

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1468

Short Title: Growth Management Act of 1999.

(Public)

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Sponsors: Representatives Hackney; and Insko.

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Referred to: Rules, Calendar and Operations of the House.

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May 12, 1999

A BILL TO BE ENTITLED

1 AN ACT PROVIDING FOR EFFECTIVE GROWTH MANAGEMENT BY LOCAL  
2 GOVERNMENTS, AUTHORIZING IMPACT TAXES BY LOCAL  
3 GOVERNMENTS ENGAGING IN EFFECTIVE GROWTH MANAGEMENT,  
4 PROVIDING FOR THE ACQUISITION BY LOCAL GOVERNMENTS OF  
5 INTERESTS IN LAND FOR CONSERVATION PURPOSES; AND ALLOWING  
6 PROPERTY SUBJECT TO CONSERVATION MANAGEMENT AGREEMENTS  
7 TO BE TAXED AT ITS PRESENT-USE VALUE.  
8

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 153A-158 reads as rewritten:

11 "**§ 153A-158. Power to acquire property.**

12 (a) A county may acquire, by gift, grant, devise, bequest, exchange, purchase,  
13 lease, or any other lawful method, the fee or any lesser interest in real or personal  
14 property for use by the county or any department, board, commission, or agency of the  
15 county. In exercising the power of eminent domain a county shall use the procedures of  
16 Chapter 40A.

17 (b) A county may acquire by gift, grant, devise, bequest, exchange, purchase,  
18 lease, or any other lawful method except eminent domain, the fee or any lesser interest in  
19 real property for the purpose of land conservation, including the acceptance of the  
20 transfer of development rights. For the purposes of this subsection, 'development right'

1 means the right of the owner of the fee simple interest in land to change the use of the  
2 land."

3 Section 2. G.S. 160A-240.1 reads as rewritten:

4 **"§ 160A-240.1. Power to acquire property.**

5 (a) A city may acquire, by gift, grant, devise, bequest, exchange, purchase, lease,  
6 or any other lawful method, the fee or any lesser interest in real or personal property for  
7 use by the city or any department, board, commission or agency of the city. In exercising  
8 the power of eminent domain a city shall use the procedures of Chapter 40A. In  
9 exercising the power of eminent domain a city shall use the procedures of Chapter 40A.

10 (b) A city may acquire by gift, grant, devise, bequest, exchange, purchase, lease, or  
11 any other lawful method except eminent domain, the fee or any lesser interest in real  
12 property for the purpose of land conservation, including the acceptance of the transfer of  
13 development rights. For the purposes of this subsection, 'development right' means the  
14 right of the owner of the fee simple interest in land to change the use of the land."

15 Section 3. Article 18 of Chapter 153A of the General Statutes is amended by  
16 adding a new Part to read:

17 **"PART 6. PLANNED GROWTH MANAGEMENT AND COMMUNITY**  
18 **DEVELOPMENT.**

19 **"§ 153A-380. Applicability; legislative findings and intent.**

20 (a) The provisions of this Part shall apply to any county that elects to come under  
21 its coverage upon adoption of a resolution to that effect by the board of county  
22 commissioners. Upon adoption of the resolution, the incorporated municipalities located  
23 wholly or partly within the county shall also come under the coverage of this Part. The  
24 resolution shall remain in effect until rescinded by a three-fifths majority vote of the  
25 board of county commissioners. A certified copy of any resolution of the board of county  
26 commissioners adopted pursuant to this subsection shall be filed with the Secretary of  
27 State and with the Legislative Services Office within 10 days of adoption of the  
28 resolution.

29 (b) The General Assembly finds that:

- 30 (1) Effective growth management by local governments is essential to the  
31 continued prosperity of the State and its citizens.
- 32 (2) Growth planning by local governments facilitates a favorable quality of  
33 life for the citizens of this State and helps to preserve the State's natural,  
34 economic, and cultural resources.
- 35 (3) New commercial and residential development throughout the State  
36 requires local governments to provide additional infrastructure and  
37 services as a result of the new development, particularly with regard to  
38 public school capital needs.
- 39 (4) For counties engaged in effective growth planning, the option of levying  
40 impact taxes on new development will provide a much needed source of  
41 revenue to pay for public school capital needs caused by new  
42 development.

1 (c) It is the intent of the General Assembly that local governments engage in long-  
2 term planning, and that such planning be accomplished through regular communication  
3 and cooperation among local governments, the agencies attached to them, and the  
4 agencies that serve them. It is also the intent of the General Assembly that the growth  
5 plans required by this Part result from communication and cooperation among local  
6 governments.

7 **"§ 153A-380.1. Recommended growth plans.**

8 (a) The board of county commissioners shall serve as the coordinating body for  
9 growth management efforts within the county. In this role, the board of county  
10 commissioners shall confer with the mayor and governing bodies of the incorporated  
11 municipalities located wholly or partly within the county.

12 (b) The board of county commissioners shall develop a recommended growth plan  
13 to identify urban growth boundaries for each municipality within the county and shall  
14 identify planned growth areas and rural areas within the county, all in conformance with  
15 G.S. 153A-380.2. In developing a recommended growth plan, the board of county  
16 commissioners shall give due consideration to urban growth boundaries proposed by each  
17 municipal governing body. The board of commissioners shall utilize the planning  
18 resources that are available within the county, including municipal and county planning  
19 boards and commissions. All State departments, agencies, and institutions that provide  
20 planning and community assistance services shall cooperate with the board of county  
21 commissioners in developing recommended growth plans upon the board's written  
22 request. The board of county commissioners shall conduct at least two public hearings  
23 before adopting a recommended growth plan. The county shall give at least 15 days'  
24 advance notice of the time, place, and purpose of each public hearing by notice published  
25 in a newspaper of general circulation throughout the county.

26 (c) The county shall transmit copies of the recommended growth plan to the mayor  
27 and governing body of each incorporated municipality located wholly or partly in the  
28 county. Each municipality shall develop and submit to the board of county  
29 commissioners, within 120 days, a written response to the county's recommended growth  
30 plans. The municipal response shall set forth any objections to the county's  
31 recommended growth plan, including detailed reasons for each objection. The  
32 municipality shall conduct at least one public hearing on its response to the county's  
33 recommended growth plan. The municipality shall give at least 15 days' advance notice  
34 of the time, place, and purpose of the public hearing by notice published in a newspaper  
35 of general circulation throughout the county.

36 (d) The board of county commissioners shall give due consideration to the  
37 municipal responses to its recommended growth plan. The board of county  
38 commissioners shall make any necessary revisions to the recommended growth plan  
39 based upon information provided by the municipalities. The board of county  
40 commissioners may consider any other relevant information available to the board  
41 subsequent to adoption of its initial recommended growth plan.

42 **"§ 153A-380.2. Growth boundaries defined.**

43 (a) The urban growth boundaries of a municipality shall:

- 1           (1) Identify territory that is reasonably compact yet sufficiently large to  
2 accommodate residential and nonresidential growth projected to occur  
3 during the next 20 years;
- 4           (2) Identify territory that is contiguous to the existing boundaries of the  
5 municipality;
- 6           (3) Identify territory that a reasonable and prudent person would project is  
7 the likely site of high density, commercial, industrial, and residential  
8 growth, or both, over the next 20 years based on historical experience,  
9 economic trends, population growth patterns, and topographical  
10 characteristics. If available, professional planning, engineering, and  
11 economic studies may also be considered;
- 12           (4) Identify territory in which the municipality is better able and prepared  
13 than other municipalities to efficiently and effectively provide urban  
14 services; and
- 15           (5) Reflect the municipality's duty to facilitate full development of  
16 resources within the current boundaries of the municipality and to  
17 manage and control urban expansion outside of the current boundaries,  
18 taking into account the impact to agricultural lands, forest, recreational  
19 areas, and wildlife management areas.
- 20           (a1) Before formally proposing urban growth boundaries to the board of county  
21 commissioners, the municipality shall develop and report population growth projections.  
22 The municipality shall also determine and report the current costs and the projected costs  
23 of core infrastructure, urban services, and public facilities necessary to facilitate full  
24 development of resources within the current boundaries of the municipality and to expand  
25 such infrastructure, services, and facilities throughout the territory under consideration  
26 for inclusion within the urban growth boundaries. The municipality shall also determine  
27 and report on the need for additional land suitable for high density, industrial,  
28 commercial, and residential development, after taking into account all areas within the  
29 municipality's current boundaries that can be used, reused, or redeveloped to meet such  
30 needs. The municipality shall examine and report on agricultural lands, forests,  
31 recreational areas, and wildlife management areas within the territory under consideration  
32 for inclusion within the urban growth boundaries and shall examine and report on the  
33 likely long-term effects of urban expansion on such agricultural lands, forests,  
34 recreational areas, and wildlife management areas.
- 35           (b) Each planned growth area of a county shall:
- 36           (1) Identify territory that is reasonably compact yet sufficiently large to  
37 accommodate residential and nonresidential growth projected to occur  
38 during the next 20 years;
- 39           (2) Identify territory that is not within the existing boundaries of any  
40 municipality;
- 41           (3) Identify territory that a reasonable and prudent person would project as  
42 the likely site of high or moderate density, commercial, industrial, or  
43 residential growth over the next 20 years based on historical experience,

1 economic trends, population growth patterns, and topographical  
2 characteristics. If available, professional planning, engineering, and  
3 economic studies may also be considered;

4 (4) Identify territory that is not contained within urban growth boundaries;  
5 and

6 (5) Reflect the county's duty to manage natural resources and to manage  
7 and control urban growth, taking into account the impact to agricultural  
8 lands, forests, recreational areas, and wildlife management areas.

9 (b1) Before formally proposing any planned growth area, the county shall develop  
10 and report population growth projections. The county shall also determine and report the  
11 projected costs of providing urban type core infrastructure, urban services, and public  
12 facilities throughout the territory under consideration for inclusion within the planned  
13 growth area as well as the feasibility of recouping such costs by imposition of fees or  
14 taxes within the planned growth area. The county shall also determine and report on the  
15 need for additional land suitable for high density, industrial, commercial, and residential  
16 development after taking into account all areas within the current boundaries of  
17 municipalities that can be used, reused, or redeveloped to meet such needs. The county  
18 shall also determine and report on the likelihood that the territory under consideration for  
19 inclusion within the planned growth area will eventually incorporate as a new  
20 municipality or be annexed. The county shall also examine and report on agricultural  
21 lands, forests, recreational areas, and wildlife management areas within the territory  
22 under consideration for inclusion within the planned growth area and shall examine and  
23 report on the likely long-term effects of urban expansion on such agricultural lands,  
24 forests, recreational areas, and wildlife management areas.

25 (c) Each rural area shall:

26 (1) Identify territory that is not within urban growth boundaries;

27 (2) Identify territory that is not within a planned growth area;

28 (3) Identify territory that, over the next 20 years, is to be preserved as  
29 agricultural lands, forests, recreational areas, wildlife management  
30 areas, or for uses other than high density, commercial, industrial, or  
31 residential development; and

32 (4) Reflect the county's duty to manage growth and natural resources in a  
33 manner which reasonably minimizes detrimental impact to agricultural  
34 lands, forests, recreational areas, and wildlife management areas.

35 "**§ 153A-380.3. Final growth plan; land-use decisions to be consistent with plan;**  
36 **dispute resolution; judicial review.**

37 (a) Not later than July 1, 2001, a growth plan for each county and the incorporated  
38 municipalities located wholly or partly in the county shall be finalized by the board of  
39 county commissioners in accordance with the provisions of this Part. After a growth plan  
40 is approved, all land-use planning decisions made by the county and the incorporated  
41 municipalities located wholly or partly in the county, and by their respective planning  
42 boards and other related departments and bodies, shall be consistent with the final growth  
43 plan.

1       (b) The final growth plan shall include, at a minimum, documents describing and  
2 depicting municipal corporate limits, as well as urban growth boundaries, planned growth  
3 areas, if any, and rural areas, if any, developed in conformance with the provisions of this  
4 Part.

5       (c) The final growth plan shall direct the coordinated, efficient, and orderly  
6 development of the covered local governments and environs that will, based on an  
7 analysis of present and future needs, best promote the public health, safety, morals, and  
8 general welfare. The final growth plan may address land-use, transportation, public  
9 infrastructure, housing, public education, and economic development. The goals and  
10 objectives of the final growth plan shall include the need to:

- 11           (1) Provide a unified physical design for the development of the local  
12 community;
- 13           (2) Encourage a pattern of compact and contiguous high density  
14 development to be guided into urban areas or planned growth areas;
- 15           (3) Establish an acceptable and consistent level of public services and  
16 community facilities and ensure timely provision of those services and  
17 facilities;
- 18           (4) Promote the adequate provision of employment opportunities and the  
19 economic health of the region;
- 20           (5) Conserve features of significant statewide or regional architectural,  
21 cultural, historical, or archaeological interest;
- 22           (6) Protect life and property from the effects of natural hazards, such as  
23 flooding, winds, and wildfires;
- 24           (7) Take into consideration any other matters that may be logically related  
25 to or form an integral part of a plan for the coordinated, efficient, and  
26 orderly development of the local community; and
- 27           (8) Provide for a variety of housing choices and assure affordable housing  
28 for future population growth.

29       (d) Any objection to a recommended growth plan made by an incorporated  
30 municipality in accordance with G.S. 153A-380.1 that is not resolved fully under the  
31 provisions of the final growth plan adopted by the board of county commissioners may be  
32 subject to consideration and dispute resolution by the Local Government Commission as  
33 provided by G.S. 159-3.

34       (e) An affected incorporated municipality, a resident of the county, or an owner of  
35 real property located within the county is entitled to judicial review under this subsection,  
36 which shall be the exclusive method for judicial review of the final growth plan, as  
37 follows:

- 38           (1) Proceedings for review shall be instituted by filing a petition before the  
39 superior court in the county. The petition must be filed within 30 days  
40 of the board of county commissioners' approval of the final growth plan.
- 41           (2) Judicial review shall be de novo and shall be conducted without a jury.  
42 The petitioner shall have the burden of proving, by a preponderance of  
43 the evidence, that the recommended growth plan is invalid because it

1           was adopted in an arbitrary, capricious, illegal, or other manner  
2           characterized by an abuse of official discretion.

3           (3) The filing of a petition for judicial review shall not automatically stay  
4           effectiveness of the final growth plan. The court may order a stay upon  
5           appropriate terms if it is shown to the satisfaction of the court that any  
6           party or the public at large is likely to suffer significant injury if the stay  
7           is not granted. If more than one civil action is filed within the county,  
8           then all the petitions shall be consolidated and tried as a single civil  
9           action.

10          (4) If the court finds by a preponderance of the evidence that the final  
11          growth plan is invalid because it was adopted in an arbitrary, capricious,  
12          illegal, or other manner characterized by an abuse of official discretion,  
13          then an order shall be issued vacating the plan, in whole or in part, and  
14          remanding the plan to the county to adopt a final growth plan in  
15          conformance with the procedures set forth in this Part.

16 **"§ 153A-380.4. Joint economic development planning.**

17          (a) There shall be established in each county a joint economic and community  
18          development board which shall be established by interlocal agreement. The purpose of  
19          the board is to foster communication relative to economic and community development  
20          between and among governmental entities, industry, and private citizens.

21          (b) Each joint economic and community development board shall be composed of  
22          representatives of county and municipal governments, private citizens, and present  
23          industries and businesses. The final composition of the board shall be determined by  
24          interlocal agreement but shall, at a minimum, include the chair of the board of county  
25          commissioners, the county manager, the mayors, and city managers, as appropriate, of  
26          each incorporated municipality lying within the county, and one person who owns land  
27          qualifying for classification and valuation under Article 12B of Chapter 105 of the  
28          General Statutes. In cases where there are multiple municipalities, smaller municipalities  
29          may have representation on a rotating basis as determined by the interlocal agreement.

30          (c) There shall be an executive committee of the board which shall be composed  
31          of members of the joint economic and community development board selected by the  
32          entire board. The composition of the executive committee shall be determined by the  
33          entire joint economic and community development board but shall, at a minimum,  
34          include the county manager and the mayors or managers of the larger municipalities in  
35          the county.

36          (d) The terms of office shall be determined by the interlocal agreement but shall be  
37          staggered except for those positions held by elected officials whose terms shall coincide  
38          with the terms of office for their elected positions. All terms of office shall be for a  
39          maximum of four years.

40          (e) The board shall meet, at a minimum, four times annually and the executive  
41          committee of the board shall meet at least eight times annually. Meetings of the board  
42          and the executive committee shall be documented by minutes kept and certification of

1 attendance. Meetings of the joint economic and community development board and its  
2 executive committee are subject to the open meetings law.

3 (f) The activities of the board shall be jointly funded by the participating  
4 governments. The board may accept and expend donations, grants, and payments from  
5 persons and entities other than the participating local governments. An annual budget to  
6 fund the activities of the board shall be recommended by the executive committee to the  
7 board which shall adopt a budget before April 1 of each year. The funding formula  
8 established by the interlocal agreement shall then be applied to the total amount budgeted  
9 by the board as the participating governments' contributions for the ensuing fiscal year.  
10 The budget and a statement of the amount due from each participating government shall  
11 be immediately filed with the appropriate officer of each participating government. In  
12 the event a participating government does not fully fund its contribution, the board may  
13 establish and impose such sanctions or conditions as it deems proper.

14 **"§ 153A-380.5. Impact tax.**

15 (a) The following definitions apply to this section:

16 (1) Commercial building enclosed floor space. – All enclosed floor space  
17 used for any purpose except:

18 a. Dwelling units and accessory structures to dwelling units.

19 b. Recreational facilities constructed as part of a residential  
20 development and used primarily by residents of the development.

21 c. Buildings owned by the United States, the State of North  
22 Carolina, any county, or any municipal corporation.

23 d. Buildings owned and operated by nonprofit entities for  
24 noncommercial and nonresidential purposes.

25 e. Schools or day care centers.

26 (2) Dwelling unit. – An enclosure containing sleeping, kitchen, and  
27 bathroom facilities designed for and used or held ready for use as a  
28 permanent residence by one family.

29 (3) Land development. –

30 a. Land development includes any of the following:

31 1. Construction of any dwelling unit, other than one  
32 excluded under sub-subdivision b. of this subdivision, for  
33 which a building permit was issued or should have been  
34 issued after the effective date of an ordinance adopted  
35 under this Part.

36 2. Construction of any commercial building enclosed floor  
37 space for which a building permit was issued or should  
38 have been issued after the effective date of an ordinance  
39 adopted under this Part.

40 3. Conversion of a building that adds one or more new  
41 dwelling units or that creates new commercial building  
42 enclosed floor space.

- 1                   4.     The initial location of a manufactured home or other  
2                   dwelling or commercial structure within the county.
- 3            b.     For purposes of determining the impact of land development for  
4            this section, land development does not include:
- 5                   1.     Construction of an addition to a dwelling unit.  
6                   2.     The relocation within the county of any structure located  
7                   within the county on the effective date of an ordinance  
8                   adopted pursuant to this Part or any structure with respect  
9                   to which an impact tax pursuant to this section has been  
10                  paid.
- 11                  3.     Within the county, the reconstruction or replacement of  
12                  one dwelling unit by another or the replacement or  
13                  reconstruction of commercial building enclosed floor  
14                  space that was in existence on the effective date of an  
15                  ordinance adopted pursuant to this Part or of any such  
16                  floor space with respect to which an impact tax adopted  
17                  pursuant to this section has been paid.
- 18           (4)    Net proceeds. – The gross proceeds of the tax less the cost to the county  
19           of collecting and administering the tax.
- 20           (5)    Person. – An individual, a partnership, a corporation, or another legal  
21           entity.
- 22           (6)    Person responsible for the impact of land development. – The owner of  
23           any dwelling unit or commercial building enclosed floor space on the  
24           date an occupancy permit is issued for the dwelling unit or commercial  
25           floor space or, if no occupancy permit is issued, the date the dwelling  
26           unit or commercial floor space is occupied.
- 27           (b)    Except as provided in subsection (c) of this section, a county which has  
28           adopted a final growth plan pursuant to G.S. 153A-380.3 may adopt an ordinance levying  
29           a tax on the impact of land development within the county and to provide for the  
30           administration, enforcement, and collection of the tax.
- 31           (c)    A county may not adopt an ordinance pursuant to this section if any other  
32           ordinance pertaining to a system of impact fees to provide for capital improvements to  
33           public schools within the county is in effect.
- 34           (d)    A county may not levy impact taxes on a land development that would exceed  
35           one dollar (\$1.00) per square foot of each new dwelling unit or one dollar (\$1.00) per  
36           square foot of new commercial building enclosed floor space.
- 37           (e)    The purpose of the tax authorized by this section is to generate funds to  
38           partially offset the cost of constructing new school capital facilities or replacing,  
39           expanding, or improving existing school capital facilities necessitated in part by new  
40           growth within the county. Accordingly, the net proceeds generated by the tax authorized  
41           by this section shall be deposited by the county in its capital reserve improvements fund  
42           or funds established under Part 2 of Article 3 of Chapter 159 of the General Statutes and

1 may be expended, to the extent otherwise authorized by law, only for capital  
2 improvements projects related to public schools.

3 (f) An ordinance adopted pursuant to this section shall provide that:

4 (1) A person responsible for the impact of land development shall pay an  
5 impact tax for each square foot of dwelling space and commercial  
6 building enclosed floor space for which an occupancy permit is issued  
7 or, if no occupancy permit is issued, for each square foot of dwelling  
8 space in an occupied dwelling and for each square foot of occupied  
9 enclosed floor space in a commercial building.

10 (2) The tax shall be due on or before the date an occupancy permit is  
11 initially issued for the dwelling unit or commercial building enclosed  
12 floor space in question or, if no occupancy permit is issued, the date the  
13 dwelling unit or commercial floor space is initially occupied. However,  
14 no tax due shall be considered delinquent until 60 days after the tax  
15 becomes due. There shall be added to delinquent taxes interest at the  
16 legal rate.

17 (3) Taxes authorized by this section may be collected pursuant to G.S.  
18 153A-147 or G.S. 160A-207. In addition, taxes authorized by this  
19 section may be recovered in a civil action in the nature of debt including  
20 an award of reasonable attorneys' fees as part of costs.

21 (g) The county shall establish annually at the time of the adoption of its annual  
22 budget the tax rate to be levied per square foot of dwelling space and per square foot of  
23 commercial building enclosed floor space for the ensuing fiscal year. Different tax rates  
24 may be established for different types of dwelling units and different types of commercial  
25 building enclosed floor space.

26 (h) The county may repeal all or part of an existing ordinance pertaining to a  
27 system of impact fees to provide for capital improvements to public schools within the  
28 county adopted under any local act. The county may not adopt another ordinance  
29 pertaining to a system of impact fees to provide for capital improvements to public  
30 schools within the county while an ordinance adopted pursuant to this section is in effect.

31 (i) Whenever the sale of real property located in the county involves new  
32 construction, the seller shall prepare and sign, and the buyer shall receive and sign, a  
33 disclosure statement. The disclosure statement shall either be included in a contract or  
34 sale or contained in a separate document executed prior to the execution of a sales  
35 contract. This disclosure statement shall fully and completely disclose that the owner of  
36 the property at the time an occupancy permit issued for the new construction or, if no  
37 occupancy permit is issued, the date the new construction is occupied, may be subject to  
38 a tax levied by the county on the impact of land development. If a seller fails to make  
39 this disclosure and the buyer suffers injury as a result of the seller's failure to disclose, the  
40 seller is liable to the buyer to the extent of the buyer's injury."

41 Section 4. G.S. 159-3 reads as rewritten:

42 "**§ 159-3. Local Government Commission established.**

1 (a) The Local Government Commission consists of nine members. The State  
2 Treasurer, the State Auditor, the Secretary of State, and the Secretary of Revenue each  
3 serve ex officio; the remaining five members are appointed to four-year terms as follows:  
4 three by the Governor, one by the General Assembly upon the recommendation of the  
5 President Pro Tempore in accordance with G.S. 120-121, and one by the General  
6 Assembly upon the recommendation of the Speaker of the House in accordance with G.S.  
7 120-121. Of the three members appointed by the Governor, one shall be or have been the  
8 mayor or a member of the governing board of a city and one shall be or have been a  
9 member of a county board of commissioners. The State Treasurer is chairman ex officio  
10 of the Local Government Commission. Membership on the Commission is an office that  
11 may be held concurrently with one other office, as permitted by G.S. 128-1.1.

12 ~~The~~ Except as provided by subsection (b1) of this section, the Commission  
13 shall meet at least quarterly in the City of Raleigh, and may hold special meetings at any  
14 time or place upon notice to each member given in person or by mail not later than the  
15 fifth day before the meeting. The notice need not state the purpose of the meeting.

16 Action of the Commission shall be taken by resolution adopted by majority vote of  
17 those present and voting. A majority of the Commission constitutes a quorum.

18 (b1) The Commission may meet, as often as necessary, outside the City of Raleigh  
19 to consider and resolve disputes between local governments arising under Part 6 of  
20 Article 18 of Chapter 153A of the General Statutes. Whenever practicable, the  
21 Commission shall meet in the county where the dispute has arisen.

22 (c) The appointed members of the Commission are entitled to the per diem  
23 compensation and allowances prescribed by G.S. 138-5. All members are entitled to  
24 reimbursement for necessary travel and other expenses.

25 (d) The Commission may call upon the Attorney General for legal advice in  
26 relation to its powers and duties. The Commission may call upon the Secretary of  
27 Commerce, the Secretary of the Department of Cultural Resources, the Secretary of the  
28 Department of Environment and Natural Resources, and the Secretary of the Department  
29 of Transportation, as appropriate, for consultations and technical assistance in connection  
30 with the resolution of disputes between local governments arising under Part 6 of Article  
31 18 of Chapter 153A of the General Statutes.

32 (e) The Local Government Commission shall operate as a division of the  
33 Department of the State Treasurer.

34 (f) The Commission may adopt rules and regulations to carry out its powers and  
35 duties."

36 Section 5. Subchapter II of Chapter 105 of the General Statutes is amended by  
37 adding a new Article 12B entitled "Use-Value Taxation."

38 Section 6. G.S. 105-277.2 is recodified as G.S. 105-282.10 in Article 12B of  
39 Chapter 105 of the General Statutes.

40 Section 7. G.S. 105-277.3 through G.S. 105-277.7 are recodified as G.S. 105-  
41 282.12 through G.S. 105-282.16 in Article 12B of Chapter 105 of the General Statutes.

42 Section 8. Article 12B of Chapter 105 of the General Statutes, as enacted and  
43 amended by this act, reads as rewritten:

**"ARTICLE 12B.  
"USE-VALUE TAXATION.**

**"§ 105-282.10. Agricultural, horticultural, and forestland—Definitions.**

The following definitions apply in ~~G.S. 105-277.3 through G.S. 105-277.7~~; this Article:

- (1) Agricultural land. – Land that is a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program. Agricultural land includes woodland and wasteland that is a part of the farm unit, but the woodland and wasteland included in the unit shall be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in ~~G.S. 105-277.3(a)(1)~~, 105-282.12(a)(1), and each tract must be under a sound management program.
- (1a) Business entity. – A corporation, a general partnership, a limited partnership, or a limited liability company.
- (2) Forestland. – Land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit shall be appraised under the use-value schedules as wasteland. A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements in ~~G.S. 105-277.3(a)(3)~~, 105-282.12(a)(3), and each tract must be under a sound management program.
- (3) Horticultural land. – Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit shall be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in ~~G.S. 105-277.3(a)(2)~~, 105-282.12(a)(2), and each tract must be under a sound management program.
- (4) Individually owned. – Owned by one of the following:
  - a. A natural person. For the purpose of this section, a natural person who is an income beneficiary of a trust that owns land may elect to treat the person's beneficial share of the land as owned by that person. If the person's beneficial interest is not an identifiable share of land but can be established as a proportional interest in the trust income, the person's beneficial share of land is a percentage of the land owned by the trust that corresponds to the beneficiary's proportional interest in the trust income. For the purpose of this section, a natural person who is a member of a

- 1 business entity, other than a corporation, that owns land may  
2 elect to treat the person's share of the land as owned by that  
3 person. The person's share is a percentage of the land owned by  
4 the business entity that corresponds to the person's percentage of  
5 ownership in the entity.
- 6 b. A business entity having as its principal business one of the  
7 activities described in subdivisions (1), (2), and (3) and whose  
8 members are all natural persons who meet one or more of the  
9 following conditions:
- 10 1. The member is actively engaged in the business of the  
11 entity.
- 12 2. The member is a relative of a member who is actively  
13 engaged in the business of the entity.
- 14 3. The member is a relative of, and inherited the membership  
15 interest from, a decedent who met one or both of the  
16 preceding conditions after the land qualified for  
17 classification in the hands of the business entity.
- 18 c. A trust that was created by a natural person who transferred the  
19 land to the trust and each of whose beneficiaries who is currently  
20 entitled to receive income or principal meets one of the following  
21 conditions:
- 22 1. Is the creator of the trust or the creator's relative.
- 23 2. Is a second trust whose beneficiaries who are currently  
24 entitled to receive income or principal are all either the  
25 creator of the first trust or the creator's relatives.
- 26 d. A testamentary trust that meets all of the following conditions:
- 27 1. It was created by a natural person who transferred to the  
28 trust land that qualified in that person's hands for  
29 classification under G.S. 405-277.3-105-282.12.
- 30 2. At the time of the creator's death, the creator had no  
31 relatives as defined in this section as of the date of death.
- 32 3. The trust income, less reasonable administrative expenses,  
33 is used exclusively for educational, scientific, literary,  
34 cultural, charitable, or religious purposes as defined in  
35 G.S. 105-278.3(d).
- 36 (4a) Member. – A shareholder of a corporation, a partner of a general or  
37 limited partnership, or a member of a limited liability company.
- 38 (5) Present-use value. — ~~The value of land in its current use as~~ In the case of  
39 agricultural land, horticultural land, or forestland, the value of the land  
40 based solely on its ability to produce income, using a rate of nine  
41 percent (9%) to capitalize the expected net income of the property and  
42 assuming an average level of management. In the case of conservation

land classified under G.S. 105-282.11, the value of the land based solely on its value in its present use.

(5a) Relative. – Any of the following:

- a. A spouse or the spouse's lineal ancestor or descendant.
- b. A lineal ancestor or a lineal descendant.
- c. A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.
- d. An aunt or an uncle.
- e. A spouse of a person listed in paragraphs a. through d.

For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term 'spouse' includes a surviving spouse.

(6) Sound management program. – A program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement.

**"§ 105-282.11. Classification of conservation land.**

(a) Land that meets all of the following conditions is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and shall be appraised, assessed, and taxed as provided in this Article:

(1) It is managed for the protection of environmental resources for the public benefit.

(2) It is subject to a written conservation management agreement between the owner and the State, a local government, or an entity that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9.

(3) The Department of Environment and Natural Resources has certified that the land is suitable to be managed for the protection of environmental resources for the public benefit.

(b) Land that meets all of the following conditions is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and shall be appraised, assessed, and taxed as provided in this Article:

(1) It is managed for the preservation of historical, architectural, archaeological, or other cultural aspects of land.

(2) It is subject to:

a. A written conservation management agreement between the owner and the State or a local government.

b. Either (i) a written agreement between the owner and local government that transfers the owner's development rights to the land or (ii) another instrument conveying to a local government less than a fee simple interest in the land in accordance with G.S. 153A-158(b) or G.S. 160A-240.1(b).

(3) The Department of Cultural Resources has certified that the land is suitable to be managed for the preservation of cultural resources for the public benefit.

1 "**§ 105-282.12. Agricultural, horticultural, and forestland — Classifications.**  
2 **Classification of farmland.**

3 (a) **Classes Defined.** – The following classes of property are designated special  
4 classes of property under authority of Section 2(2) of Article V of the North Carolina  
5 Constitution and shall be appraised, assessed, and taxed as provided in ~~G.S. 105-277.2~~  
6 ~~through G.S. 105-277.7.~~ this Article.

7 (1) **Agricultural land.** – Individually owned agricultural land consisting of  
8 one or more tracts, one of which consists of at least 10 acres that are in  
9 actual production and that, for the three years preceding January 1 of the  
10 year for which the benefit of this section is claimed, have produced an  
11 average gross income of at least one thousand dollars (\$1,000). Gross  
12 income includes income from the sale of the agricultural products  
13 produced from the land and any payments received under a  
14 governmental soil conservation or land retirement program. Land in  
15 actual production includes land under improvements used in the  
16 commercial production or growing of crops, plants, or animals.

17 (2) **Horticultural land.** – Individually owned horticultural land consisting of  
18 one or more tracts, one of which consists of at least five acres that are in  
19 actual production and that, for the three years preceding January 1 of the  
20 year for which the benefit of this section is claimed, have met the  
21 applicable minimum gross income requirement. Land in actual  
22 production includes land under improvements used in the commercial  
23 production or growing of fruits or vegetables or nursery or floral  
24 products. Land that has been used to produce evergreens intended for  
25 use as Christmas trees must have met the minimum gross income  
26 requirements established by the Department of Revenue for the land.  
27 All other horticultural land must have produced an average gross  
28 income of at least one thousand dollars (\$1,000). Gross income includes  
29 income from the sale of the horticultural products produced from the  
30 land and any payments received under a governmental soil conservation  
31 or land retirement program.

32 (3) **Forestland.** – Individually owned forestland consisting of one or more  
33 tracts, one of which consists of at least 20 acres that are in actual  
34 production and are not included in a farm unit.

35 (b) **Natural Person Ownership Requirements.** – In order to come within a  
36 classification described in subsection (a) of this section, the land must, if owned by a  
37 natural person, also satisfy one of the following conditions:

38 (1) It is the owner's place of residence.

39 (2) It has been owned by the current owner or a relative of the current  
40 owner for the four years preceding January 1 of the year for which the  
41 benefit of this section is claimed.

42 (3) At the time of transfer to the current owner, it qualified for classification  
43 in the hands of a business entity or trust that transferred the land to the

1 current owner who was a member of the business entity or a beneficiary  
2 of the trust, as appropriate.

3 (b1) Entity Ownership Requirements. – In order to come within a classification  
4 described in subsection (a) of this section, the land must, if owned by a business entity or  
5 trust, have been owned by the business entity or trust or by one or more of its members  
6 or creators, respectively, for the four years immediately preceding January 1 of the year  
7 for which the benefit of this section is claimed.

8 (b2) Exception to Ownership Requirements. – G.S. ~~105-277.4(e)~~-105-282.13(c)  
9 provides that deferred taxes are payable if land fails to meet any condition or requirement  
10 for classification. Accordingly, if land fails to meet an ownership requirement due to a  
11 change of ownership, G.S. ~~105-277.4(e)~~-105-282.13(c) applies. Despite this failure and  
12 the resulting liability for taxes under G.S. ~~105-277.4(e)~~-105-282.13(c), the land may  
13 qualify for classification in the hands of the new owner if both of the following  
14 conditions are met, even if the new owner does not meet all of the ownership  
15 requirements of subsections (b) and (b1) of this section with respect to the land:

16 (1) The land was appraised at its present use value or was eligible for  
17 appraisal at its present use value at the time title to the land passed to  
18 the new owner.

19 (2) At the time title to the land passed to the new owner, the owner owned  
20 other land classified under subsection (a).

21 (c) Repealed by Session Laws 1995, c. 454, s. 2.

22 (d) Exception for Conservation Reserve Program. – Land enrolled in the federal  
23 Conservation Reserve Program authorized by 16 U.S.C. § 1381 is considered to be in  
24 actual production, and income derived from participation in the federal Conservation  
25 Reserve Program may be used in meeting the minimum gross income requirements of  
26 this section either separately or in combination with income from actual production. Land  
27 enrolled in the federal Conservation Reserve Program shall be assessed as agricultural  
28 land if it is planted in vegetation other than trees, or as forestland if it is planted in trees.

29 (e) Exception for Turkey Disease. – Agricultural land that meets all of the  
30 following conditions is considered to be in actual production and to meet the minimum  
31 gross income requirements:

32 (1) The land was in actual production in turkey growing within the  
33 preceding two years and qualified for present use value treatment while  
34 it was in actual production.

35 (2) The land was taken out of actual production in turkey growing solely for  
36 health and safety considerations due to the presence of Poult Enteritis  
37 Mortality Syndrome among turkeys in the same county or a neighboring  
38 county.

39 (3) The land is otherwise eligible for present use value treatment.

40 "~~§ 105-282.13. Agricultural, horticultural and forestland—Application; appraisal~~  
41 Appraisal at use value; appeal; deferred taxes.

42 (a) Application. – Property coming within one of the classes defined in G.S. ~~105-~~  
43 ~~277.3~~ shall be this Article is eligible for taxation on the basis of the value of the property

1 in its present use if a timely and proper application is filed with the assessor of the county  
2 in which the property is located. The application ~~shall clearly show~~ must show clearly that  
3 the property comes within one of the classes and ~~shall~~ must also contain any other  
4 relevant information required by the assessor to properly appraise the property at its  
5 present-use value. An initial application ~~shall~~ must be filed during the regular listing  
6 period of the year for which the benefit of this classification is first claimed, or within 30  
7 days ~~of~~ after the date shown on a notice of a change in valuation made pursuant to G.S.  
8 105-286 or G.S. 105-287. A new application is not required to be submitted unless the  
9 property is transferred or becomes ineligible for use-value appraisal because of a change  
10 in use or acreage.

11 (b) Appraisal at Present-use Value. – Upon receipt of a properly executed  
12 application, the assessor shall appraise the property at its present-use value as established  
13 in the schedule prepared pursuant to G.S. 105-317. In appraising the property at its  
14 present-use value, the assessor shall appraise the improvements located on qualifying  
15 land according to the schedules and standards used in appraising other similar  
16 improvements in the county. If all or any part of a qualifying tract of land is located  
17 within the limits of an incorporated city or town, or is property annexed subject to G.S.  
18 160A-37(f1) or G.S. 160A-49(f1), the assessor shall furnish a copy of the property record  
19 showing both the present-use appraisal and the valuation upon which the property would  
20 have been taxed in the absence of this classification to the collector of the city or town.  
21 ~~He~~ The assessor shall also notify the tax collector of any changes in the appraisals or in  
22 the eligibility of the property for the benefit of this classification. Upon a request for a  
23 certification pursuant to G.S. 160A-37(f1) or G.S.160A-49(f1), or any change in the  
24 certification, the assessor for the county where the land subject to the annexation is  
25 located shall, within 30 days, determine if the land meets the requirements of G.S. 160A-  
26 37(f1)(2) or G.S. 160A-49(f1)(2) and report the results of its findings to the city.

27 (b1) Appeal. – Decisions of the assessor regarding the qualification or appraisal of  
28 property under this section may be appealed to the county board of equalization and  
29 review or, if that board is not in session, to the board of county commissioners. Decisions  
30 of the county board may be appealed to the Property Tax Commission.

31 (c) Deferred Taxes. – Land meeting the conditions for classification under ~~G.S.~~  
32 ~~105-277.3~~ this Article shall be taxed on the basis of the value of the land for its present  
33 use. The difference between the taxes due on the present-use basis and the taxes that  
34 would have been payable in the absence of this classification, together with any interest,  
35 penalties, or costs that may accrue thereon, are a lien on the real property of the taxpayer  
36 as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the  
37 records of the taxing unit or units as deferred taxes. The taxes become due and payable  
38 when the land fails to meet any condition or requirement for classification. The tax for  
39 the fiscal year that opens in the calendar year in which deferred taxes become due is  
40 computed as if the land had not been classified for that year, and taxes for the preceding  
41 three fiscal years that have been deferred are immediately payable, together with interest  
42 as provided in G.S. 105-360 for unpaid taxes. Interest accrues on the deferred taxes due  
43 as if they had been payable on the dates on which they originally became due. If only a

1 part of the qualifying tract of land fails to meet a condition or requirement for  
2 classification, a determination shall be made of the amount of deferred taxes applicable to  
3 that part and that amount becomes payable with interest as provided above. Upon the  
4 payment of any taxes deferred in accordance with this section for the three years  
5 immediately preceding a disqualification, all liens arising under this subsection are  
6 extinguished.

7 (d) Exceptions. – Notwithstanding the provisions of subsection (c) of this section,  
8 if property loses its eligibility for present use value classification solely due to one of the  
9 following reasons, no deferred taxes are due and the lien for the deferred taxes is  
10 extinguished:

11 (1) There is a change in income caused by enrollment of the property in the  
12 federal conservation reserve program established under 16 U.S.C.  
13 Chapter 58.

14 (2) The property is conveyed by gift to a nonprofit organization and  
15 qualifies for exclusion from the tax base pursuant to G.S. 105-275(12)  
16 or G.S. 105-275(29).

17 (3) The property is conveyed by gift to the State, a political subdivision of  
18 the State, or the United States.

19 (e) Repealed by Session Laws 1997-270, s. 3.

20 **"§ 105-282.14. ~~Agricultural, horticultural and forestland~~ Notice of change in use.**

21 Not later than the close of the listing period following a change which would  
22 disqualify all or a part of a tract of land receiving the benefit of this classification, the  
23 property owner shall furnish the assessor with complete information regarding ~~such the~~  
24 change. Any property owner who fails to notify the assessor of changes ~~as aforesaid~~  
25 regarding land receiving the benefit of this classification shall be subject to a penalty of  
26 ten percent (10%) of the total amount of the deferred taxes and interest thereon for each  
27 listing period for which the failure to report continues.

28 **"§ 105-282.15. ~~Agricultural, horticultural and forestland~~ Appraisal; computation of  
29 deferred tax.**

30 (a) In determining the amount of the deferred ~~taxes herein provided,~~ taxes under this  
31 Article, the assessor shall use the appraised valuation established in the county's last  
32 general revaluation except for any changes made under the provisions of G.S. 105-287.

33 (b) In revaluation years, as provided in G.S. 105-286, all property entitled to  
34 classification under ~~G.S. 105-277.3~~ this Article shall be reappraised at its true value in  
35 money and at its present use value as of the effective date of the revaluation. The two  
36 valuations shall continue in effect and shall provide the basis for deferred taxes until a  
37 change in one or both of the appraisals is required by law. The present use-value  
38 schedule, standards, and rules shall be used by the tax assessor to appraise agricultural  
39 property, forestland, and horticultural property receiving the benefit of this classification  
40 until the next general revaluation of real property in the county as required by G.S. 105-  
41 286.

42 (c) Repealed by Session Laws 1987, c. 295, s. 2.

43 **"§ 105-282.16. Use-Value Advisory Board.**

1 The Use-Value Advisory Board is established under the supervision of the  
2 Agricultural Extension Service of North Carolina State University. The Board shall  
3 annually submit to the Department of Revenue a recommended use-value manual  
4 developed in accordance with the guidelines in G.S. 105-289(a)(5). In developing the  
5 manual, the Board may consult with federal and State agencies as needed. The Board  
6 shall submit to the Department of Revenue recommendations concerning requirements  
7 for horticultural land used to produce evergreens intended for use as Christmas trees  
8 when requested to do so by the Department.

9 The Board shall be chaired by the Director of the Agricultural Extension Service of  
10 North Carolina State University and shall consist of the following additional members: a  
11 representative of the Department of Agriculture and Consumer Services, designated by  
12 the Commissioner of Agriculture; a representative of the Forest Resources Division of the  
13 Department of Environment and Natural Resources, designated by the Director of that  
14 Division; and a representative of the Agricultural Extension Service at North Carolina  
15 Agricultural and Technical State University, designated by the Director of the Extension  
16 Service. All members shall serve ex officio. The Agricultural Extension Service at North  
17 Carolina State University shall provide clerical assistance to the Board."

18 Section 9. G.S. 105-282.7(a) reads as rewritten:

19 "(a) When any cropland or forestland owned by the United States, the State, a  
20 ~~county-county~~, or a municipal corporation is leased, ~~loaned-loaned~~, or otherwise made  
21 available to and used by a person, as defined in G.S. ~~105-273(12)~~, 105-273, in connection  
22 with a business conducted for profit, the lessee or user of the property is subject to  
23 taxation to the same extent as if the lessee or user owned the property. As used in this  
24 section, 'forestland' has the same meaning as in G.S. ~~105-277.2(2)~~, 105-282.10, and  
25 'cropland' means agricultural land and horticultural land as defined in G.S. ~~105-277.2(1)~~  
26 ~~and (3) respectively~~. 105-282.10."

27 Section 10. G.S. 105-284(a) reads as rewritten:

28 "(a) Except as otherwise provided in this section, all property, real and personal,  
29 shall be assessed for taxation at its true value or use value as determined under G.S. 105-  
30 283 or ~~G.S. 105-277.6~~, Article 12B of this Chapter, and taxes levied by all counties and  
31 municipalities shall be levied uniformly on assessments determined in accordance with  
32 this section."

33 Section 11. G.S. 105-290(c)(1) reads as rewritten:

34 "(1) A property owner of the county who, either separately or in conjunction  
35 with other property owners of the county, asserts that the schedules of  
36 values, standards, and rules adopted by order of the board of county  
37 commissioners do not meet the true value or present-use value appraisal  
38 standards established by G.S. 105-283 and ~~G.S. 105-277.2(5)~~, Article  
39 12B of this Chapter, respectively, may appeal the order to the Property  
40 Tax Commission within 30 days of the date when the order adopting the  
41 schedules, standards, and rules was first published, as required by G.S.  
42 105-317(c)."

43 Section 12. The introductory language of G.S. 105-361(a) reads as rewritten:

1       "(a) Duty to Furnish a Certificate. – On the request of any of the persons prescribed  
2 in subdivision ~~(a)(1), below, (1)~~ of this subsection and upon the condition prescribed by  
3 subdivision ~~(a)(2), below, (2)~~ of this subsection, the tax collector shall furnish a written  
4 certificate stating the amount of any taxes and special assessments for the current year  
5 and for prior years in ~~his~~ the tax collector's hands for collection (together with any  
6 penalties, interest, and costs accrued thereon) including the amount due under ~~G.S. 105-~~  
7 ~~277.4(e)~~ Article 12B of this Chapter if the property should lose its eligibility for the  
8 benefit of classification under ~~G.S. 105-277.2 et seq.~~ that Article, that are a lien on a parcel  
9 of real property in the taxing unit."

10               Section 13. This act becomes effective July 1, 2000, with Sections 5 through  
11 12 effective for taxes imposed for taxable years beginning on or after July 1, 2000.