

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS85032-LBf-63 (2/19)

Short Title: Delegations of Authority. (Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY EXISTING DELEGATIONS OF AUTHORITY TO
COUNTIES, CITIES, AND BOARDS OF HEALTH AND TO CONFIRM
FLEXIBILITY IN THE EXECUTION OF THOSE DELEGATED AUTHORITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-4 reads as rewritten:

"§ 160A-4. Broad construction.

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

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

SECTION 2. G.S. 160A-174 reads as rewritten:

"Article 8.

"Delegation and Exercise of the General Police Power.

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

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

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

- 4 (1) The ordinance infringes a liberty guaranteed to the people by the State
5 or federal Constitution;
- 6 (2) The ordinance makes unlawful an act, omission or condition which is
7 expressly made lawful by State or federal law;
- 8 (3) The ordinance makes lawful an act, omission, or condition which is
9 expressly made unlawful by State or federal law;
- 10 (4) The ordinance purports to regulate a subject that cities are expressly
11 forbidden to regulate by State or federal law;
- 12 (5) The ordinance purports to regulate a field for which a State or federal
13 statute ~~clearly show~~expressly states a legislative intent to provide a
14 complete and integrated regulatory scheme to the exclusion of local
15 regulation;
- 16 (6) The elements of an offense defined by a city ordinance are identical to
17 the elements of an offense defined by State or federal law.

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

21 **SECTION 3.** G.S. 160A-177 reads as rewritten:

22 "**§ 160A-177. Enumeration not exclusive.**

23 The enumeration in this Article or other portions of this Chapter of specific powers
24 to regulate, restrict or prohibit acts, omissions, and conditions shall not be deemed to be
25 exclusive or a limiting factor upon the general authority to adopt ordinances conferred
26 on cities by G.S. 160A-174. Where there are multiple sources of authority to act, a city
27 may freely elect to use any or all sources, either individually or in combination;
28 provided that when a city makes such an election it shall specify which sources of
29 authority are being employed and shall follow the procedures specified for each of those
30 authorities elected."

31 **SECTION 4.** G.S. 160A-363 reads as rewritten:

32 "**§ 160A-363. Supplemental powers.**

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

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

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

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

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

14 **SECTION 5.** G.S. 153A-4 reads as rewritten:

15 "**§ 153A-4. Broad construction.**

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

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

29 **SECTION 6.** G.S. 153A-121 reads as rewritten:

30 "Article 6.

31 "Delegation and Exercise of the General Police Power.

32 "**§ 153A-121. General ordinance-making power.**

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

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

43 (c) This section does not impair the authority of local boards of health to adopt
44 rules and regulations to protect and promote public health.

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

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

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

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

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

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

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

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

20 (e) Within the meaning of this section, a 'county ordinance' includes a rule of a
21 local board of health adopted pursuant to G.S. 130A-39."

22 **SECTION 7.** G.S. 153A-124 reads as rewritten:

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

24 The enumeration in this Article or other portions of this Chapter of specific powers
25 to define, regulate, prohibit, or abate acts, omissions, or conditions is not exclusive, nor
26 is it a limit on the general authority to adopt ordinances conferred on counties by G.S.
27 153A-121. Where there are multiple sources of authority to act, a county may freely
28 elect to use any or all sources, either individually or in combination; provided that when
29 a county makes such an election it shall specify which sources of authority are being
30 employed and shall follow the procedures specified for each of those authorities
31 elected."

32 **SECTION 8.** G.S. 153A-322 reads as rewritten:

33 **"§ 153A-322. Supplemental powers.**

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

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

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

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

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

15 **SECTION 9.** G.S. 130A-39 reads as rewritten:

16 "**§ 130A-39. Powers and duties of a local board of health.**

17 (a) A local board of health shall have the responsibility to protect and promote
18 the public health. The board shall have the authority to adopt rules necessary for that
19 purpose.

20 (b) A local board of health may adopt a more stringent rule in an area regulated
21 by the Commission for Health Services or the Environmental Management Commission
22 where, in the opinion of the local board of health, a more stringent rule is required to
23 protect the public health; otherwise, the rules of the Commission for Health Services or
24 the rules of the Environmental Management Commission shall prevail over local board
25 of health rules. However, a local board of health may not adopt a rule concerning the
26 grading, operating, and permitting of food and lodging facilities as listed in Part 6 of
27 Article 8 of this Chapter and as defined in G.S. 130A-247(1), and a local board of health
28 may adopt rules concerning wastewater collection, treatment and disposal systems
29 which are not designed to discharge effluent to the land surface or surface waters only
30 in accordance with G.S. 130A-335(c).

31 (b1) If a local board of health finds that a proposed local rule is required to protect
32 and promote the public health, the fact that the local health rule may also be based in
33 part on nonhealth grounds shall not invalidate the rule as one that exceeds the rule-
34 making authority of the local board of health. Provisions of a local health rule that
35 exceed the rule-making authority of the local board of health may be judicially found to
36 be separable in accordance with a separability clause contained in the rule.

37 (c) The rules of a local board of health shall apply to all municipalities within the
38 local board's jurisdiction.

39 (d) Not less than 10 days before the adoption, amendment or repeal of any local
40 board of health rule, the proposed rule shall be made available at the office of each
41 county clerk within the board's jurisdiction, and a notice shall be published in a
42 newspaper having general circulation within the area of the board's jurisdiction. The
43 notice shall contain a statement of the substance of the proposed rule or a description of
44 the subjects and issues involved, the proposed effective date of the rule and a statement

1 that copies of the proposed rule are available at the local health department. A local
2 board of health rule shall become effective upon adoption unless a later effective date is
3 specified in the rule.

4 (e) Copies of all rules shall be filed with the secretary of the local board of
5 health.

6 (f) A local board of health may, in its rules, adopt by reference any code,
7 standard, rule or regulation which has been adopted by any agency of this State, another
8 state, any agency of the United States or by a generally recognized association. Copies
9 of any material adopted by reference shall be filed with the rules.

10 (g) A local board of health may impose a fee for services to be rendered by a
11 local health department, except where the imposition of a fee is prohibited by statute or
12 where an employee of the local health department is performing the services as an agent
13 of the State. Notwithstanding any other provisions of law, a local board of health may
14 impose cost-related fees for services performed pursuant to Article 11 of this Chapter,
15 "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this
16 Chapter, "Public Swimming Pools", and for services performed pursuant to Part 11,
17 Article 8 of this Chapter, "Tattooing". Fees shall be based upon a plan recommended by
18 the local health director and approved by the local board of health and the appropriate
19 county board or boards of commissioners. The fees collected under the authority of this
20 subsection are to be deposited to the account of the local health department so that they
21 may be expended for public health purposes in accordance with the provisions of the
22 Local Government Budget and Fiscal Control Act."

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