



NORTH CAROLINA
DEPARTMENT OF STATE TREASURER
STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION

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Memorandum #2010-10

TO: Officials of Local Governments and Public Authorities and Their Independent Auditors
FROM: Sharon Edmundson, Director
Fiscal Management Section
SUBJECT: Recent Legislative Changes Affecting Local Governmental Units and Public Authorities
DATE: September 8, 2009

The 2009 Session of the General Assembly considered many items of legislation and passed a number that affect or will be of interest to local governments and public authorities. The following briefly summarizes these items. Local governments should review these legislative changes with legal counsel to determine their impact and any action required to comply with them.

Appropriations Bill Changes

The 2009 appropriations bill, **SL 2009-451**, in Section 27A.4(b) reduces the share of the beer and wine taxes distributed to cities and counties. See Memorandum 2010-8 for a detailed analysis. Recording fees for deeds and for deeds of trust and mortgages were increased by Section 17.8 and the fee for issuance of a marriage license was increased by Section 20A.4, with \$30 of the fee now used for domestic violence programs. Also, Section 20B.3 added a new fee to be collected by the register of deeds for archival of records. Look for further guidance on remittance of portions of these fees the State.

The 2009 Appropriations Bill also adjusted some distributions of state-shared revenues to local governments as a result of the increase on October 1, 2009, to the State sales tax. The distribution rates on the telecommunications services, video programming, and direct-to-home satellite services are reduced until July 1, 2011. Changes also were made to require that sales tax be collected on the sale of digital property if certain criteria are met.

Other Legislative Changes

SL 2009-27 authorizes local governments to adopt, subject to certain limitations, smoking regulations that are more restrictive than State law. Violations may be enforced by a fine not exceeding \$50. This fine is a civil fine likely subject to appropriation to public schools.

To allow the state to take full advantage of the expansion of qualified zone academy bonds, the creation of qualified school construction bonds and other bond programs under The American Recovery and Reinvestment Tax Act of 2009 (ARRTA), **SL 2009-140** amended various debt-related provisions. See Memorandums 2010-6 and 2010-9 for more information.

SL 2009-141 gives municipalities the authority to donate surplus, obsolete, or unused personal property to charter schools. By reference to the statute modified by SL 2009-141, counties and local

education administrations (LEAs) also are now permitted to donate such property to charter schools as well.

SL 2009-226 amends the conflict-of-interest statute to increase the exemption limits in the public contracting statutes applicable to small local governments and their contracts for the provision of goods, services and medically-related services. This statute applies to small municipalities with populations of under 15,000, counties with no municipalities with populations over 15,000, and LEAs in those same counties. It also applies to certain local health boards, mental health boards, and certain public hospital boards. Under the new statute, which goes into effect on October 1, 2009, qualifying units of government may conduct business with board members for goods, services, and medically related services up to \$20,000 for medically related transactions and up to \$40,000 for all other goods and services in a twelve month period.

SL 2009-403 requires various governing boards to adopt a resolution or policy containing a code of ethics to guide actions by the members of the board and requires all members of the boards to receive a minimum of two hours of ethics education within 12 months of election or re-election.

Disclosure by State officials of certain local government tax information to the State Treasurer is now allowed under **SL 2009-283** for purposes of determining compliance with the Local Government Finance Act. This will involve disclosure of any significant failures to comply with payroll tax deadlines by local governments and public authorities; it will not involve disclosure of individual tax information to the Department.

SL 2009-302 offers a limited expansion to local governments of certain debt collection practices for public enterprise services. A municipality or county may not suspend or disconnect service to a current customer because of an unpaid, past-due balance for service incurred by another party in the household unless a) the current customer and other party were members of the same household at a different location at which the unpaid charge was incurred; b) the other party was a member of the current customer's household when the current service was established, and the other party had an unpaid balance at that time; or c) The other party is or becomes responsible for the bill for the current service to the current customer. The county or municipality may not require that the current customer agree to be liable for a delinquent account of another party who will reside in the current customer's household in order to receive service unless a) the current customer and the other party were members of the same household at a different location at which the unpaid balance charge was incurred; or b) the other party was a member of the current customer's current household at the time the current service was established, and the other party had an unpaid charge for service at that time. Prior to enactment of this law, counties and municipalities were not permitted to suspend or disconnect service to a current customer because of an unpaid, past-due balance for service incurred by another party in the household.

SL 2009-308 allows a builder to defer the portion of tax imposed on real property held for sale that represents the increase in value attributable solely to improvements resulting from the construction by the builder of a residence on the property. The deferred amount becomes due and payable when the builder transfers the residence or the residence is occupied or upon the passage of certain time limits. This bill is effective for taxes imposed for taxable years beginning on or after July 1, 2010 and is repealed for taxes imposed for taxable years beginning on or after July 1, 2013. Any deferred taxes assessed constitute a lien on the property being taxed. A future memorandum will address the accounting for the deferred amount.

Local governments are authorized to elect to protect the status of furloughed employees in the Local Government Employees Retirement System under the provisions of **SL 2009-378**. Employers so electing will be required to pay both the employee and employer contributions to the Retirement System during the furlough period. The employee will be considered on active service during the period of furlough and will suffer no diminution in the calculation of retirement average final compensation.

SL 2009-436 requires certain electronic notices by local governments, sanitary districts, or water and sewer authorities, of the imposition of or increase in fees or charges applicable solely to the construction of development that is subject to the provisions of Part 2 of Article 19 of Chapter 160A and Part 2 of Article 18 of Chapter 153A. If a local government, sanitary district, or water and sewer authority maintains a website, the government, district or authority is required to provide notice on the site of the imposition of new fees and charges or increases to existing fees and charges, at least 7 days before the first regular meeting of the governing body where the imposition or increase will be discussed. Note – this applies only to fees applicable to the construction of development, which likely includes water and sewer impact fees and possibly some water and sewer tap fees, and only to units that maintain a website. The bill also requires that local governments provide a period of public comment during the meeting at which the fee changes/increases are discussed. The bill does not apply to new fees or fee increases adopted as part of the annual budget process.

SL 2009-395 indefinitely extends the 60% earmark of local sales and use taxes (Articles 40 and 42) for public school construction.

The law regarding the Special Separation Allowance for Law Enforcement Officers is clarified by **SL 2009-396**. Additional guidance will be provided on the changes that result from this bill.

The Department of Transportation has been authorized by **SL 2009-332** to provide road maintenance materials to municipalities upon their agreement to reimburse the DOT an amount at least equal to the cost of the materials plus the reasonable cost of handling and storing the materials and administering the reimbursement agreement.

SL 2009-233 reauthorizes the refund of state and local sales and use taxes to volunteer fire departments and volunteer emergency services squads.

If you have any questions concerning this memorandum, please contact Jones Norris at (919) 807-2386 or via email at jones.norris@nctreasurer.com