

February 25, 2003

S 160. DELEGATIONS OF AUTHORITY. TO CLARIFY EXISTING DELEGATIONS OF AUTHORITY TO COUNTIES, CITIES, AND BOARDS OF HEALTH AND TO CONFIRM FLEXIBILITY IN THE EXECUTION OF THOSE DELEGATED AUTHORITIES. As title indicates.

Specific changes and clarifications include:

Broad construction. Amends GS 160A-4 and 153A-4 (providing that city and county powers, respectively, should be broadly construed) to specify the intention of the General Assembly that the rule of strict construction known as Dillon's Rule is not to be applied to interpretations of the scope of the delegations of authority to cities or counties. Adds new provision to both sections specifying that cities and counties respectively are to have the authority and flexibility to adopt reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions in carrying out their delegated powers, except where specifically provided otherwise. Makes other minor wording changes to make the two statutes almost identical.

Preemption. Amends GS 160A-174(b) (ordinance preemption under city general ordinance-making power) to specify that an ordinance is preempted if it purports to regulate a field for which a state or federal law expressly states a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation (was, "clearly shows," with no requirement of express language in the state or federal law). Adds new GS 153A-121(d), to clarify that same preemption rules apply to counties.

Sources of authority to act. Amends GS 160A-177 and 153A-124 to clarify further that cities and counties, respectively, are not limited to a single source of authority in enacting police power ordinances. Amendment specifies that where there are multiple sources of authority to act, a city or county may freely elect to use any or all sources, either individually or in combination. Requires that when a city or county makes such an election, it specify which sources of authority are being employed and that it follow the procedures for each of the authorities elected.

Unitary development ordinances. Adds new GS 160A-363(d) and 153A-322(d) (supplemental city and county powers, respectively, under the planning and development regulation laws) to specifically provide that a city or county, respectively, may elect to combine any of the ordinances authorized by law into a unified ordinance. Authorizes a city or county, unless expressly provided otherwise, to apply any of the definitions and procedures authorized by law to any or all aspects of such an ordinance, and to use any organizational structure, board, commission, or staffing arrangement authorized by law with respect to any or all aspects of the ordinance.

Board of health rules and rule-making. Adds new GS 153A-121(e) to include rules of local boards of health adopted pursuant to GS 130A-39 within the definition of "county ordinance" in county general ordinance-making power statute. Adds new GS 130A-39(b1) to specify (1) that if a local board of health finds that a proposed local rule is required to protect and promote the public health, the fact that the rule may also be based in part on nonhealth grounds does not invalidate the rule as one that exceeds the board's rule-making authority; and (2) that provisions of a rule that exceed such authority may be judicially found to be separable in accordance with a separability clause contained in the rule.

Intro. by Clodfelter.

Ref. to Judiciary I	GS 130A, 153A, 160A
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April 30, 2003

S 160. DELEGATIONS OF AUTHORITY. Intro. 2/25/03. Senate committee substitute adopted 4/29/03 makes the following changes to 1st edition. Adds new GS 160A-3(d) providing that city may elect to use any powers granted by general law or city charter and shall follow the applicable procedures, and that where there is a direct conflict between general law and charter procedures, the charter procedure shall prevail. Deletes amendment to GS 160A-174(b)(5) and new GS 153A-121(d) and (e) and GS 130A-39(b1). Amends GS 160A-177 and GS 153A-124 by deleting requirement that city and county specify source of authority. Further amends GS 160A-177 to provide that when there is a direct conflict between procedures, city charter procedure shall prevail over a procedure established by general law. Adds new 160A-466 authorizing local governments engaged in a joint undertaking to enter into agreements regarding the financing of undertaking, agreement term not to exceed 99 years. Further authorizes parties to agreement to transfer and spend funds in accordance with agreement. Adds new GS 158-7.3 authorizing local

governments to enter into agreements for the development of industrial or commercial sites and parks and place property taxes levied on park or site in common fund or transfer funds to a nonprofit corporation, agreement term not to exceed 40 years. Amends GS 153A-4 to clarify that sec. does not expand or restrict taxing authority under Art. 7, authority to finance under Art. 15, or the purposes for which regulations may be adopted under Art. 18. Makes technical corrections.