

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

1

HOUSE BILL 1064

Short Title: Delegations of Authority. (Public)

Sponsors: Representatives L. Allen, Carney, Saunders (Primary Sponsors); England, Glazier, Hackney, Jones, Lucas, Parmon, Rapp, and Wright.

Referred to: Local Government II.

April 10, 2003

A BILL TO BE ENTITLED
AN ACT TO CLARIFY EXISTING DELEGATIONS OF AUTHORITY TO
COUNTIES AND CITIES AND TO CONFIRM FLEXIBILITY IN THE
EXECUTION OF THOSE DELEGATED AUTHORITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-3 is amended by adding a new subsection to read:

"(d) When any power, duty, function, privilege, or immunity is granted by general law and by a city charter, a city may freely elect to use any or all of those authorizations, either individually or in combination, and shall follow the procedures, if any, set forth for those authorities so chosen. In the case of a direct conflict or inconsistency between general law and a charter provision, the charter procedure shall control."

SECTION 2. G.S. 160A-4 reads as rewritten:

"§ 160A-4. Broad construction.

It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. ~~To this end, the provisions of this Chapter and of city charters~~ It is the intention of the General Assembly that the rule of strict construction known as Dillon's Rule shall not be applied to interpretations of the scope of the delegations of authority to cities. Rather, all grants of authority to cities shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

Except where specifically provided otherwise, in carrying out their delegated powers cities shall have the authority and flexibility to adopt reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions.

1 This section neither expands nor restricts the authority of cities to impose taxes
2 pursuant to Article 9 of this Chapter or to finance public enterprises pursuant to Article
3 16 of this Chapter. This section neither expands nor restricts the purposes for which
4 regulations may be adopted pursuant to Article 19 of this Chapter."

5 **SECTION 3.** G.S. 160A-174 reads as rewritten:

6 "Article 8.

7 "Delegation and Exercise of the General Police Power.

8 **"§ 160A-174. General ordinance-making power.**

9 (a) A city may by ordinance define, prohibit, regulate, or abate acts, omissions,
10 or conditions, detrimental to the health, safety, or welfare of its citizens and the peace
11 and dignity of the city, and may define and abate nuisances.

12 (b) A city ordinance shall be consistent with the Constitution and laws of North
13 Carolina and of the United States. An ordinance is not consistent with State or federal
14 law when:

- 15 (1) The ordinance infringes a liberty guaranteed to the people by the State
16 or federal Constitution;
- 17 (2) The ordinance makes unlawful an act, omission or condition which is
18 expressly made lawful by State or federal law;
- 19 (3) The ordinance makes lawful an act, omission, or condition which is
20 expressly made unlawful by State or federal law;
- 21 (4) The ordinance purports to regulate a subject that cities are expressly
22 forbidden to regulate by State or federal law;
- 23 (5) The ordinance purports to regulate a field for which a State or federal
24 statute ~~clearly shows~~expressly states a legislative intent to provide a
25 complete and integrated regulatory scheme to the exclusion of local
26 regulation;
- 27 (6) The elements of an offense defined by a city ordinance are identical to
28 the elements of an offense defined by State or federal law.

29 The fact that a State or federal law, standing alone, makes a given act, omission, or
30 condition unlawful shall not preclude city ordinances requiring a higher standard of
31 conduct or condition."

32 **SECTION 4.** G.S. 160A-177 reads as rewritten:

33 **"§ 160A-177. Enumeration not exclusive.**

34 The enumeration in this Article or other portions of this Chapter of specific powers
35 to regulate, restrict or prohibit acts, omissions, ~~and or~~ conditions shall not be deemed to
36 be exclusive or a limiting factor upon the general authority to adopt ordinances
37 conferred on cities by G.S. 160A-174. Where a city is authorized to regulate, restrict, or
38 prohibit acts, omissions, or conditions by this Chapter, a city may freely elect to use any
39 or all those authorizations, either individually or in combination; and shall follow the
40 procedures for adoption set forth for those authorities so chosen. In the case of a direct
41 conflict or inconsistency between a charter provision and other provision of law
42 regarding the procedure to be employed for adoption, the charter procedure shall
43 control."

44 **SECTION 5.** G.S. 160A-363 reads as rewritten:

1 **"§ 160A-363. Supplemental powers.**

2 (a) A city or its designated planning agency may accept, receive, and disburse in
3 furtherance of its functions any funds, grants, and services made available by the federal
4 government and its agencies, the State government and its agencies, any local
5 government and its agencies, and any private and civic sources. Any city, or its
6 designated planning agency with the concurrence of the council, may enter into and
7 carry out contracts with the State and federal governments or any agencies thereof under
8 which financial or other planning assistance is made available to the city and may agree
9 to and comply with any reasonable conditions that are imposed upon such assistance.

10 (b) Any city, or its designated planning agency with the concurrence of the
11 council, may enter into and carry out contracts with any other city, county, or regional
12 council or planning agency under which it agrees to furnish technical planning
13 assistance to the other local government or planning agency. Any city, or its designated
14 planning agency with the concurrence of its council, may enter into and carry out
15 contracts with any other city, county, or regional council or planning agency under
16 which it agrees to pay the other local government or planning agency for technical
17 planning assistance.

18 (c) Any city council is authorized to make any appropriations that may be
19 necessary to carry out any activities or contracts authorized by this Article or to support,
20 and compensate members of, any planning agency that it may create pursuant to this
21 Article, and to levy taxes for these purposes as a necessary expense.

22 (d) A city may elect to combine any of the ordinances authorized by law into a
23 unified ordinance. Unless expressly provided otherwise, a city may apply any of the
24 definitions and procedures authorized by law to any or all aspects of such a unified
25 ordinance and may employ any organizational structure, board, commission, or staffing
26 arrangement authorized by law to any or all aspects of such ordinance."

27 **SECTION 5.1.** Part 1 of Article 20 of Chapter 160A of the General Statutes
28 is amended by adding a new section to read:

29 **"§ 160A-466. Revenue and expenditures for joint undertakings.**

30 Where two or more units of local government are engaged in a joint undertaking,
31 they may enter into agreements regarding financing, expenditures, and revenues related
32 to the joint undertaking. Funds collected by any participating unit of government may
33 be transferred to and expended by any other unit of government in a manner consistent
34 with the agreement. An agreement regarding expenses and revenues may be of
35 reasonable duration, not to exceed 99 years."

36 **SECTION 5.2.** Article 2 of Chapter 158 of the General Statutes is amended
37 by adding a new section to read:

38 **"§ 158-7.3. Interlocal agreements concerning economic development.**

39 (a) Any two or more units of local government may enter into contracts or
40 agreements to execute undertakings pursuant to Part 1 of Article 20 of Chapter 160A of
41 the General Statutes under which each participating local government agrees to provide
42 resources for the development of an industrial or commercial park or industrial or
43 commercial site pursuant to G.S. 158-7.1. In consideration for that participation, the unit
44 or units in which the park or site is located may agree to place the proceeds from some

1 or all property taxes levied on the park or site into a common fund or transfer those
2 proceeds to a nonprofit corporation or other entity. The proceeds placed into the
3 common fund or transferred to the other entity may then be distributed among the
4 participating local governments as provided in the contract or agreement.

5 (b) Any undertaking entered into pursuant to this section may be for that period
6 that is agreed to by the participating local governments, up to a maximum of 40 years.

7 (c) Any undertaking entered into pursuant to this section is binding upon each
8 participating local government for the duration of the contract or agreement. Any
9 participating local government may bring an action to specifically enforce the contract
10 or agreement."

11 **SECTION 6.** G.S. 153A-4 reads as rewritten:

12 **"§ 153A-4. Broad construction.**

13 It is the policy of the General Assembly that the counties of this State should have
14 adequate authority to exercise the powers, rights, duties, functions, privileges, and
15 immunities conferred upon them by law. ~~To this end, the provisions of this Chapter and~~
16 ~~of local acts~~It is the intention of the General Assembly that the rule of strict construction
17 known as Dillon's Rule shall not be applied to interpretations of the scope of the
18 delegations of authority to counties. Rather all grants of authority to counties shall be
19 broadly construed and grants of power shall be construed to include any additional and
20 supplemental powers that are reasonably necessary or expedient to the exercise of the
21 power. Provided, that the exercise of such additional or supplementary powers shall not
22 be contrary to State or federal law or to the public policy of this State.

23 Except where specifically provided otherwise, in carrying out their delegated powers
24 counties shall have the authority and flexibility to adopt reasonable definitions,
25 procedures, rules, fee schedules, exceptions, and exemptions.

26 This section neither expands nor restricts the authority to impose taxes pursuant to
27 Article 7 of this Chapter or to finance public enterprises pursuant to Article 15 of this
28 Chapter. This section neither expands nor restricts the purposes for which regulations
29 may be adopted pursuant to Article 18 of this Chapter."

30 **SECTION 7.** G.S. 153A-121 reads as rewritten:

31 "Article 6.

32 "Delegation and Exercise of the General Police Power.

33 **"§ 153A-121. General ordinance-making power.**

34 (a) A county may by ordinance define, regulate, prohibit, or abate acts,
35 omissions, or conditions detrimental to the health, safety, or welfare of its citizens and
36 the peace and dignity of the county; and may define and abate nuisances.

37 (b) This section does not authorize a county to regulate or control vehicular or
38 pedestrian traffic on a street or highway under the control of the Board of
39 Transportation, nor to regulate or control any right-of-way or right-of-passage
40 belonging to a public utility, electric or telephone membership corporation, or public
41 agency of the State. In addition, no county ordinance may regulate or control a highway
42 right-of-way in a manner inconsistent with State law or an ordinance of the Board of
43 Transportation.

1 (c) This section does not impair the authority of local boards of health to adopt
2 laws and regulations to protect and promote public health.

3 (d) A county ordinance shall be consistent with the Constitution and laws of
4 North Carolina and of the United States. An ordinance is not consistent with State or
5 federal law when:

6 (1) The ordinance infringes a liberty guaranteed to the people by the State
7 or federal Constitution.

8 (2) The ordinance makes unlawful an act, omission, or condition which is
9 expressly made lawful by State or federal law.

10 (3) The ordinance makes lawful an act, omission, or condition which is
11 expressly made unlawful by State or federal law.

12 (4) The ordinance purports to regulate a subject that counties are expressly
13 forbidden to regulate by State or federal law.

14 (5) The ordinance purports to regulate a field for which a State or federal
15 statute expressly states a legislative intent to provide a complete and
16 integrated regulatory scheme to the exclusion of local regulation.

17 (6) The elements of an offense defined by a county ordinance are identical
18 to the elements of an offense defined by State or federal law.

19 The fact that a State or federal law, standing alone, makes a given act, omission, or
20 condition unlawful shall not preclude county ordinances requiring a higher standard of
21 conduct or condition."

22 **SECTION 8.** G.S. 153A-124 reads as rewritten:

23 **"§ 153A-124. Enumeration not exclusive.**

24 The enumeration in this Article or other portions of this Chapter of specific powers
25 to define, regulate, prohibit, or abate acts, omissions, or conditions is not exclusive, nor
26 is it a limit on the general authority to adopt ordinances conferred on counties by G.S.
27 153A-121. Where a county is authorized to regulate, restrict, or prohibit acts, omissions,
28 or conditions by this Chapter, by other general law, or by local act, a county may freely
29 elect to use any or all of those authorizations, either individually or in combination, and
30 shall follow the procedures for adoption set forth for those authorities so chosen."

31 **SECTION 9.** G.S. 153A-322 reads as rewritten:

32 **"§ 153A-322. Supplemental powers.**

33 (a) A county or its designated planning agency may accept, receive, and disburse
34 in furtherance of its functions funds, grants, and services made available by the federal
35 government or its agencies, the State government or its agencies, any local government
36 or its agencies, and private or civic sources. A county, or its designated planning agency
37 with the concurrence of the board of commissioners, may enter into and carry out
38 contracts with the State or federal governments or any agencies of either under which
39 financial or other planning assistance is made available to the county and may agree to
40 and comply with any reasonable conditions that are imposed upon the assistance.

41 (b) A county, or its designated planning agency with the concurrence of the
42 board of commissioners, may enter into and carry out contracts with any other county,
43 city, regional council, or planning agency under which it agrees to furnish technical
44 planning assistance to the other local government or planning agency. A county, or its

1 designated planning agency with the concurrence of the board of commissioners, may
2 enter into and carry out contracts with any other county, city, regional council, or
3 planning agency under which it agrees to pay the other local government or planning
4 agency for technical planning assistance.

5 (c) A county may make any appropriations that may be necessary to carry out an
6 activity or contract authorized by this Article, by Chapter 157A, or by Chapter 160A,
7 Article 19 or to support, and compensate members of, any planning agency that it may
8 create or designate pursuant to this Article.

9 (d) A county may elect to combine any of the ordinances authorized by law into a
10 unified ordinance. Unless expressly provided otherwise, a county may apply any of the
11 definitions and procedures authorized by law to any or all aspects of such a unified
12 ordinance and may employ any organizational structure, board, commission, or staffing
13 arrangement authorized by law to any or all aspects of such ordinance."

14 **SECTION 10.** This act is effective when it becomes law.