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Local Government

This chapter primarily discusses acts of interest to local governments that are not addressed in other chapters of *North Carolina Legislation 2007*. Local officials interested in particular topics also should consult Chapter 8, “Economic and Community Development”; Chapter 12, “Environment and Natural Resources”; Chapter 16, “Local Finance”; Chapter 18, “Local Taxes and Tax Collection”; Chapter 22, “Public Employment”; and Chapter 23, “Public Purchasing and Contracting.”

Annexation and Incorporation

This session saw a large number of bills introduced to restrict or do away with the state’s involuntary annexation statutes. Several bills would have required a referendum on any involuntary annexation, one would have required county approval of any involuntary annexation, one would have prohibited an involuntary annexation if the annexation area already was receiving urban services, and several would have modified the procedures or the standards for annexation. In addition, several bills sought to require referendums in specific counties before an involuntary annexation could take place. None of these bills reached the floor of the house in which they were introduced.

Two further bills called for a study of the involuntary annexation statutes, and eventually the House Rules committee held a public hearing on the possibility of such a study, attended by both defenders and opponents of involuntary annexation. At the end of the session, the House of Representatives amended the study bill it had received from the Senate to add an annexation study by a House select committee, but the two houses never were able to reconcile their differences and the study bill did not pass. So there is no formal authorization for a legislative study of involuntary annexation. The issue is not likely to go away, however, and another annexation study in the next few years seems a good bet.

During the session, bills were introduced to incorporate six communities, and three of the bills were enacted. Butner, in Granville County, and Eastover, in Cumberland County, were each incorporated directly by the General Assembly, with no need for a local referendum. Butner was incorporated by S.L. 2007-269 (H 986) and Eastover by S.L. 2007-267 (H 1191). S.L. 2007-329 (S 15) incorporates Hampstead, in Pender County, subject to referendum approval by the area’s voters; that referendum is scheduled for this November.

Interestingly, each of the new towns is subject to restrictions upon its powers to annex. Certain annexations by Butner will require the approval of either the Creedmoor town council or the Durham city council, depending on the area proposed for annexation. The Eastover charter defines one area into which the new town is prohibited from annexing and another area in which it may not annex for the first fifteen years of its existence. The Hampstead charter requires that any involuntary annexation undertaken by the town be approved by the voters of the annexation area in a referendum before the annexation may take effect.

Police Power

Regulation of Smoking in Government Facilities

S.L. 2007-193 (H 24), as amended by S.L. 2007-484, s. 31.7 (S 613), makes major changes in the laws restricting the ability of the state and local governments to regulate smoking. The act is discussed in detail in Chapter 14, "Health."

City Regulation of Fireworks with County Approval

Public fireworks displays are generally regulated through permits granted by the board of county commissioners. S.L. 2007-38 (H 189) broadens this regulatory authority to include cities, as long as the county where the city is located approves. Specifically, the act amends G.S. 14-410(a) and G.S. 14-413 to authorize boards of county commissioners to adopt a resolution allowing the city council of any city within the county to issue permits for the use of pyrotechnics in connection with concerts or public exhibitions within the city's corporate limits. The resolution remains in effect until the board of commissioners adopts a subsequent resolution withdrawing the authorization.

If a city lies within more than one county, the boards of county commissioners of all of those must adopt authorizing resolutions. In such a case, if any county withdraws its authority for the city to issue permits, the city's authority ends, and all of its counties must resume their authority to issue the permits.

Effective May 11, 2007, S.L. 2007-38 also repeals all local acts authorizing cities to grant public fireworks permits pursuant to G.S. 14-410 or G.S. 14-413.

City and County Regulation of Demonstrations on State Roadways and Highways

Section 6 of S.L. 2007-360 (H 563) adds a new statute, G.S. 20-174.2, to the motor vehicle law, authorizing cities and counties to adopt ordinances regulating the time, place, and manner of gatherings, picket lines, or protests that occur on state roadways and highways. Licensees, employees, and contractors of the state Department of Transportation and of municipalities that are engaged in construction or maintenance or in making traffic or engineering surveys are exempted from the act (that is, no restrictions may be imposed on their activities).

On its face, new G.S. 20-174.2 appears to pass muster under the free speech and free assembly clauses of the First Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment. It allows regulation of only the time, place, and manner of protected speech, and such regulations are generally permitted by the courts. In addition, the only special "classes" or special exceptions that the statute creates relate to highway construction and safety. These are matters that are probably compelling state interests in this context and therefore valid subjects for special treatment.

A more important question for the future involves how counties and municipalities will choose to use their new authority. Statutes that are constitutional on their face may be

unconstitutional as applied in specific situations. City and county officials should consult their attorneys and use care if they are thinking about adopting ordinances under G.S. 20-174.2.

Electricity, Cable, and Fiber Optics

In 2005 the General Assembly enacted legislation calling upon cities with electric distribution systems (electric cities) and electric membership corporations (EMCs) that were competing for the same territory to undertake negotiations to resolve the competition. If the parties were unable to agree by May 31, 2007, the 2005 legislation directed the parties to submit any remaining disputes to mediation, and if mediation was not successful, to arbitration by a member of the Public Staff of the state Utilities Commission. S.L. 2007-419 (H 1395) modifies this arrangement. It repeals the special mediation provision enacted in 2005 and instead directs that any unresolved disputes come under the immediate jurisdiction of the Utilities Commission. Either party—a city or an EMC—may petition the Utilities Commission, which is to decide the issues based on public convenience and necessity and without consideration of any rate differentials between the parties.

The act also gives new authority to the Utilities Commission to order a transfer of responsibility for service to a particular consumer from a city or EMC to some other city or EMC, if the commission finds that the existing service is or will be "inadequate or undependable, or that the rates, conditions of service, or service regulations, applied to such consumer, are unreasonably discriminatory."

S.L. 2007-397 (S 3) enacts a new state policy that requires electric power suppliers—investor-owned utilities, EMCs, and electric cities—to provide a minimum percentage of electric power from renewable sources, effective January 1, 2008. For electric cities and EMCs, the minimum "Renewable Energy and Energy Efficiency Portfolio Standard" or REPS is phased in as follows:

Calendar Year	REPS Requirement
2012	3% of 2011 NC retail sales
2015	6% of 2014 NC retail sales
2018 and thereafter	10% of 2017 NC retail sales

An electric power supplier may meet these requirements by some combination of the following actions:

- generating power at a renewable energy facility,
- reducing energy consumption through demand-side management or energy efficient measures,
- purchasing power from a renewable energy facility or a hydroelectric facility,
- buying renewable energy certificates from a supplier with an excess of renewable energy, or
- buying power from a wholesale supplier whose portfolio meets the REPS requirement.

One of the most contested bills of the session was House Bill 1587, the Local Government Fair Competition Act. It would have imposed a number of requirements on any city intending to begin providing "communication services," defined to include cable television service or telephone service, installing fiber optic lines for public use, or acting as an Internet service provider. Perhaps most importantly, the bill would have required that any communication services provided by a city be entirely self-supported from rates, including any capital financing associated with the services. Indeed, not only would the bill have prohibited a city from subsidizing communication services from the general fund or from other enterprise funds, it would have required that any communication services pay a payment in lieu of taxes to the general fund in at least the amount of the property taxes that would have been imposed on a private provider of these services with the same amount of property.

The North Carolina League of Municipalities organized a strong lobbying effort to oppose the bill and was joined by a number of private companies involved in using the communication services targeted by the bill. This effort was ultimately successful. The House committee hearing the bill rewrote it to merely propose a study of the issues raised by the bill and then this House committee substitute was itself not enacted by the Senate.

Property Acquisition and Disposition

S.L. 2007-430 (H 1060) permits those local governments subject to Article 12 of G.S. Chapter 160A to donate surplus, obsolete, or unused personal property to other local governments or to nonprofit organizations. The donee governments or nonprofit organizations may be anywhere within the United States; in addition, a North Carolina local government can also donate to a sister city, defined as “a city in a nation other than the United States that has entered into a formal, written agreement or memorandum of understanding with the donor city for the purposes of establishing a long term partnership to promote communication, understanding, and goodwill between peoples and to develop mutually beneficial activities, programs, and ideas.” The donor government must post public notice of the donation at least five days before the governing board adopts a resolution approving it. (The new statute does not require that this notice be published but merely posted; the best location is probably the principal bulletin board of the donor government.)

This statute should facilitate donating surplus property to local governments in this country that have been hit by natural disasters or to sister cities in foreign countries. There are constitutional questions about the ability of a local school administrative unit to donate property, and, therefore, school units should be cautious about use of the new statute.

S.L. 2007-396 (S 1167) amends G.S. 146-22, which regulates the acquisition of land on behalf of the state, to require the Department of Administration to give written notice of any proposed acquisition by the state (other than for transportation purposes) of land worth at least $25,000. The notice must be given to the county where the land is located and, if the land is in a city, to the city as well. The notice must be given at least thirty days before the acquisition, and the governing board or boards and individual elected officials may forward written comments on the acquisition to the Department of Administration, which must forward them in turn to the Governor and Council of State. (Any acquisition of land on behalf of the state must be approved by the Governor and Council of State.)

S.L. 2007-131 (H 1456) exempts regional solid waste management authorities from Article 8 of G.S. Chapter 143 (the purchasing statutes) and from all statutory procedural requirements for the disposition of real or personal property.

Economic Development

A reader interested in the economic development activities of local governments should turn to Chapter 8, “Economic and Community Development.” One new act, however, should be mentioned here. S.L. 2007-515 (H 1595) makes two important changes to G.S. 158-7.1, the principal statute authorizing local governments to provide economic development incentives. First, under prior law a county or city could construct a shell building, defined as a building of “flexible design adaptable for use by a variety of industrial or commercial businesses.” The new act deletes the quoted language and permits a local government to “acquire, construct, convey, or lease a building suitable for industrial or commercial use.” This change permits a government to purchase or construct a building designed for a specific company and convey or lease the building to the company as an incentive. Second, the act adds a new provision to the statute requiring that any incentives agreement between a local government and a company include a “clawback” provision, under which the company agrees to return some portion of incentives received if it fails to perform its responsibilities under the agreement.

Transportation

Changes in County and Municipal Roles in Financing Roads.

S.L. 2007-428 (S 1513) makes two important changes in the ways counties and municipalities participate in the financing of roads and related improvements.

The more sweeping change alters a fundamental state highway financing and construction policy that dates from the 1930s. During the Great Depression, all county responsibilities for financing, constructing, and maintaining roads were taken over by the state, thereby removing counties from the road business entirely. S.L. 2007-428 reverses part of this decision. The act authorizes, but does not require, counties to participate in paying the costs of rights-of-way, construction, reconstruction, improvement, or maintenance of roads on the state highway system, under agreement with the state Department of Transportation.

A county may also acquire land by dedication and acceptance, purchase, or eminent domain and may even make improvements to portions of the state highway system, if it uses local funds that have been authorized for this purpose. Acquisition of property outside of the county limits is subject to G.S. 153A-15. That statute, applicable in 84 of North Carolina's 100 counties, requires that the board of county commissioners of the county where the land is located approve the acquisition.

The other change applies to municipalities' use of so-called "Powell Bill funds." These moneys comprise a portion of the state gasoline tax that is set aside pursuant to G.S. 136-41.1 for municipal use for road projects. New G.S. 136-41.4 gives municipalities that qualify for an allocation of funds under G.S. 136-41.1 the option of either accepting all the funds allocated and continuing to use them for municipal streets or reprogramming some or all of the allocation for any Transportation Improvement Project currently on the approved project list within the municipality's limits or within the area of any metropolitan planning organization or rural planning organization. The minimum amount that may be reprogrammed is an amount equal to either (1) the amount necessary to complete one full phase of the project selected by the municipality or (2) an amount that, when added to the amount already programmed for the project selected, would allow completion of at least one full phase of the project.

Length Increase Allowed for Public Transit Vehicles.

S.L. 2007-499 (H 514) amends G.S. 20-116 to authorize local governments to operate passenger buses up to 45 feet long on public streets or highways, as long as they are single vehicles. However, the Department of Transportation may prevent the operation of these buses if their operation on a street or highway presents a hazard to bus passengers or to the motoring public.

Public Safety

ATV Use by Public Safety Officers

S.L. 2007-433 (H 767) enacts new G.S. 20-171.23, which authorizes all law enforcement officers and fire, rescue, and emergency medical services personnel in North Carolina to operate motorized all-terrain vehicles (ATVs) on public highways where the speed limit is 35 mph or less. They may also operate ATVs on highways with higher speed limits that do not have fully controlled access, in order to travel from one speed zone to an adjacent speed zone where the speed limit is 35 mph or less. The vehicles must be owned or leased by the agency or department or directly under the control of the incident commander, and the operator must be acting in the course and scope of his or her duties.

All state laws governing the operation of ATVs also apply to the operation authorized by the act. The operator must observe posted speed limits and must not exceed the manufacturer's recommended speed for the vehicle, and he or she must carry an official identification card or badge. An ATV operated pursuant to the new law must be equipped with operable front and rear lights and a horn.

The act also adds new G.S. 20-171.24, which codifies the existing authority of municipal and county employees in certain jurisdictions to operate motorized ATVs that are owned or leased by the local agency, as long as they do so in the same places and obey the same rules as described above. Conforming changes repeal several local and other acts.

The act also amends G.S. 20-171.20 to require that ATV safety courses be sponsored or approved either by the Commissioner of Insurance (added by the act) or by the All-Terrain Vehicle Safety Institute (already included in the law). It authorizes the North Carolina Community College System to provide commissioner-approved training to persons less than eighteen years of age. (Since October 1, 2006, every ATV operator born in 2000 or later has been required to complete this type of course.)

Criminal History Background Checks for Emergency Medical Service Applicants

S.L. 2007-479 (H 1322) amends G.S. 114-19.12 to authorize local fire chiefs, county fire marshals, and local emergency service directors who are paid local government employees to request, and the North Carolina Department of Justice to supply, criminal histories for applicants for either paid or volunteer positions with an emergency medical service (fire department applicants are already included under G.S. 114-19.12). In the past, these requests had to go through the local Homeland Security director or, if there was none, through a local law enforcement agency that was in charge of the information that was supplied.

Emergency Service Vehicle Access to Gated Communities

Effective December 1, 2007, S.L. 2007-455 (H 976) adds a new section to Article 3 of Chapter 20 of the General Statutes to require that gated communities provide a means of immediate access to the roads within the gated areas for all emergency service vehicles, including law enforcement, fire, rescue, ambulance, and first responder vehicles. The act applies to all gated communities, whether or not the subdivision or community roads have been offered for dedication to the public.

Animal Control

Animal Cruelty

Under current law, animal cruelty is a crime.[1] Some acts of cruelty, such as maliciously torturing, poisoning, or killing an animal, are felonies. Other acts, such as intentionally overdriving, injuring, or even killing an animal are Class 1 misdemeanors. S.L. 2007-211 (H 995) amends the cruelty law to provide that a person who maliciously kills an animal by intentionally depriving it of necessary sustenance (i.e., starvation), is guilty of a Class A1 misdemeanor. It is already a Class 1 misdemeanor to intentionally starve an animal, but this change makes it a more severe crime to maliciously starve an animal to death. Under the state's structured sentencing guidelines, the potential punishment for a Class A1 misdemeanor is significantly higher than the punishment for a Class 1 misdemeanor.

1. G.S. 14-360.

S.L. 2007-211 makes another change to the criminal cruelty statute, G.S. 14-360. Under current law, there are several exceptions to the law. For example, a person is not guilty of cruelty if he or she kills an animal for the primary purpose of providing food. The act expands the list of exceptions to include the act of physically altering livestock or poultry for the purpose of conforming with breed or show standards.

While individuals are not required to report animal cruelty to law enforcement officials, many feel compelled to do so. Under a new law, S.L. 2007-232 (H 1359, enacting new G.S. 14-360.1), a veterinarian who has reasonable cause to believe that an animal has been the subject of animal cruelty will be protected from civil and criminal liability as well as any professional disciplinary action for (1) making a report of animal cruelty, (2) participating in a cruelty investigation, or (3) testifying in a cruelty-related judicial proceeding. Note that the new law does not require veterinarians to make these reports. In fact, it specifically states that veterinarians may not be disciplined by the North Carolina Veterinary Medical Board for failing to make a report.

Dog Fighting and Baiting

Two separate bills were enacted this session establishing new exceptions to the state's criminal law governing dog fighting and baiting, G.S. 14-362.2. The first new exception applies to herding dogs engaged in the working of domesticated livestock for agricultural, entertainment, or sporting purposes (S.L. 2007-181; S 21). The second new exception applies to the use of dogs in earthdog trials. An earthdog trial is a sporting event in which certain breeds of dogs, specifically terriers and dachsunds, attempt to locate the "quarry" (such as a caged rat) that is in an underground den. According to the American Kennel Club, the trials are designed to test a dog's "natural aptitude and trained hunting and working behaviors when exposed to an underground hunting situation."[2] As a result of S.L. 2007-180 (S 1424), activities conducted at these earthdog trials are not considered fighting or baiting as long as (1) they are sanctioned or sponsored by entities approved by the Commissioner of Agriculture and (2) the quarry (i.e., bait) is kept separate from the dogs by a sturdy barrier, such as a cage, and has access to food and water. Interestingly, while the earthdog trials are now exempt from the law, the act of training dogs to participate in these trials is not specifically exempted from the law.

Law Enforcement and Assistance Animals

Teasing, obstructing, and causing serious harm to law enforcement and assistance animals are crimes under G.S. 14-163.1. The law provides for penalties ranging from a Class I felony to a Class 2 misdemeanor. S.L. 2007-80 (S 34) amends the law to make it a Class H felony for a person to willfully kill an animal that the person knows or has reason to know is a law enforcement or assistance animal. The act also amends the state's sentencing laws (G.S. 15A-1340.16) to provide that the court may consider as an aggravating factor whether the crime involved harming a law enforcement or assistance animal.

Spay/Neuter Program Funding

The Division of Public Health in the North Carolina Department of Health and Human Services (DHHS) administers the Spay/Neuter program, which has two basic components. One component focuses on public education about the benefits of spaying and neutering pets and the other provides grants to local governments in support of programs that provide free or subsidized spay/neuter services to pets owned by low-income individuals. The second component—the spay/neuter grant program—is currently funded primarily through surcharges on voluntary purchases of "I Care" rabies tags and "Animal Lovers" license plates. S.L. 2007-487 (S 684) amends the funding structure for the program. Beginning in 2008, every rabies tag issued by

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2. *See* American Kennel Club, *Getting Started in Earthdog Tests*, at http://www.akc.org/events/earthdog/getting_started.cfm (last visited August 12, 2007).

DHHS[3] will have a twenty-cent surcharge that will be dedicated to the Spay/Neuter program. Two categories of individuals are exempt from this surcharge: (1) a person who operates an establishment used primarily for boarding and training hunting dogs and (2) a person who owns and vaccinates ten or more dogs per year. S.L. 2007-487 also places a new condition on the receipt of funds from the Spay/Neuter program. Local governments must now require pet owners applying for free or subsidized spay/neuter services to either show proof that the animal has been vaccinated or have it vaccinated at the time of the spay/neuter service.

Petting Zoos

In the fall of 2004, more than 100 people—mostly children under age 6—contracted a communicable disease called E. coli after visiting the petting zoo at the North Carolina State Fair.[4] As a result, the General Assembly passed legislation directing the Commissioner of Agriculture to establish a permitting system for such petting zoos, or "animal exhibitions," at agricultural fairs (S.L. 2005-191, adopting new G.S. 106-520.3A). This year, S.L. 2007-171 (H 590), amends the laws governing liability of agritourism operators to extend them to operators of animal exhibitions at agricultural fairs. If the operator of the animal exhibition posts a sign warning the public about the "inherent risks" related to the animal exhibition, then a person who files a civil lawsuit alleging that he or she was harmed at the exhibition may not be able to recover money damages from the operator.[5] This new provision would not protect the operator in some circumstances, such as if the operator was negligent or had actual knowledge of a dangerous condition.[6]

Miscellaneous

Leaves of Absence for Officials During Active Duty

S.L. 2007-432 (H 671) amends G.S. Chapter 128 to provide for leaves of absence for elected and appointed state, county, and municipal officials who enter active duty in the United States armed forces or the North Carolina National Guard. For county and municipal officials, the leave of absence is obtained by filing a copy of the official's active duty orders with the clerk of the board of county commissioners or the city clerk, as appropriate.

The law allows for the appointment of a temporary replacement if the official will be on active duty for at least thirty days (no temporary replacement is appointed for shorter leaves). In the case of counties and municipalities, the temporary replacement is to be appointed by the board of county commissioners or the city council, respectively. The temporary replacement must be a citizen with all of the qualifications required by law for holding the office.

No vacancy is created by an official's obtaining a leave of absence under the law. During the leave, the official on active duty receives no salary.

The replacement official has all the authority, duties, perquisites, and emoluments of the official being temporarily replaced. The replacement is to begin serving on the date specified in writing by the official being temporarily replaced as the date that he or she will enter active military service, or as soon as practicable thereafter. The replacement's service ends (1) on the third day after the last day of active duty status of the official being temporarily replaced; (2) when the city clerk or the clerk to the board of commissioners receives written notice from the replaced

3. Note that veterinarians and others may purchase rabies tags from sources other than DHHS.
4. *See* Centers for Disease Control, *Outbreaks of Escherichia coli 0157:H7 Associated with Petting Zoos—North Carolina, Florida, and Arizona, 2004 and 2005, Morbidity and Mortality Weekly* (MMWR), 54(50); 1277-1280 (Dec. 23, 2005); Lisa Hoppenjans, *As Girl Copes, Legacy May Protect Others*, Raleigh News & Observer, July 26, 2005, at 1A.
5. G.S. 99E-32.
6. G.S. 99E-31.

official that he or she is ready and able to resume the duties of office; or (3) when the term of office of the person being temporarily replaced expires.

Changes in Cemetery Laws

A number of cities in North Carolina operate cemeteries, and counties often assume some responsibility for cemeteries that have been abandoned and neglected. But many of the cemetery laws that have developed over the years—particularly the provisions dealing with the care of abandoned and neglected cemeteries—have themselves effectively been "abandoned" or "neglected" due to age or disuse.

In recent years, however, the increasing level of development across the state has led to the unearthing of many long-forgotten burying places. The current lack of information about many of these abandoned or neglected cemeteries makes it difficult to contact heirs and properly relocate the discovered human remains.

S.L. 2007-118 (H 107) takes a step toward addressing these and related concerns. The act recodifies much of North Carolina's cemetery law, while also making technical, clarifying, and updating changes. The recodified provisions are gathered into a new Article 12 of G.S. Chapter 65. Also included are definitions of such key terms as *abandoned, neglected, cemetery,* and *grave* that might have been unclear in the past. Sections of the law dealing with municipal cemeteries are repealed, since nearly identical provisions are now found in G.S. 160A-344.

The act makes two changes to the law dealing with county commissioners' responsibilities with respect to certain cemeteries (formerly G.S. 65-1 to 65-3; now G.S. 65-111 to 65-113). For many years, G.S. 65-1 has required boards of county commissioners to prepare and keep on record in the register of deeds' office lists of (1) abandoned public cemeteries and (2) all public cemeteries in the county outside municipal limits that are not established and maintained for municipal use. These lists must be furnished to the division of publications in the office of the Secretary of State. G.S. 65-111, which replaces G.S. 65-1, retains these provisions and adds a new requirement that the lists also be furnished to the Department of Cultural Resources.

Second, the act appears to make completely optional the formerly mandatory responsibilities of boards of county commissioners with respect to public cemeteries, which were set out in G.S. 65-3 and are now found in G.S. 65-113. The prior language in G.S. 65-3 specified that the commissioners were "*required to take possession and control* of all abandoned public cemeteries in their respective counties" [emphasis added], and to see to the completion of various specified tasks involving the cemeteries, either directly or through a board of trustees. The new law, G.S. 65-113, states instead that "[t]he county commissioners of the various counties *are authorized to oversee* all abandoned public cemeteries in their respective counties" [emphasis added], in order to perform the same sorts of tasks as set out in G.S. 65-3. The new law also authorizes the use of a board of trustees.

Given the overall tenor of the portion of S.L. 2007-118 that deals with county commissioners' duties, including the reenactment and expansion in G.S. 65-111 of county commissioners' reporting responsibilities with respect to abandoned and certain other public cemeteries, one might be tempted to conclude that the change from "required" to "authorized" described in the immediately preceding paragraph was merely an oversight. Nevertheless, the change was made, and it appears to give boards of county commissioners the option of removing themselves from all of their responsibilities listed in G.S. 65-113 with respect to the control of abandoned public cemeteries, although they are still required to make the reports specified in G.S. 65-111. In truth, most boards of commissioners have not really been exercising the responsibilities now listed in G.S. 65-113 for many years, and the change may simply be recognition of this fact.

Some other substantive changes are found in the part of S.L. 2007-118 that recodifies the statutes allowing trust accounts to be established with the clerk of superior court for the upkeep of abandoned or neglected graves or cemeteries. This part of the act raises from $100 to $5,000 the minimum amount that must be deposited with the clerk to create such a trust account, and it eliminates the maximum amount for such a deposit. It continues to allow the clerk to use a

qualified bank or trust company as the trustee, and it adds a requirement that the clerk place a copy of the fund accounting in the estate file of the deceased.

S.L. 2007-118 became effective July 1, 2007, and applies to all trusts created on or after that date.

Qualified Immunity for Local Trustees of the Firemen's Relief Fund

S.L. 2007-54 (H 552) adds new G.S. 58-84-60, which makes persons serving on local boards of trustees of the Firemen's Relief Fund immune individually from civil liability for monetary damages—except to the extent covered by insurance—for any act or failure to act arising out of service on the board of trustees. This immunity does not apply in cases where the person

1. was not acting within the scope of his or her official duties;
2. was not acting in good faith;
3. committed gross negligence or willful or wanton misconduct that resulted in the damages or injury;
4. derived an improper direct or indirect personal financial benefit from the transaction; or
5. incurred the liability from the operation of a motor vehicle.

Clarification of the Gender Equity Reporting Statute

G.S. 143-157.1 requires that appointments to statutorily created public bodies be made from among the most qualified persons, in such a manner that the appointments promote membership on each body that accurately reflects the proportion each gender represents in the population of the state as a whole for statewide bodies, or in the population of the area represented by the body, in the case of local bodies. Information about these appointments must be reported annually to the Secretary of State.

Unfortunately, the statute's coverage, especially with respect to local governments, has been unclear. In particular, exactly what is a "statutorily created public body," the appointing authority of which is covered by the law?

Partly in response to the concerns of those who are involved in the local reporting process, in particular clerks of boards of county commissioners and municipal clerks, the Secretary of State's office prepared, and the General Assembly enacted, clarifying revisions to G.S. 143-157.1. S.L. 2007-167 (H 824) amends the law to list thirty-seven specific types of local public bodies that are covered and requires that the clerk of each appointing authority make an annual report on a form prescribed by the Secretary of State. The Secretary of State may accept reports by electronic means. The reports are due by September 1; the Secretary of State uses them to generate an annual composite report to be published by December 1. Copies of this report are submitted to the Governor, the Speaker of the House, and the President Pro Tempore of the Senate. The act also makes clarifying changes in the reporting requirements for state bodies.

Ethics

Several changes were made during the 2007 session to the 2006 State Government Ethics Act, S.L. 2006-201, and some of these modifications should be of interest to local government officials. The ethics act amendments are discussed in Chapter 13, "Ethics and Lobbying."

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