

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-452
HOUSE BILL 786

AN ACT TO AMEND THE CHARTER OF THE CITY OF CONCORD TO ALLOW THE CITY MANAGER TO APPOINT THE FINANCE DIRECTOR AND THE CITY CLERK; TO PROVIDE FOR INITIATIVE AND REFERENDUM AUTHORITY FOR THE CONCORD CITY COUNCIL AND THE CABARRUS COUNTY BOARD OF COMMISSIONERS; AND AN ACT TO AMEND THE CHARTER OF THE CITY OF DURHAM AS IT RELATES TO VOLUNTARY ANNEXATIONS, PROTEST PETITIONS, THE APPROVAL OF PAYMENT OF FACILITIES FEES, AND THE RENAMING OF THE SUBDIVISION REVIEW BOARD, AND TO AMEND THE CHARTER OF THE CITY OF SANFORD RELATING TO THE PUBLICATION OF FRANCHISE ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. Section 4.2 of the Charter of the City of Concord, being Chapter 861 of the 1985 Session Laws, as amended, reads as rewritten:

"Sec. 4.2. City Manager. The ~~Board of Aldermen~~ City Council shall appoint a City Manager who shall be the chief administrator of city government, and who shall be responsible to the ~~Board~~ Council for the proper administration of the affairs of the city. The Manager shall be appointed on the basis of merit only, and he shall serve at the pleasure of the ~~Board~~ Council. Although he need not be a resident at the time of his appointment, the Manager shall become a resident of the city after his appointment. In exercising his duties as chief administrator, the Manager shall have the following powers and duties:

(a) He shall appoint, suspend or remove all city officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by law, except the ~~City Attorney, City Finance Director, Tax Collector, and City Clerk,~~ City Attorney and Tax Collector, in accordance with such general personnel rules, regulations, policies, or ordinances as the ~~Board~~ Council may adopt.

(b) He shall direct and supervise the administration of all departments, offices, and agencies of the city, subject to the general direction and control of the ~~Board,~~ Council, except as otherwise provided by law.

(c) He shall attend all meetings of the ~~Board~~ Council and recommend any measures that he deems expedient.

(d) He shall see that all laws of the State, the City Charter and the ordinances, resolutions and regulations of the ~~Board~~ Council are faithfully executed within the city.

(e) He shall prepare and submit the annual budget and capital program to the city.

(f) He shall annually submit to the ~~Board~~Council and make available to the public a complete report on the finances and administrative activities of the city as of the end of the fiscal year.

(g) He shall make any other reports that the ~~Board~~Council may require concerning the operations of the city departments, offices, and agencies subject to his direction and control.

(h) He shall perform any other duties that may be required and authorized by the ~~Board~~Council."

Section 2. Sections 4.5 and 4.6 of the Charter of the City of Concord, being Chapter 861 of the 1985 Session Laws, as amended, are repealed.

Section 3. The Charter of the City of Concord, being Chapter 861 of the 1985 Session Laws, as amended, is amended by adding a new Article to read:

"ARTICLE VI.

"Sec. 6.1. Direct voting on issues by the people. The City Council may adopt an ordinance providing for a procedure of direct voting on issues by the people. Such an ordinance shall contain either or both of the following provisions:

- (1) When twenty-five percent (25%) of the qualified voters of the city apply to the Council by signed petition for the purpose of voting upon any question of public interest which that petition requests be submitted to a vote of the citizens of the city, the Council shall order a referendum on the question. The election shall be held not more than 120 nor fewer than 60 days after receipt of the petition. No special act shall be necessary to authorize the Council to order that referendum. The Council shall order as many referenda under the provisions of this section as it may be petitioned to call in the manner set out in this section. The Council shall call more than one election to be held for the purpose of voting upon the same question if a petition is filed, as herein provided, requesting the Council to call that election, notwithstanding the fact that a prior election may have been held for the purpose of ascertaining the wishes of the citizens of the city on the same question.
- (2) The Council may submit to a vote of the people of the city any resolution or ordinance passed by the Council or any other question of public interest, if the Council resolves to do so by a vote of three-fifths of its total members.

If a referendum is called under either subdivision (1) or (2) of this section, the county board of elections shall cause the ordinance or resolution to be voted on to be published in accordance with G.S. 163-33. If a referendum is called under either subdivision (1) or (2) of this section and a majority of the qualified voters voting vote in favor of the measure proposed, then the vote of the people shall be binding upon the Council and the city, and the measure shall become effective throughout the city on the date the results are certified unless the measure contains another effective date.

"Sec. 6.2. The City Council may, by majority vote, repeal an ordinance for a direct vote on issues by the people it has adopted under Sec. 6.1."

Section 4. (a) The Cabarrus County Board of Commissioners may adopt an ordinance providing for a procedure of direct voting on issues by the people. Such an ordinance shall contain either or both of the following provisions:

- (1) When twenty-five percent (25%) of the qualified voters of the county apply to the Board by signed petition for the purpose of voting upon any question of public interest which that petition requests be submitted to a vote of the citizens of the county, the Board shall order a referendum on the question. The election shall be held not more than 120 nor fewer than 60 days after receipt of the petition. No special act shall be necessary to authorize the Board to order that referendum. The Board shall order as many referenda under the provisions of this section as it may be petitioned to call in the manner set out in this section. The Board shall call more than one election to be held for the purpose of voting upon the same question if a petition is filed, as herein provided, requesting the Board to call that election, notwithstanding the fact that a prior election may have been held for the purpose of ascertaining the wishes of the citizens of the county on the same question.
- (2) The Board may submit to a vote of the people of the county any resolution or ordinance passed by the Board or any other question of public interest, if the Board resolves to do so by a vote of three-fifths of its total members.

If a referendum is called under either subdivision (1) or (2) of this section, the county board of elections shall cause the ordinance or resolution to be voted on to be published in accordance with G.S. 163-33. If a referendum is called under either subdivision (1) or (2) of this subsection and a majority of the qualified voters voting vote in favor of the measure proposed, then the vote of the people shall be binding upon the Board of Commissioners and the county, and the measure shall become effective throughout the county on the date the results are certified unless the measure contains another effective date.

(b) The Cabarrus County Board of Commissioners may, by majority vote, repeal an ordinance for a direct vote on issues by the people it has adopted under subsection (a) of this section.

Section 5. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is amended by adding a new section to read:

"Sec. 2.6. Petition Annexation Appeals. Any judicial action contesting the validity of an annexation by the City pursuant to Part 1 or 4 of Article 4A of Chapter 160A of the General Statutes shall be filed within 30 days after the adoption of the annexation ordinance."

Section 6. Section 115.6(b) of the Charter of the City of Durham, being Chapter 671 of the 1995 Session Laws, as added by Chapter 476 of the 1989 Session Laws and rewritten by Chapter 992 of the 1991 Session Laws, reads as rewritten:

"(b) The City Council may permit the payment of a facilities fee in a lump sum or in equal monthly or annual installments over a period of time not to exceed 10 years. The City Council may delegate authority to the city manager, or designee of the city manager, to authorize the payment of a facilities fee in installments when requested by the person who is responsible for paying the fee. If paid in installments, such installments shall bear interest at a rate fixed by the City Council of not more than nine percent (9%) per annum from the date when ~~payment by lump sum would have otherwise been due.~~ the City approves payment of the facilities fee in installments. The facilities fee, with accrued interest, may be paid in full at any time."

Section 7. Subsection (3) of Section 97 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, reads as rewritten:

"(3) The City Council may provide for the appointment of a board to be known as a ~~Subdivision Review Board consisting of not less than four nor more than six members~~ Development Review Board consisting of four or more members who shall serve without pay as such members, each of whom shall be appointed by the Council for a term of years or for a term at the will of the Council, as may be determined by the Council; in the event the Council appoints such Board for a term of years, the term of the office of each member shall be three years. ~~Such Subdivision~~ The Development Review Board shall hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of any ordinance adopted pursuant to this section. It shall also hear and decide all matters referred to in or upon which it is required to pass under any such ordinance. The affirmative vote of a majority of members of the Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or to effect any variation in any of the provisions of such ordinance. Every decision of such Board shall, however, be subject to review by proceedings in the nature of certiorari. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the City. Such appeal shall be taken within such time as shall be prescribed by the ~~Subdivision~~ Development Review Board by general rule, by filing with the officer from whom the appeal is taken and with the ~~Subdivision~~ Development Review Board a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal from the administrative official to the ~~Subdivision~~ Development Review Board stays all proceedings in furtherance of the action appealed from until the decision of the ~~Subdivision~~ Development Review Board is rendered, at which time the stay of proceedings shall cease, unless the

proceedings shall be further stayed by a restraining order granted by a court of record or by the ~~Subdivision-Development~~ Review Board. The ~~Subdivision-Development~~ Review Board shall fix a reasonable time for the hearing of the appeal from the administrative official and shall give due notice thereof to the parties, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The ~~Subdivision-Development~~ Review Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, action or determination appealed from, and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all of the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinances, the ~~Subdivision-Development~~ Review Board shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of such ordinances relating to subdivisions, plats, maps and all other requirements of the ordinance, in harmony with the general purpose and intent of this section, so that the spirit of the ordinance may be observed, public safety, convenience and welfare secured and substantial justice done."

Section 8. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, is amended by adding the following new section:

"Section 94.4. Protest Petitions.

The provisions of G.S. 160A-386, as applied to the City of Durham, are modified to require that protest petitions be received by the city clerk in sufficient time to allow the City at least four normal work days, excluding Saturdays, Sundays, and legal holidays, before the date established for a public hearing on the proposed charge or amendment to determine the sufficiency and accuracy of the petition."

Section 9. The Charter of the City of Sanford, as enacted by Chapter 650 of the Session Laws of 1967, and as amended by Chapter 403 of the Session Laws of 1987, is further amended as follows:

"Sec. 3.10. ~~Publication and~~ Reading of Ordinance. ~~No ordinance granting any franchise for the use of the streets, sidewalks, highways or other public property of the City shall be passed until the full text thereof shall have been published for three weeks in a newspaper having general circulation in the City at the expense of the applicant applying for such franchise, before the second reading of such ordinance.~~A copy of a proposed ordinance granting any franchise for the use of the streets, sidewalks, highways or other public property of the City shall be made available in the office of the City Clerk for public inspection. All such ordinances shall be read at two separate regular meetings of the Board of Aldermen and a 'yea' and 'nay' vote shall be taken and recorded on the first and second readings. The rules shall not be suspended so as to pass any such ordinance in a shorter time."

Section 10. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of August, 1997.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives