

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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HOUSE BILL 821  
PROPOSED COMMITTEE SUBSTITUTE H821-PCS10528-BVa-28

Short Title: Various Land-Use Law Changes/Clarifications.

(Public)

Sponsors:

Referred to:

May 5, 2021

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE THAT COURTS MUST AWARD REASONABLE ATTORNEYS'  
3 FEES AND COSTS AGAINST A LOCAL GOVERNMENT IN CERTAIN CIVIL  
4 ACTIONS AND APPEALS, TO CLARIFY LOCAL GOVERNMENT AUTHORITY  
5 OVER LOCAL PLANNING AND DEVELOPMENT REGULATION, TO REQUIRE  
6 CITIES TO PROVIDE WATER AND SEWER SERVICES FOR CERTAIN PROPERTIES  
7 IN AREAS OF EXTRATERRITORIAL JURISDICTION, AND TO PROVIDE AN  
8 APPROPRIATION TO THE SCHOOL OF GOVERNMENT OF THE UNIVERSITY OF  
9 NORTH CAROLINA AT CHAPEL HILL.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.(a)** G.S. 6-21.7 reads as rewritten:

12 "**§ 6-21.7. Attorneys' fees; ~~cities or counties~~ local governments acting outside the scope of**  
13 **their authority.**

14 (a) In any action in which a ~~city or county~~ local government is a party, upon a finding by  
15 the court that the ~~city or county~~ local government violated a statute or case law setting forth  
16 unambiguous limits on its authority, the court ~~shall~~ must award reasonable attorneys' fees and  
17 costs to the party who successfully challenged the ~~city's or county's~~ local government's action.

18 (b) ~~In any action in which a city or county is a party, upon finding by the court that the~~  
19 ~~city or county took action inconsistent with, or in violation of, G.S. 160D-108(b) or~~  
20 ~~G.S. 143-755, the court shall award reasonable attorneys' fees and costs to the party who~~  
21 ~~successfully challenged the local government's failure to comply with any of those provisions.~~  
22 In all other matters, matters in which a local government is a party, the court may award  
23 reasonable attorneys' fees and costs to the prevailing private ~~litigant~~ litigant, except the court  
24 must award reasonable attorneys' fees and costs to the party who successfully challenged the  
25 local government's action as follows:

26 (1) Upon a finding by the court that the local government took action inconsistent  
27 with, or in violation of, G.S. 160D-108(b).

28 (2) Upon a finding by the court that the local government took action inconsistent  
29 with, or in violation of, G.S. 143-755.

30 (3) Upon a finding by the court that the local government is not the prevailing  
31 party in an appeal initiated by the local government regarding a development  
32 approval decision under Chapter 160D of the General Statutes.

33 (c) For purposes of this section, the following terms apply:

34 (1) Local government. – As defined in G.S. 160D-102(22).

35 (2) ~~"unambiguous" means that the~~ Unambiguous. – The limits of authority are not  
36 reasonably susceptible to multiple constructions."



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1           **SECTION 1.(b)** This section becomes effective October 1, 2021, and applies to civil  
2 actions or appeals commenced on or after that date.

3           **SECTION 2.(a)** Article 1 of Chapter 160D of the General Statutes is amended by  
4 adding a new section to read:

5 **"§ 160D-112. Clarification of local government authority.**

6           Unless otherwise provided by local act, local governments have no authority under this  
7 Chapter to do any of the following:

8           (1) Impose impact fees for development.

9           (2) Condition a development approval on the existence of a community benefits  
10 agreement. The term "community benefits agreement" means a  
11 development-specific arrangement between a developer and persons affected  
12 by the development that details the development's contributions to the persons  
13 affected or ensures support for the development by the persons affected.

14           (3) Require a developer to provide funds for affordable housing or construct, set  
15 aside, or designate one or more dwellings or developments as affordable  
16 housing.

17           (4) Require a completed traffic impact analysis prior to a development approval.

18           (5) Require a developer to construct a greenway."

19           **SECTION 2.(b)** G.S. 160D-703(b) reads as rewritten:

20           "(b) Conditional Districts. – Property may be placed in a conditional district only in  
21 response to a petition by all owners of the property to be included. Specific conditions may be  
22 proposed by the petitioner or the local government or its agencies, but only those conditions  
23 approved by the local government and consented to by the petitioner in writing may be  
24 incorporated into the zoning regulations. Unless consented to by the petitioner in writing, in the  
25 exercise of the authority granted by this section, a local government may not require, enforce, or  
26 incorporate into the zoning regulations any condition or requirement not authorized by otherwise  
27 applicable law, including, without limitation, taxes, ~~impact fees,~~ building design elements within  
28 the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in  
29 G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or  
30 use of land. Conditions and site-specific standards imposed in a conditional district shall be  
31 limited to those that address the conformance of the development and use of the site to local  
32 government ordinances, plans adopted pursuant to G.S. 160D-501, or the impacts reasonably  
33 expected to be generated by the development or use of the site. The zoning regulation may  
34 provide that defined minor modifications in conditional district standards that do not involve a  
35 change in uses permitted or the density of overall development permitted may be reviewed and  
36 approved administratively. Any other modification of the conditions and standards in a  
37 conditional district shall follow the same process for approval as are applicable to zoning map  
38 amendments. If multiple parcels of land are subject to a conditional zoning, the owners of  
39 individual parcels may apply for modification of the conditions so long as the modification would  
40 not result in other properties failing to meet the terms of the conditions. Any modifications  
41 approved apply only to those properties whose owners petition for the modification."

42           **SECTION 3.(a)** Article 16 of Chapter 160A of the General Statutes is amended by  
43 adding a new section to read:

44 **"§ 160A-329.1. Water and sewer services in extraterritorial areas.**

45           (a) A city must provide water and sewer services to a property if the city has water and  
46 sewer capacity and all of the following conditions are met:

47           (1) The city exercises extraterritorial jurisdiction over the property under Article  
48 2 of Chapter 160D of the General Statutes.

49           (2) The city extends a development regulation to the extraterritorial area where  
50 the property is located.

1           (3)    The owner of the property submits a request for water and sewer services to  
2                   the governing board no earlier than one year after the property was added to  
3                   the area of extraterritorial jurisdiction.

4       (b)    For purposes of this section, the following terms apply:

5           (1)    City. – As defined in G.S. 160D-102(5).

6           (2)    Development regulation. – As defined in G.S. 160D-102(14).

7           (3)    Governing board. – As defined in G.S. 160D-102(17).

8           (4)    Owner. – As defined in G.S. 160D-102(18).

9           (5)    Property. – As defined in G.S. 160D-102(27)."

10       **SECTION 3.(b)** This section becomes effective October 1, 2021, and applies to  
11 property added to the extraterritorial jurisdiction of a city on or after that date.

12       **SECTION 4.** There is appropriated from the General Fund the sum of ten thousand  
13 dollars (\$10,000) in nonrecurring funds for the 2021-2022 fiscal year to the School of  
14 Government of the University of North Carolina at Chapel Hill for the purposes of providing free  
15 training to local government board members and managers on the implementation of this act.

16       **SECTION 5.** Except as otherwise provided, this act becomes effective October 1,  
17 2021.