



HOUSE BILL 911: Various Local Provisions II.

2023-2024 General Assembly

Committee:		Date:	June 25, 2024
Introduced by:	Rep. Gillespie	Prepared by:	Erika Churchill
Analysis of:	Fifth Edition		Staff Attorney

OVERVIEW: *House Bill 911 would make various changes to multiple local provisions.*

[As introduced, this bill was identical to S770, as introduced by Sen. Corbin, which is currently in Senate Finance.]

CURRENT LAW and BILL ANALYSIS:

Corporate Boundaries: (Andrews, Asheville, Boiling Spring Lakes, Edenton, Laurel Park, and Newport)

Under Section 1 of Article VII of the NC Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable." Pursuant to this Section, the General Assembly enacted Article 4A of Chapter 160A of the General Statutes which governs annexations by municipalities. In addition, the General Assembly may annex property by local act. However, the General Assembly has not enacted any method for municipalities to deannex property; only the General Assembly may deannex property.

With respect to satellite annexation under the general statutes, if all property owners in a non-contiguous area petition a municipality for voluntary annexation of the non-contiguous property, the municipality may annex the property if the certain requirements are met, including that the area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.

The bill would, effective June 30, 2024, remove certain described property from the corporate limits of the following municipalities:

- Andrews, Section 1.
- Asheville, Section 2.
- Boiling Spring Lakes, Section 4.
- Newport, Section 8.

The bill would, effective June 30, 2024, add certain described property to the corporate limits of the Town of Edenton. Section 5.

The bill would, effective when it becomes law, remove the 10% cap on satellite annexations for the Town of Laurel Park. Section 7.

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Real Property Disposal: (Beaufort, Section 3)

Local governments generally dispose of real and personal property in accordance with the procedures established by Article 12 of Chapter 160A. Subject to certain conditions for each method, a local government can dispose of real or personal property by any of the following means:

- Private negotiation and sale.
- Advertisement for sealed bids.
- Negotiated offer, advertisement, and upset bid.
- Public auction.
- Exchange.
- Lease. Under G.S. 160A-272, local government may lease real property for longer than 10 years, but a lease term of more than 10 years must be treated as a sale of the real property and executed by following any of the procedures authorized for sale of real property.

The bill would expand the local authority previously granted to the Town of Beaufort to lease real property owned or controlled by the Town to all of the area between Front Street and Taylor Creek, together with any riparian and littoral rights, for longer than 10 years without treating the lease as a sale of real property under Article 12 of Chapter 160A. The bill would also authorize the Town to renew or extend such leases for periods longer than 10 years without treating the lease renewal or extension as a sale of real property under Article 12 of Chapter 160A.

Vacancies on City Councils: (Hendersonville, Section 6)

Generally, vacancies occurring on a municipal council are filled in accordance with G.S. 160A-63. According to G.S. 160A-63, vacancies occurring in a municipal elected office are filled by the governing board. If the term of office of the vacating officer expires immediately after the next municipal election or if the next municipal election occurs within 90 days of the vacancy, the governing board appoints an individual to serve the unexpired term. Otherwise, the governing board appoints an individual to serve only until a successor is elected, and the elected successor serves the remainder of the unexpired term. For the City of Hendersonville, the charter provides that vacancies in office are filled as follows:

- For the office of Mayor, the City Council appoints an individual from among the members of the City Council, by a majority vote, to serve as Mayor for the remainder of the unexpired term.
- For the office of City Council member, the Mayor and the remaining members of the City Council appoint an individual, by a majority vote, to serve as City Council member until the next election for members of the City Council.

The bill would provide that for any vacancy filled on or after December 1, 2023, and before the organizational meeting in December 2026, any individual appointed to fill a vacancy on the Hendersonville City Council would serve for the remainder of the unexpired term, rather than until the next election.

City Council Method of Election: (Northwest, Section 9)

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Part 4 of Article 2 of Chapter 160A of the General Statutes sets forth the optional structures for forms of government for city councils. With respect to methods of elections, the options are:

- At-large, with all the qualified voters of the entire city nominating all candidates and electing all members of the city council.
- Pure election districts, with the qualified voters of each district nominating candidates and electing members who reside in the district for seats apportioned to that district.
- Residency districts, with all the qualified voters of the entire city nominating all candidates and electing all members of the city council, but members must reside in and represent the districts according to the apportionment plan adopted.
- Combination of at-large and districts.

The Charter of the City of Northwest provides that the City Council consists of five members elected from the city at-large for staggered four-year terms. Elections are conducted using the nonpartisan plurality method.

The bill would revise the Charter for the City of Northwest to require the members of the City Council to be elected from residency districts, beginning with the 2025 municipal election. Candidates must reside in the district in which the election is held, but the seat would be voted on by all qualified voters of the city.

Extraterritorial Jurisdiction: (Southport, Section 10)

Except under certain circumstances, a municipality may regulate land use within an area beyond its corporate limits, commonly referred to as extraterritorial jurisdiction (ETJ). Land use regulations include zoning, subdivision regulation, building code enforcement, minimum housing code enforcement, historic preservation, erosion and sedimentation control regulation, and historic district regulation.

The bill would eliminate the authority of the City of Southport to exercise extraterritorial jurisdiction, returning the area currently within the ETJ of the City of Southport to the jurisdiction of the County of Brunswick for enforcement of land use regulations and allowing any person with vested rights in the ETJ area from the City of Southport to exercise those vested rights as if no change in jurisdiction occurred.

Beaufort County Local Matters: (Washington-Warren Airport Authority, Section 11)

The Washington-Warren Airport Authority (Airport Authority), is a body corporate and politic, governed by a seven-member board. The Washington City Council appoints all members to the Airport Authority, each serving three-year staggered terms and are able to serve one or more successive terms. The Airport Authority is a unit of local government, subject to the Local Government Budget and Fiscal Control Act; able to sue and be sued in its own right; to acquire, own, control, or occupy land for a public purpose; and able to pay for the operation of the Washington-Warren Airport.

The bill would alter the appointment process for members of the Airport Authority, with all current terms expiring on October 1, 2024. From October 1, 2024, forward, the Airport Authority would continue to consist of seven members, serving three-year staggered terms, and eligible for successive appointments. From October 1, 2024, forward, the appointing authorities would be as follows:

- One member appointed by Washington City Council, who must be a registered voter of the City of Washington with aviation or drone experience or business management expertise.

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- One member appointed by the Beaufort County Commissioners, who must be a registered voter of the County of Beaufort and the City of Washington with business management or financial expertise.
- Two members appointed by the Beaufort County Commissioners, who must be registered voters of the County of Beaufort and not of the City of Washington with aviation or drone experience.
- Three members, who must be registered voters of the County of Beaufort selected and appointed by the remaining members of the Airport Authority.

Eminent Domain: (Currituck County, Section 12)

Municipalities and counties may use eminent domain for the purposes listed in G.S. 40A-3(b), such as constructing municipal streets, building water and sewer lines, and establishing parks.

In exercising the power of eminent domain, a municipality or county may acquire property by purchase, gift, or condemnation. Article 3 of Chapter 40A provides the procedures by which a municipality or county may condemn property. Generally, the public condemnor must file a civil action to condemn the property in the superior court in which the land is located and must provide a deposit in the amount estimated by the condemnor to be just compensation for the taking. Compensation is generally the fair market value (FMV) of the property. In the case of a taking of less than an entire tract, compensation is usually the greater of (i) the diminution on value, or (ii) the FMV of the property taken. In limited circumstances under G.S. 40A-42, the condemnor has the right to immediate possession when the complaint is filed. Beach renourishment and public access to beaches and appurtenant parking areas are included in the limited instances in which the right to immediate possession of the property may occur.

G.S. 40A-3(b1) provides several coastal counties and municipalities the following two additional purposes for which they may use the power of eminent domain:

- Beach renourishment and erosion control.
- Public access to beaches and parking areas.

The bill would add the County of Currituck to the list of counties and municipalities that may utilize the power of eminent domain and acquire property by condemnation for the purpose of engaging in beach erosion control and flood and hurricane protection works.

Collection of Stormwater Fees: (Woodfin, Section 13)

Municipalities are authorized to acquire, construct, establish, maintain, own, operate, and contract for the operation of a "public enterprise," which includes wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities. Municipalities are authorized to establish a schedule of rates and fees for the use of or the services furnished by any public enterprise.

A municipality has the authority to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts. A municipality may discontinue service to any customer whose account remains delinquent for more than 10 days. A municipality may also use the debt set-off collection process to collect taxes, assessments, fees, fines, or any obligation owed to the city that is more than \$50.00.

Property taxes may be collected in the following ways:

- Placement of a lien on real and personal property, which is superior to all other liens.
- Sale of real or personal property.

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- Attachment and garnishment of wages and bank accounts.

The PCS would authorize the Town of Woodfin to adopt an ordinance providing that any sewer fee or stormwater utility fee imposed by the Town of Woodfin may be billed and collected in the same manner as property taxes. If the ordinance adopted by the Town of Woodfin provides that delinquent fees may be collected in the same manner as delinquent real property taxes, then the delinquent fees are a lien on the real property described on the delinquent bill.

Occupancy Tax Changes: (McDowell County, Pender County)

McDowell County Occupancy Tax, Section 15. McDowell County is currently authorized to levy a room occupancy tax of up to 5%. The bill would provide McDowell County the authority to levy an additional 1% room occupancy tax, for a total of up to 6%. The bill would also make administrative changes to McDowell County's occupancy tax authority to modernize and conform the authorizing language to current occupancy tax drafting practices. The bill conforms to the Guidelines for Occupancy Tax adhered to by the House Finance Committee and would be effective July 1, 2024, and apply to the distribution and use of occupancy tax proceeds on or after that date.

Pender County District P Occupancy Tax, Section 14. Pender County is currently authorized to levy a room occupancy tax of up to 3%. The Towns of Burgaw, Surf City, and Topsail Beach, which lie within Pender County, are each authorized to levy a room occupancy tax of up to 3%, for a total of up to 6% within each town.

The bill would create a taxing district comprising of all the areas within Pender County exclusive of the Towns of Burgaw, Surf City, and Topsail Beach, and authorize that district to levy a room occupancy tax of up to 3%. Effectively, this would allow a room occupancy tax of up to 6% to be levied throughout Pender County. The proceeds of the new occupancy tax in the district must be remitted to the Pender County Tourism Development Authority. At least two-thirds of the funds must be used to promote travel and tourism in the district and the remainder must be used for tourism-related expenditures in the district. Pender County District P would conform to the Guidelines for Occupancy Tax adhered to by the House Finance Committee.

EFFECTIVE DATE: Except as noted above, effective when it becomes law.

Nicholas Giddings, Jessica Sammons, Hillary Woodard, William Brewer, Susan Barham, and Ike McCree in Legislative Analysis substantially contributed to this summary.