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SENATE BILL 314
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Short Title: Local Gov Commission Assistance Toolkit.

(Public)

Sponsors:

Referred to:

March 18, 2021

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL TOOLS FOR THE LOCAL GOVERNMENT COMMISSION TO ASSIST LOCAL GOVERNMENT UNITS AVOID AND CORRECT FISCAL DISTRESS THAT REQUIRES THAT THE IMPACT OF CHANGES TO SALES TAX DISTRIBUTION FORMULAS BE DELAYED UNTIL THE FISCAL YEAR FOLLOWING THE INITIAL DECISION, MANDATES THAT A STATEMENT FROM THE LOCAL GOVERNMENT COMMISSION BE INCLUDED IN THE PETITION TO THE GENERAL ASSEMBLY WHEN A NEW MUNICIPALITY IS PROPOSED, ADDS OPTIONAL SOURCES FOR TRAINING FOR FINANCE OFFICERS, ALLOWS THE LOCAL GOVERNMENT COMMISSION TO MANDATE SPECIALIZED TRAINING FOR CITY AND COUNTY MANAGERS WHEN A UNIT IS EXHIBITING FISCAL DISTRESS AND TO ESTABLISH A PROCESS FOR A MUNICIPALITY TO INITIATE A TRANSITION TO RECOVER FROM FINANCIAL DISTRESS AND TO ESTABLISH A PROCESS FOR THE LOCAL GOVERNMENT COMMISSION TO TRANSFER THE ASSETS, LIABILITIES, AND OTHER OBLIGATIONS AND DISSOLVE MUNICIPALITIES DETERMINED TO BE IN FINANCIAL DISTRESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-472(b) reads as rewritten:

"(b) Distribution Between Counties and Cities. – The Secretary shall divide the amount allocated to each taxing county among the county and its municipalities in accordance with the method determined by the county. The board of county commissioners shall, by resolution, choose one of the following methods of distribution:

(1) Per Capita Method. – The net proceeds of the tax collected in a taxing county shall be distributed to that county and to the municipalities in the county on a per capita basis according to the total population of the taxing county, plus the total population of the municipalities in the county. In the case of a municipality located in more than one county, only that part of its population living in the taxing county is considered its "total population". In order to make the distribution, the Secretary shall determine a per capita figure by dividing the amount allocated to each taxing county by the total population of that county plus the total population of all municipalities in the county. The Secretary shall then multiply this per capita figure by the population of the taxing county and by the population of each municipality in the county; each respective product shall be the amount to be distributed to the county and to



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1 each municipality in the county. To determine the population of each county
2 and each municipality, the Secretary shall use the most recent annual estimate
3 of population certified by the State Budget Officer.
4 (2) Ad Valorem Method. – The net proceeds of the tax collected in a taxing county
5 shall be distributed to that county and the municipalities in the county in
6 proportion to the total amount of ad valorem taxes levied by each on property
7 having a tax situs in the taxing county during the fiscal year next preceding
8 the distribution. For purposes of this section, the amount of the ad valorem
9 taxes levied by a county or municipality includes ad valorem taxes levied by
10 the county or municipality in behalf of a taxing district and collected by the
11 county or municipality. In addition, the amount of taxes levied by a county
12 includes ad valorem taxes levied by a merged school administrative unit
13 described in G.S. 115C-513 in the part of the unit located in the county. In
14 computing the amount of tax proceeds to be distributed to each county and
15 municipality, the amount of any ad valorem taxes levied but not substantially
16 collected shall be ignored. Each county and municipality receiving a
17 distribution of the proceeds of the tax levied under this Article shall in turn
18 immediately share the proceeds with each district in behalf of which the
19 county or municipality levied ad valorem taxes in the proportion that the
20 district levy bears to the total levy of the county or municipality. Any county
21 or municipality that fails to provide the Department of Revenue with
22 information concerning ad valorem taxes levied by it adequate to permit a
23 timely determination of its appropriate share of tax proceeds collected under
24 this Article may be excluded by the Secretary from each monthly distribution
25 with respect to which the information was not provided in a timely manner,
26 and those tax proceeds shall then be distributed only to the remaining counties
27 or municipalities, as appropriate. For the purpose of computing the
28 distribution of the tax under this subsection to any county and the
29 municipalities located in the county for any month with respect to which the
30 property valuation of a public service company is the subject of an appeal and
31 the Department of Revenue is restrained by law from certifying the valuation
32 to the county and the municipalities in the county, the Department shall use
33 the last property valuation of the public service company that has been
34 certified.

35 The board of county commissioners in each taxing county shall, by resolution adopted during
36 the month of April of each year, determine which of the two foregoing methods of distribution
37 shall be in effect in the county during the ~~next~~ next fiscal year following the succeeding fiscal year.
38 In order for the resolution to be effective, a certified copy of it must be delivered to the Secretary
39 in Raleigh within 15 calendar days after its adoption. If the board fails to adopt a resolution
40 choosing a method of distribution not then in effect in the county, or if a certified copy of the
41 resolution is not timely delivered to the Secretary, the method of distribution then in effect in the
42 county shall continue in effect for the following fiscal year. The method of distribution in effect
43 on the first of July of each fiscal year shall apply to every distribution made during that fiscal
44 year."

45 **SECTION 2.** G.S. 120-163(c) reads as rewritten:

46 "(c) The petition must include a proposed name for the city, a map of the city, a list of
47 proposed services to be provided by the proposed municipality, the names of three persons to
48 serve as interim governing board, a proposed charter, a statement of the estimated population,
49 assessed valuation, degree of development, population density, and recommendations as to the
50 form of government and manner of election. The petition must contain a statement that the
51 proposed municipality will have a budget ordinance with an ad valorem tax levy of at least five

1 cents (5¢) on the one hundred dollar (\$100.00) valuation upon all taxable property within its
2 corporate limits. The petition must contain a statement that the proposed municipality will offer
3 four of the following services no later than the first day of the third fiscal year following the
4 effective date of the incorporation: (i) police protection; (ii) fire protection; (iii) solid waste
5 collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or
6 right-of-way acquisition; (vii) street lighting; and (viii) zoning. In order to qualify for providing
7 police protection, the proposed municipality must propose either to provide police service or to
8 have services provided by contract with a county or another municipality that proposes that the
9 other government be compensated for providing supplemental protection. The petition must
10 contain a statement from the Local Government Commission regarding the proposed
11 municipality's prospects for financial viability and effective fiscal management. The proposed
12 municipality may not contain any noncontiguous areas."

13 **SECTION 3.** G.S. 153A-82 reads as rewritten:

14 "**§ 153A-82. Powers and duties of manager.**

15 The manager is the chief administrator of county government. He is responsible to the board
16 of commissioners for the administration of all departments of county government under the
17 board's general control and has the following powers and duties:

18 ...

19 (9) If (i) the Local Government Commission is exercising its authority under
20 Article 10 of Chapter 159 of the General Statutes with respect to the county,
21 (ii) the county has received a unit letter from the Commission due to a
22 deficiency in complying with Chapter 159 of the General Statutes, (iii) the
23 county has an internal control material weakness or significant deficiency in
24 the most recently completed financial audit, or (iv) the county is included on
25 the most recently published Unit Assistance List issued by the Department of
26 State Treasurer, then the manager shall receive a minimum of six clock hours
27 of education when an event listed in (i) through (iv) occurs or within six
28 months of it occurring. The education shall incorporate fiscal management
29 and the requirements of Chapter 159 of the General Statutes. The education
30 may be provided by the Local Government Commission, the School of
31 Government at the University of North Carolina, the North Carolina
32 Community College System, the North Carolina League of Municipalities, the
33 North Carolina Association of County Commissioners, or other qualified
34 sources at the choice of the governing board and upon the prior approval of
35 the Commission. The clerk to the governing board shall maintain a record
36 verifying receipt of the education by the manager and shall provide this
37 information, upon request, to the Secretary of the Local Government
38 Commission."

39 **SECTION 4.** G.S. 159-25(d) reads as rewritten:

40 "(d) The Local Government Commission has the authority to require any finance officer
41 or any other employee who performs the duties of a finance officer to participate in training
42 related to the powers, duties, and responsibilities of the finance officer under any of the following
43 circumstances: (i) the Commission is exercising its authority under Article 10 of this Chapter
44 with respect to the employing local government or public authority, (ii) the employing local
45 government or public authority has received a unit letter from the Commission due to a deficiency
46 in complying with this Chapter, (iii) the employing local government or public authority has an
47 internal control material weakness or significant deficiency in the most recently completed
48 financial audit, or (iv) the finance officer fails to annually meet or attest to the minimum
49 qualifications of the position, as established by the Local Government Commission. ~~The~~
50 ~~Commission may collaborate with training~~ may be provided by the Commission, the School of
51 Government at the University of North Carolina, the North Carolina Community College System,

1 and other educational institutions in the State to develop and deliver the training required by this
2 subsection—the North Carolina League of Municipalities, the North Carolina Association of
3 County Commissioners, or other qualified sources at the choice of the governing board and upon
4 the prior approval of the Commission. When the Commission requires a finance officer or other
5 employee to participate in training as authorized in this subsection, the Commission shall notify
6 the finance officer or other employee and the employing local government or public authority of
7 the required training. Upon completion of the required training by the finance officer or other
8 employee, the employing local government or public authority shall submit, in writing, to the
9 Commission proof that the training requirements have been satisfied."

10 **SECTION 5.** G.S. 160A-148 reads as rewritten:

11 **"§ 160A-148. Powers and duties of manager.**

12 The manager shall be the chief administrator of the city. He shall be responsible to the council
13 for administering all municipal affairs placed in his charge by them, and shall have the following
14 powers and duties:

15 ...

16 (9) If (i) the Local Government Commission is exercising its authority under
17 Article 10 of Chapter 159 of the General Statutes with respect to the city, (ii)
18 the city has received a unit letter from the Commission due to a deficiency in
19 complying with Chapter 159 of the General Statutes, (iii) the city has an
20 internal control material weakness or significant deficiency in the most
21 recently completed financial audit, or (iv) the city is included on the most
22 recently published Unit Assistance List issued by the Department of State
23 Treasurer, then the manager shall receive a minimum of six clock hours of
24 education when an event listed in (i) through (iv) occurs or within six months
25 of it occurring. The education shall incorporate fiscal management and the
26 requirements of Chapter 159 of the General Statutes. The education may be
27 provided by the Local Government Commission, the School of Government
28 at the University of North Carolina, the North Carolina Community College
29 System, the North Carolina League of Municipalities, the North Carolina
30 Association of County Commissioners, or other qualified sources at the choice
31 of the governing board and upon the prior approval of the Commission. The
32 clerk to the governing board shall maintain a record verifying receipt of the
33 education by the manager and shall provide this information, upon request, to
34 the Secretary of the Local Government Commission."

35 **SECTION 6.(a)** Chapter 160A of the General Statutes is amended by adding a new
36 Article to read:

37 "Article 31.

38 "Transitions for Unsustainable Cities.

39 "Part 1. General Provisions.

40 **"§ 160A-800. Purpose of Article; definition.**

41 (a) The purpose of this Article is to provide a process for a city in financial distress to
42 transition out of that distress either on its own initiative or with assistance from or under the
43 direction of the Local Government Commission.

44 (b) For purposes of this Article, the following terms shall apply:

45 (1) City. – As defined in G.S. 160A-1.

46 (2) Commission. – The Local Government Commission.

47 (3) Council. – As defined in G.S. 160A-1.

48 **"§§ 160A-801 through 160A-804.** Reserved for future codification purposes.

49 "Part 2. Transition Initiation by Local Government Commission.

50 **"§ 160A-805. Initiation of process.**

1 (a) The process established by this Article to rehabilitate a city's financial affairs may be
2 initiated by the Commission. The Commission shall establish criteria for evaluating a city for
3 financial rehabilitation under this Article.

4 (b) The Commission shall apply those criteria to each city with respect to which the
5 Commission has exercised its authority under G.S. 159-181(c) and each city with respect to
6 which the Commission has received a referral from any of the following persons:

7 (1) The State Auditor.

8 (2) The Department of Environmental Quality.

9 (3) The city's auditor for the current or most recent annual audit.

10 (c) After application and review of the criteria established under this section, the
11 Commission shall make a determination whether or not the city shall be subject to this Part and
12 shall so notify the mayor, council, and city finance officer within 10 days of such determination.

13 **"§ 160A-806.** Reserved for future codification purposes.

14 **"§ 160A-807. Assessment of services and financial affairs.**

15 (a) Upon initiation of the process under G.S. 160A-805, the city shall cooperate and
16 provide information to the Commission to assess the city's financial affairs. The assessment shall
17 include a review of all of the following:

18 (1) The revenues of the city.

19 (2) The future revenue forecast of the city.

20 (3) The real property owned by the city, including the amounts of any outstanding
21 debt associated with that real property.

22 (4) The contractual obligations of the city.

23 (5) Any internal control matters highlighted in prior audits and the city's ongoing
24 responses to those matters.

25 (6) The outstanding debts of the city.

26 (7) Any public enterprise accounts.

27 (8) The general fund balance.

28 (9) Any other information requested by the Commission.

29 (b) Upon initiation of the process under G.S. 160A-805, the city shall prepare a report for
30 its citizens and the Commission on the status of any of the following services provided by that
31 city which shall include the costs of those services over the five most recent fiscal years, any
32 revenues from those services over the five most recent fiscal years, the time period that service
33 has been provided, and any other information required by the Commission:

34 (1) Any public enterprise, whether owned, operated, or contracted by the city.

35 (2) Fire protection.

36 (3) Law enforcement.

37 (4) Building inspection.

38 (5) Streets, lighting, and sidewalks.

39 (6) Land use regulation.

40 (7) Buildings, facilities, and property owned or leased by the city.

41 (8) Parks and recreation.

42 (9) Public libraries.

43 (10) Animal control.

44 (11) Any other amenities provided by the city.

45 (c) The report required by subsection (b) of this section shall be remitted to the
46 Commission no more than 90 days after initiation under G.S. 160A-805, shall be presented to the
47 council at a regular meeting of the council no more than 60 days after remittance to the
48 Commission, and shall be made available to the public. A copy of the report shall be delivered
49 to the board or boards of county commissioners in which the city lies prior to the regular meeting
50 of the council during which the report is presented.

1 (d) If the Commission determines that preparing the report under subsection (b) of this
2 section presents a substantial hardship on a city, the Commission may prepare the report on behalf
3 of the city. Reports prepared by the Commission shall be completed within 90 days of the
4 hardship determination and presented to the council at a regular meeting of the council no more
5 than 60 days after the report is completed. The report shall be made available to the public. A
6 copy of the report shall be delivered to the board or boards of county commissioners in which
7 the city lies prior to the regular meeting of the council during which the report is presented.

8 **"§§ 160A-808 through 160A-809.** Reserved for future codification purposes.

9 **"§ 160A-810. Local Government Commission control.**

10 (a) If the Commission determines a city should be subject to this Part but the Commission
11 has not exercised its authority under G.S. 159-181(c) after completion of the financial assessment
12 and receipt or completion of the report required by G.S. 160A-807, the Commission may
13 impound the books and records of the city and assume full control of all its financial affairs. If
14 the Commission exercises its authority under this section, the Commission is vested with all of
15 the powers of the council as to the levy of taxes, expenditure of money, adoption of budgets, and
16 all other financial powers conferred upon the council by law.

17 (b) When the Commission exercises its authority under G.S. 159-181(c) or subsection (a)
18 of this section with respect to a city determined subject to this Part, the council shall continue to
19 be vested with all other powers of the city, such as land use regulation, not assumed by the
20 Commission. The council shall have no authority to implement any new service or other amenity
21 unless specifically approved by the Commission.

22 (c) Regardless of whether the Commission exercises its authority under G.S. 159-181(c)
23 or subsection (a) of this section, a city determined subject to this Part shall cooperate with the
24 Commission to identify options to address deficiencies in the city's financial affairs, to identify
25 potential partners to assist the city in the continuation of the provision of services to its citizens,
26 and to educate the council and the citizens on merger with other local government partners. A
27 city that fails to cooperate under this section is subject to those enforcement actions under Article
28 11 of Chapter 159 of the General Statutes.

29 (d) Subsection (a) of this section shall not apply to contractual obligations undertaken by
30 the city in a debt instrument issued pursuant to Chapter 159G of the General Statutes unless such
31 debt instrument is secured by a pledge of the faith and credit of the city.

32 **"§§ 160A-811 through 160A-813.** Reserved for future codification purposes.

33 **"§ 160A-814. Reassessment of financial status.**

34 (a) After the first fiscal year of cooperation with the Commission, and every year
35 thereafter, the council shall reassess its financial affairs with the assistance of the Commission.
36 Upon completion of this reassessment, the Commission shall make a recommendation to the city
37 as to whether or not the city's financial affairs are sufficiently stable to permit the city to continue
38 operations.

39 (b) If the Commission finds that the city's financial affairs for three consecutive fiscal
40 years are sufficiently stable to continue operations, the Commission shall relinquish any
41 authorities exercised under G.S. 159-181 or G.S. 160A-810 with respect to that city.

42 (c) Notwithstanding subsection (a) of this section, if at any time the Commission finds
43 that the city's financial affairs are not sufficiently stable to continue operations, the Commission
44 may exercise, or continue to exercise, its authority under this Part and begin to identify local
45 government partners for merger or dissolution of the city.

46 **"§§ 160A-815 through 160A-817.** Reserved for future codification purposes.

47 **"§ 160A-818. Distribution of services, assets, liabilities, and other obligations.**

48 (a) Upon a determination under G.S. 160A-814(c), the city shall work with the
49 Commission to identify local government partners able to provide the services identified by the
50 city as necessary for its citizens. The city shall, after negotiating its terms, enter into interlocal
51 agreements with any local government partner willing to provide one or more of those services.

1 Any city may initiate administrative dissolution in accordance with this Part by adoption of
2 a resolution of intent. Such resolution of intent shall be adopted at a regular meeting of the city.
3 A copy of the adopted resolution of intent shall be delivered to the Commission and the county
4 or counties in which the city lies.

5 **"§ 160A-826.** Reserved for future codification purposes.

6 **"§ 160A-827. Impact statement.**

7 (a) Within 90 days of the adoption of a resolution of intent to dissolve, the council shall
8 release an impact statement to educate the city residents of the potential ramifications of
9 dissolution. The impact statement shall be filed in the office of the city clerk where it shall remain
10 available for public inspection. The clerk shall make a copy of the impact statement available to
11 all news media in the county or counties in which the city lies. The clerk shall also publish a
12 statement that the impact statement has been prepared and is available for public inspection in
13 the office of the clerk. The published statement shall also give notice of the time and place of the
14 public hearing required by G.S. 160A-829.

15 (b) The impact statement shall include at least all of the following:

16 (1) For each of the services below provided by that city, the costs of those services
17 over the two most recent fiscal years, any revenues resulting from those
18 services over the two most recent fiscal years, how long each service has been
19 provided, and any other relevant information:

20 a. Any public enterprise, whether owned, operated, or contracted by the
21 city.

22 b. Fire protection.

23 c. Law enforcement.

24 d. Building inspection.

25 e. Streets, lighting, and sidewalks.

26 f. Land use regulation.

27 g. Buildings, facilities, and property owned or leased by the city.

28 h. Parks and recreation.

29 i. Public libraries.

30 j. Animal control.

31 k. Any other amenities provided by the city.

32 (2) Information for the two most recent fiscal years on the following:

33 a. The revenues of the city.

34 b. With respect to real property owned by the city, the amounts of any
35 outstanding debt associated with that real property.

36 c. The contractual obligations of the city.

37 d. The outstanding debts of the city.

38 e. Any public enterprise accounts.

39 f. Ending fund balance.

40 (3) The future revenue forecast of the city for at least the next two fiscal years.

41 (4) Any ongoing litigation in which the city is a defendant.

42 (c) Upon adoption of the resolution of intent to dissolve, the impact statement and the
43 resolution of intent to dissolve shall be posted on the city's website, if any, in a conspicuous
44 placement.

45 **"§ 160A-828.** Reserved for future codification purposes.

46 **"§ 160A-829. Public hearings on proposed dissolution.**

47 (a) The council shall conduct at least two public hearings, at regular council meetings,
48 on the matter of the proposed dissolution of the city. The first public hearing shall be no less than
49 45 days after the filing of the impact statement with the city clerk and no more than 90 days after
50 the filing of the impact statement with the city clerk.

1 of the votes cast shall be against the ballot question, the resolution to dissolve shall be void and
2 of no effect.

3 "§ 160A-836. Reserved for future codification purposes.

4 "§ 160A-837. Dissolution.

5 After the time for submitting a petition under G.S. 160A-835 has passed and no petition has
6 been submitted or the referendum authorized under this Part was answered in favor of dissolution,
7 the city may implement the plan of action. The effective date of the plan of action to dissolve
8 shall be June 30 following completion of the process established by this Part. Upon completion
9 of the plan of action and written confirmation of its completion from the Commission, the city
10 shall file a copy of the resolution to dissolve with the Commission and the Secretary of State.
11 Upon filing of the resolution to dissolve, the body politic and corporate of the city shall cease to
12 exist."

13 **SECTION 6.(b)** This section is effective when it becomes law.

14 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
15 law.