAM AND
PROVIDING FOR THE TRANSITION TO THE MERGED CITY-COUNTY
FROM THE SEPARATE CITY AND COUNTY OF DURHAM.

PART 1. CHARTER

Sec. 1. A charter of the merged city-county of Durham is enacted as follows:

[Charter of merged city-county]

PART 2. DEFINITIONS

Sec. 2. In Parts 2 through Part 7 of this act:

- (1) "Board of commissioners" means the Durham county board of commissioners.
- (2) "Charter" means the charter of the merged city-county of Durham, as enacted by section 1 of this act.
- (3) "City" means the city of Durham.
- (4) "City council" means the city council of the city of Durham.
- (5) "City-county" means the merged city-county of Durham, as established in the charter.
- (6) "Commission" means the Durham commission, as established by the charter.
- (7) "County" means the county of Durham.

PART 3. CONTINUATION

Sec. 3. Continuation of ordinances and regulations. All ordinances and resolutions of the county and the city that are in force immediately before the effective date of the charter become city-county ordinances and resolutions and continue in full force and effect within the area in which they applied. All orders, rules, and regulations made by any officer, agency, board, commission, or authority of the county or the city that are in force immediately before the effective date of the charter become city-county orders, rules, and regulations and also continue in full force and effect within the area in which they applied until repealed or amended by the appropriate officer, agency, board, commission, or authority of the city-county.

Sec. 3.1. Continuation of hearings and proceedings. All petitions, hearings, and other proceedings pending, immediately before the effective date of the charter, before any officer, office, department, agency, board, commission, or authority of the county or the city continue and remain in full force and effect, even if the officer, office, department, agency, board, commission, or authority has been abolished or consolidated by the charter or by the government of the city-county of Durham pursuant to the charter. The petition, hearing, or other proceeding shall be completed by the officer, office, department, agency, board, commission, or authority of the city-county that succeeds to the powers, duties, rights, privileges, and immunities of the abolished or consolidated agency.

Sec. 3.2. Continuation of officers. Except as is otherwise provided in the charter or in this act, all officers, departments, agencies, boards, commissions, and authorities of the county and the city shall continue to perform their respective functions after the effective date of the charter, until their successors have been appointed or provided for by the city-county. Members of boards, commissions, authorities, and comparable entities continue to serve for the term for which they have been appointed; the Durham commission succeeds to the appointment authority of the city council and board of commissioners, and the most appropriate officer or employee within the city-county, as determined by the Durham commission, succeeds to the appointment authority of officers or employees of the county or the city.

Sec. 3.3. Continuation of employees. (a) Existing employees become city-county employees. On the effective date of the charter, all employees of the governments of the county and the city become employees of the city-county.

(b) Continued employment. No person who is an employee of the county or city immediately before the effective date of the charter may be discharged from employment with the city-county solely because of the merger of the county and city. In providing for the initial job assignment of each officer and employee of the city-county, the commission shall, to the extent it is feasible to do so as conclusively determined by the commission, arrange for each such person to perform the same or similar duties and responsibilities in his or her employment within the city-county that he or she performed with the county or city before merger.

No person who was an officer or employee of the county or the city has promotion rights, benefits, privileges, or opportunities within the city-county solely by virtue of the personnel policies of the county or city. The promotion rights, benefits, privileges, and opportunities of any employee of the city-county are subject and pursuant to the personnel policies adopted by or approved by the commission.

(c) Salaries. For a period of one year after the effective date of the charter, no officer or employee of the city-county may sustain any reduction in salary on account of merger. At the end of the first year after the effective date of the charter, the city-county may adjust the salaries of officers and employees in accordance with the personnel system adopted by the city-county pursuant to section 4.11 of this act. If the personnel system calls for increases in an officer's or employee's salary, the increase may be awarded before the end of the first year after the effective date of the charter.

(d) Benefits. Each person who is an employee of the county or the city immediately before the effective date of the charter retains his or her existing employment benefits until the city-county adopts its own personnel system pursuant to section 4.8 of this act.

(e) Interpretations. The commission shall resolve all questions, issues, and interpretations arising under this section.

PART 4. GENERAL TRANSITION PROVISIONS

Sec. 4. Initial election and staggering; city election cancelled. (a) The first election for the mayor and commissioners of the city-county shall be held on November

6, 2001. The four commissioners elected from districts shall be nominated and elected pursuant to G.S. 163-291. The city-county mayor and the four commissioners elected at large shall be nominated and elected pursuant to G.S. 163-294.

The mayor and eight commissioners elected in 2001 are elected to terms ending in 2004. In 2004 the merged city-county shall hold elections as provided in the charter, except that the mayor and four commissioners elected at large will be elected for terms ending in 2006 and the four commissioners elected from districts will be elected for terms ending in 2008. In 2006 and each two years thereafter, the merged city-county shall hold a regular election pursuant to the charter.

(b) The regular election for city council in the city of Durham scheduled for 2001 is cancelled.

Sec. 4.1. Organizational meeting of Durham commission. At 12:00 noon on December 3, 2001, those persons elected to the Durham commission in the initial election for the commission, as provided for in section 4.1 of this act, shall gather at the city council chamber at the Durham city hall for the purpose of organizing. The persons elected shall qualify by taking and subscribing the oath of office and shall proceed to organize the commission.

Sec. 4.2. Termination of city council and board of county commissioners. Once a majority of the persons elected to the Durham commission in the initial election provided for in section 4.1 of this act have qualified for office, the terms of office of those persons serving as members of the city council and the board of commissioners terminate immediately, and the city council and board of commissioners cease to exist as separate governing bodies.

Sec. 4.3. Transitional budgets for 2001-2002. The 2001-2002 budget ordinances as adopted by the county and the city shall be administered in accordance with their terms by the commission, officers, and employees of the city-county. Appropriations in the budget ordinance for 2001-2002 for the county and city, respectively, shall be expended as provided in that budget ordinance and for the benefit of the citizens within the county and city, respectively. The commission may, however, amend the 2001-2002 budget ordinance of the county or city in any manner and for any purpose for which the governing boards of the county or city, respectively, could have amended their budget ordinances in the absence of merger.

In 2002-2003 and thereafter, the city-county shall adopt a single budget ordinance for the city-county pursuant section 6-31 of the charter.

Sec. 4.4. Initial compensation of commission members. Notwithstanding section 2.5 of the charter, the Durham commission may set the initial compensation of the city-county mayor and the other members of the commission at any time after the effective date of the charter.

Sec. 4.5 Transition Advisory Committee. (a) Within 30 days after the ratification of this act by the General Assembly, the city council and the board of commissioners shall establish the Transition Advisory Committee [hereinafter, the committee]. The

committee shall have seven members, serving such terms as determined by the city council and the board of commissioners and appointed in a manner agreed to by the city council and the board of commissioners. The committee shall be representative of the entire city-county, and shall include persons with the expertise necessary to deal with transitional issues.

(b) The committee shall advise the city council, the board of commissioners, and the Durham commission as to issues arising in the transition to a merged government, but the city council and board of commissioners or the commission, as the case may be, must approve any recommendation of the committee before that recommendation may be made effective.

(c) The committee shall continue in service until abolished by the commission or for five years after the effective date of the charter, whichever occurs first.

Sec. 4.6. Responsibilities of the city manager and county manager. (a) Within 90 days after enactment of this act, the city manager and county manager, acting jointly, shall recommend a person to be jointly appointed by the city council and the board of commissioners as transition manager. The transition manager shall serve at the pleasure of the city council and board of commissioners and, after the effective date of merger, at the pleasure of the commission.

(b) The city manager and the county manager shall jointly create a merger transition team of city and county employees. While serving on the transition team, an employee shall have no other duties in city, county, or city-county government.

Sec. 4.7. Transition manager duties. The transition manager shall:

- (1) Work with the city manager and county manager in assembling the merger transition team.
- (2) Prepare a budget to finance transition expenses to submit to the city council and board of commissioners for funding pursuant to section 4.8 of this act, and, as appropriate, prepare subsequent budgets for financing transition expenses to submit to the commission.
- (3) Develop and implement a comprehensive plan for informing the public; employees of the city, the county, and the city-county; the city council, board of commissioners, and commission; and the General Assembly about the progress of the transition.
- (4) Within 90 days after his or her appointment, prepare the specifications and award a contract for a study of the information technology systems of the city and the county. The study must be finished within six months after the contract is awarded and shall make recommendations for the cost-effective merger of the information technology systems of the city and county. No later than six months after the effective date of the charter, the transition manager shall present the results of the study to the Transition Advisory Committee for its consideration; the committee shall promptly present its recommendations on the matter to the commission.
- (5) If the commission has not selected a city-county manager within 90 days after the effective date of the charter, prepare an organizational plan for the city-county. In preparing the plan, the transition manager shall consider the

recommendations of the city manager and county manager. Once the commission has approved the organizational plan, and if there is still no city-county manager, the transition manager shall select an interim director of each new department created by the organizational plan.

Sec. 4.8. Funding transition expenses. Within 30 days after submission of a transition budget by the transition manager, the city council and the board of commissioners shall consider the budget and appropriate funds necessary to the transition. The city and the county shall each pay one-half the costs of the approved transition budget.

Sec. 4-9. Final merger. Except as otherwise provided in this act, the city-county shall complete the merger and integration of the city government and the county government into the government of the city-county within two years after the effective date of the charter.

Sec. 4.10. Property taxes during the transition. (a) Within 60 days after the effective date of the charter, the city-county shall determine the total amount of property taxes levied by the city and by the county for the fiscal year beginning July 1, 2001. In determining this amount, the city-county shall include all taxes levied by the city, including any taxes levied for municipal service districts, if any, and all taxes levied by the county, including taxes levied for county service districts, research and production service districts, and rural fire protection districts. The city-county shall then determine the percentage of this total amount of city and county property taxes that was levied against property located within the city, as the city existed immediately before the effective date of the charter, and the percentage levied against property located outside the city, as the city existed immediately before the effective date of the charter.

(b) Except as provided in subsection (c) of this section, for the first two full fiscal years after the effective date of the charter, in levying property taxes, the commission may not alter, from the percentages determined pursuant to subsection (a) of this section, the relative percentages of total property taxes levied against property located within or without the city, as the city existed immediately before the effective date of the charter. In determining the taxes subject to this direction and limitation, the city-county shall include all taxes included in subsection (a) of this section plus any taxes levied by the commission pursuant to Article 3 of G.S. Chapter 160D.

(c) The following property tax levies are not to be included in making the determination required by subsection (b) of this section.

- (1) If the city-county extends services that previously had been provided only within the city to areas located outside the city, as the city existed immediately before the effective date of the charter, any property taxes levied by the city-county on property within such areas necessary to pay the cost of those new services.
- (2) If the city or the county has issued general obligation bonds before the effective date of the charter, or issues general obligation bonds during the two-year period subject to the requirements of subsection (b) of this section, any property taxes levied to pay debt service on those bonds, to the extent the

city or county was not levying such taxes before the effective date of the charter.

- (3) If the state or the federal government imposes a new mandate on the city-county (or the city or county), or expands an existing mandate, any property taxes levied by the city-county in order to comply with the new or expanded mandate.

Sec. 4.11. Salary and benefits analysis. (a) Study required. Within 90 days after the effective date of this Part, the city and county shall contract for a study of the personnel systems of the city and county, with the purpose of recommending a unified personnel system for the city-county. The directors of the city and county human resources departments shall jointly prepare the specifications for this study; the city and county managers shall jointly seek contractors to undertake the study, through a request-for-proposals or similar procedure. The city council and board of commissioners shall jointly award and fund the contract.

(b) Study components. The study should recommend a unified personnel system for the city-county, except for employees subject to the State Personnel Act. The recommendations should include a position classification plan, a pay plan, proposals for employment benefits, and other personnel policies appropriate to the city-county. More particularly, the recommendations should propose measures to equalize compensation between persons who are doing comparable work but are paid differently because of differences between the city's and county's pay plans before merger and should provide procedural protections that are uniform among all employees subject to the city-county personnel system.

(c) Study completion. The study shall be completed within six months after the contract is awarded, so that its recommendations may be considered promptly by the Durham commission.

Sec. 4.12. Local legislation and codes of ordinances. The county attorney and city attorney shall prepare a report for presentation to the commission on existing local legislation and existing codes of ordinances. This report should identify any existing local legislation that should be modified because of merger. It should also identify any inconsistencies between city and county ordinances and recommend commission actions necessary to reconcile those inconsistencies. The county and city attorneys shall present this report to the commission at its initial meeting on December 3, 2001.

Sec. 4.13. Boards and commissions. (a) Applicability. This section applies to all boards, commissions, authorities, and comparable entities of the city and county that existed immediately before the effective date of the charter and all of whose members are appointed by the city council or other city officials, by the board of commissioners or other county officials, or jointly by the city council and board of commissioners or other city and county officials.

(b) Study. The city-county shall undertake a study of existing boards, commissions, authorities, and comparable entities, to be completed no later than 18 months after the effective date of this Part. This study shall examine the legal basis for, the responsibilities of, and the performance of each such entity, and shall recommend

whether to continue, abolish, merge, or otherwise modify each board, commission, authority, and comparable entity.

(c) Sunset requirement. Unless a board, commission, authority, or comparable entity is expressly continued in existence by action of the commission, that board, commission, authority, or comparable entity ceases to exist at the end of 24 months after the effective date of this Part.

PART 5. LAW ENFORCEMENT TRANSITION PROVISIONS

Sec. 5. Law enforcement services after merger. Creation of the city-county pursuant to the charter does not change the provision of law enforcement services within city-county from the manner in which those services were provided immediately before the effective date of the charter. Law enforcement services with the city-county may be changed after the effective date of the charter only pursuant to this section and sections 5.2, 5.3, and 5.5. Except as provided in this section, until a single law enforcement agency is established for the city-county pursuant to sections 5.3 and 5.5, the patrol service boundaries of the sheriff's office and the police department shall remain the same as they were immediately before the effective date of the charter. The patrol service area served by the sheriff's office may be changed with the permission of the sheriff, and the patrol service area served by the police department may be changed with the permission of the chief of police.

Sec. 5.1. Law Enforcement Commission. (a) Commission established. Within 90 days after the effective date of this charter, the Durham commission shall establish the Law Enforcement Commission, composed of the following seven members: one member of the Durham commission, who shall be chair of the Law Enforcement Commission; the sheriff of Durham county; the chief of the police department; the director of the Durham E-911 communication center; the director of the Durham emergency management agency; and two persons appointed by the Durham commission, neither of whom may be a member of the commission, one of whom shall be a resident of the city of Durham as it existed immediately before the effective date of the charter, and one of whom shall be a resident of that part of Durham county not within the city of Durham as it existed immediately before the effective date of the charter.

(b) Terms. The two persons appointed by the Durham commission serve two-year terms and may be reappointed to additional terms to the extent consistent with commission policies.

Sec. 5.2. Commission duties regarding law enforcement operations. The Law Enforcement Commission has the following powers and responsibilities.

- (1) It shall develop and propose to the city-county manager and Durham commission an annual budget for law enforcement, emergency management services, and E-911 communications services within the city-county. In this budget, the Law Enforcement Commission shall propose measures to equalize compensation paid to law enforcement officers within the city-county.

- (2) It shall develop and, once the plan is approved by the Durham commission, implement a plan for a single communication system for law enforcement and all other emergency services within the city-county.
- (3) It shall investigate additional ways to consolidate and coordinate law enforcement services and resources within the city-county and shall encourage adoption of measures to that end.

Sec. 5.3. Development of plan for a single law enforcement agency. (a) Commission plan for a single law enforcement agency. The Law Enforcement Commission shall, within four years after the effective date of the charter, propose a plan for a single law enforcement agency for the city-county. Once it has proposed its plan, the Law Enforcement Commission shall call a referendum on its plan to be held at the first regular election of the city-county taking place after the plan has been proposed.

(b) Durham commission plan for a single law enforcement agency. The Durham commission shall propose a plan for a single law enforcement agency for the city-county in either of the following two circumstances:

- (1) The voters of the city-county, voting in a referendum called by the Law Enforcement Commission pursuant to subsection (a) of this section, reject that Commission’s proposed plan for a single law enforcement agency, in which case the Durham commission shall within two years after the date on which the referendum was held propose an alternative plan for a single law enforcement agency for the city-county.
- (2) The Law Enforcement Commission fails to propose a plan for a single law enforcement agency within the time period set out in section (a) of this section, in which case the Durham commission shall, within six years after the effective date of this charter, propose a plan for a single law enforcement agency for the city-county.

In either event, once the Durham commission has proposed its plan, the commission shall call a referendum on its plan to be held at the first regular election of the city-county taking place after the plan has been proposed.

(c) Voter approval required. No plan for a single law enforcement agency for the city-county may be implemented unless that plan has been approved by the voters of the city-county voting in a referendum held for that purpose pursuant to this section.

Sec. 5.4. Form of ballot. In any referendum on a single law enforcement agency called pursuant to section 5.3, the proposition shall be printed on the ballot in substantially the following form:

“Shall the plan (briefly describe the plan for a single law enforcement agency) be approved:

- () YES
- () NO”.

Sec. 5.5. Implementation of a single law enforcement agency. (a) Implementation required. If a majority of the voters of the city-county voting in a referendum held for that purpose approve a plan for a single law enforcement agency for

the city-county, the Durham commission shall proceed to implement the plan according to its terms.

(b) Necessary legislative authority. The city-county is hereby granted any additional legislative authority, consistent with the Constitution of North Carolina, necessary to implement a plan for a single law enforcement agency for the city-county as approved by the voters of the city-county. By way of illustration but not limitation:

- (1) If the approved plan provides that the sheriff of Durham county is to head a single law enforcement agency or that the sheriff's office is to be designated as the single law enforcement agency for the city-county, the law enforcement jurisdiction of the sheriff of Durham county and the sheriff's deputies extends to all parts of the city-county, including areas located outside Durham county.
- (2) If the approved plan provides that there is to be a single city-county police department, the city-county has authority to operate such a department throughout its territorial jurisdiction, and city-county police officers have, within the entire corporate limits of the city-county, all of the powers invested in law-enforcement officers by statute or common law.

(c) Commission terminated. Once a plan for a single law enforcement agency has been implemented, the Law Enforcement Commission shall cease to exist.

Sec. 5.6. If a court holds that the city-county may not establish or designate a single law enforcement agency for the entire city-county under the sheriff of Durham county, the city-county may establish a single law enforcement agency for Durham county under the sheriff of Durham county. The city-county may then contract with any law enforcement agency for provision of law enforcement services in those parts of the city-county outside of Durham county.

PART 6. REPEALS AND MISCELLANEOUS

Sec. 6. The following local acts, which enacted the city charter for the city of Durham or made amendments to the city charter, and the provisions of which have been continued in the charter of the merged city-county of Durham, are repealed:

<u>Laws</u>	<u>Chapter</u>
Session Laws, 1975	671
Session Laws, 1977	255
Session Laws, 1977	632
Session Laws, 1979	852
Session Laws, 1979(80)	1140
Session Laws, 1979(80)	1249
Session Laws, 1981	694
Session Laws, 1983	369
Session Laws, 1983	373
Session Laws, 1983	458
Session Laws, 1983	474
Session Laws, 1985	332
Session Laws, 1985	624

Session Laws, 1985	641
Session Laws, 1985	714
Session Laws, 1985	715
Session Laws, 1985	716
Session Laws, 1985	727
Session Laws, 1985	744
Session Laws, 1987	224
Session Laws, 1987	232
Session Laws, 1987	280
Session Laws, 1987	606
Session Laws, 1987	732
Session Laws, 1987	753
Session Laws, 1987	754
Session Laws, 1987	755
Session Laws, 1987	756
Session Laws, 1987	789
Session Laws, 1987	802
Session Laws, 1989	476
Session Laws, 1989	512
Session Laws, 1991	107
Session Laws, 1991	379
Session Laws, 1991	380
Session Laws, 1991	503
Session Laws, 1991	532
Session Laws, 1991	560
Session Laws, 1991	617
Session Laws, 1991(92)	992
Session Laws, 1993	81
Session Laws, 1993	121
Session Laws, 1993	261
Session Laws, 1993	264
Session Laws, 1993	279
Session Laws, 1993	283
Session Laws, 1993	297
Session Laws, 1993	342
Session Laws, 1993(94)	556
Session Laws, 1993(94)	658
Session Laws, 1993(94)	768
Session Laws, 1995	282
Session Laws, 1995	338
Session Laws, 1995(96)	642
Session Laws, 1995(96)	687
Session Laws, 1995(96)	689
Session Laws, 1995(96)	755
Session Laws, 1997	166
Session Laws, 1997(98)	50

Session Laws, 1997(98)	52
Session Laws, 1997(98)	142
Session Laws, 1999	36
Session Laws, 1999	45
Session Laws, 1999	55
Session Laws, 1999	70
Session Laws, 1999	256.

Sec. 6.1. The following local acts, the provisions of which have been continued in the charter of the merged city-county of Durham, are repealed:

<u>Laws</u>	<u>Chapter</u>
Public Local Laws, 1927	265
Session Laws, 1953	800
Session Laws, 1957	734
Session Laws, 1985(86)	908
Session Laws, 1987	206
Session Laws, 1987	418
Session Laws, 1989	513
Session Laws, 1989	516
Session Laws, 1989	541
Session Laws, 1989(90)	950
Session Laws, 1991	665
Session Laws, 1991(92)	871
Session Laws, 1991(92)	925
Session Laws, 1993	76
Session Laws, 1993	304
Session Laws, 1993	476
Session Laws, 1993(94)	616
Session Laws, 1993(94)	666
Session Laws, 1995(96)	641
Session Laws, 1995(96)	757
Session Laws, 1997	165
Session Laws, 1997(98)	60
Session Laws, 1997(98)	89
Session Laws, 1999	101.

Sec. 6.2 The following local acts, the provisions of which have been continued in the charter of the merged city-county of Durham, are repealed insofar as they apply to the city of Durham or the county of Durham:

<u>Laws</u>	<u>Chapter</u>
Session Laws, 1985(86)	910
Session Laws, 1985(86)	969
Session Laws, 1991	577
Session Laws, 1993(94)	627

Session Laws, 1995	320
Session Laws, 1995	381
Session Laws, 1997	445
Session Laws, 1997	452

Sec. 6.3. Except as may be otherwise provided in this act or in the charter, no provision of this act or of the charter is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

- (1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act.
- (2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of ordinances or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

Sec. 6.4. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

- (1) The repeal herein of any act repealing such law, or
- (2) Any provision of this act that disclaims an intention to repeal or effect enumerated or designated laws.

Sec. 6.5 If any provision of this act or of the charter or the application of a provision of this act or of the charter to any person or circumstances is held invalid, such invalidity does not affect other provisions or applications of this act or of the charter that can be given effect without the invalid provision or application, and to this end the provisions of this act and of the charter are declared to be severable.

PART 7. EFFECTIVE DATES

Sec. 7. Parts 1, 3, and 5 and sections 6, 6.1, and 6.2 of this act become effective December 3, 2001. The remainder of this act becomes effective when it becomes law.