



SENATE BILL 314: Local Gov. Commission Assistance Toolkit.

2021-2022 General Assembly

Committee:		Date:	February 4, 2022
Introduced by:		Prepared by:	Erika Churchill Staff Attorney
Analysis of:	S.L. 2021-124		

OVERVIEW: *S.L.2021-124, effective August 30, 2021:*

- *Delays the impact of changes to sales tax distribution formulas*
- *Required a statement indicating the municipality's prospects for financial viability and effective fiscal management be included on the petition for a new municipality*
- *Required training for city and county managers when a unit of local government exhibits fiscal distress*
- *Established a process by which a city in financial distress could seek assistance and potentially dissolve.*

CURRENT LAW and BILL ANALYSIS:

Section 1 amended local government sales and use tax statutes (G.S. 105-472) on the disposition and distribution of taxes collected to provide that the method of distribution will be in effect in the county during the "fiscal year following" the succeeding fiscal year, rather than during the "next" succeeding fiscal year.

Section 2 amended the statute on the procedure for incorporation review (G.S. 120-163) as it pertains to the petition for a new municipality, to require that the petition contain a statement from the Local Government Commission (LGC) regarding the proposed municipality's prospects for financial viability and effective fiscal management.

Sections 3 and 5 amended the powers and duties of county managers (G.S. 153A-82) and city managers (G.S. 160A-148) to add a requirement that the manager must receive a minimum of six clock hours of education if one of the events listed below occurs:

- The LGC is exercising its authority under Article 10 of Chapter 159 of the General Statutes with respect to the county or city, as applicable.
- The county or city, as applicable, has received a unit letter from the LGC due to deficiencies in complying with statutory requirements.
- The county or city, as applicable, has an internal control material weakness or significant deficiency in the most recently completed financial audit.
- The county or city, as applicable, is included on the most recently published Unit Assistance List issued by the Department of State Treasurer.

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This education must incorporate fiscal management and the requirements of Chapter 159 (Local Government Finance) of the General Statutes. The education may be provided by the LGC, the School of Government at The University of North Carolina, the North Carolina Community College System, the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, or other qualified sources at the choice of the governing board and upon the prior approval of the LGC. The clerk to the governing board must maintain a record verifying receipt of the education by the manager and shall provide this information, upon request, to the Secretary of the LGC.

Section 4 amended the Local Government Budget and Fiscal Control Act pertaining to the duties of the finance officer (G.S.159-25) to allow the NC League of Municipalities and the NC Association of County Commissioners, or other qualified sources to provide training in addition to entities already allowed.

Section 6 established a process by which a city in financial distress could seek assistance and potentially dissolve.

Section 1 of Article VII of the North Carolina Constitution grants authority to the General Assembly to provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions. The General Assembly is prohibited from incorporating cities or towns within a certain geographic area of an already incorporated city or town except with a 3/5 vote of the members of each chamber.

The General Assembly has enacted a statutory process for the incorporation of a municipality, which culminates in a local act of the General Assembly. The General Assembly has established statutory authority for two or more counties or cities to operate collectively, under an interlocal agreement, to undertake any power, function, or public enterprise of local government. The General Assembly has also enacted a statutory process for a consolidated county-city to be formed.

The General Assembly has not established a statutory process for de-incorporation of a municipality or the merger of two municipalities. The General Assembly has previously enacted local acts to accomplish de-incorporation or merger of municipalities.

Section 6 provides a process for a municipality that is in financial distress to transition out of that distress either on its own initiative or with assistance from or under the direction of the LGC, as follows:

Transition Initiated by the LGC:

- The LGC makes a determination of whether a city is in need of financial rehabilitation, and if so, notifies the mayor, city's governing board, and city finance officer within 10 days of the determination.
- The LGC assesses the city's financial affairs based on a report filed by the city or on behalf of the city, if needed.
- The LGC is vested with all of the powers of the city's governing board as to the levy of taxes, expenditure of money, adoption of budgets, and all other financial powers. The city maintains all powers of the city not assumed by the LGC.
- The LGC, with cooperation from the city, identifies options to address deficiencies in the city's financial affairs, identifies potential partners to assist the city in the continuation of citizen services, and educates the city on merger options with other local government partners.
- The LGC reassesses the city's financial status after the first fiscal year, and every year thereafter, to determine whether the city should be able to continue operations. If the LGC finds that the city's

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financial affairs are sufficiently stable to continue operations for three consecutive fiscal years, the LGC relinquishes control to the city.

- If the LGC finds that at any time that the city's financial affairs are not sufficiently stable to continue operations, the LGC may identify local government partners for merger or dissolution of the city. Upon a determination by the LGC that it is in the best interest of the people, the LGC may adopt a resolution to transfer the assets, liabilities, and other obligations to the local government partner and dissolve the city. If the LGC acts to dissolve a city, the General Assembly could enact a bill to disapprove the resolution of transfer and dissolution.

Transition Initiated by the City:

- A city may initiate administrative dissolution by adoption of a resolution of intent adopted at a regular meeting of the city. The resolution must be delivered to the LGC and the county or counties in which the city lies.
- The governing body of the city releases an impact statement to educate the city's residents on the potential ramifications of dissolution.
- Public hearings are conducted on the matter of the proposed resolution.
- Prior to adopting a resolution to dissolve, the governing body of the city develops a plan of action to distribute all assets and liabilities of the city, and the plan must be approved by the LGC. The governing body of the city may also adopt a resolution to request the assistance of the LGC to develop the plan of action. The LGC may modify the plan of action prior to approval. After the LGC approves the plan of action, and the approved plan of action must be presented at a regular meeting of the governing body of the city.
- Public hearings are conducted on whether to adopt a resolution to dissolve the city in accordance with the plan of action.
- The residents of the city may initiate a referendum on the resolution to dissolve the city by filing a valid initiative petition. A special election on the question of dissolving the city is then held.
- The city may implement the plan of action if the majority of citizens are in favor of dissolution, or if no petition for referendum was timely filed. After completion of the plan of action and written confirmation of completion from the LGC, the city must file a copy of the resolution to dissolve with the LGC and the Secretary of State, and the city ceases to exist.

EFFECTIVE DATE: August 30, 2021.