

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1446

Short Title: Orange Omnibus Local Act of 2000.

(Local)

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Sponsors: Senators Kinnaird; and Lee.

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Referred to: Finance.

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May 25, 2000

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO CERTAIN GENERAL AND LOCAL LAWS AFFECTING ORANGE COUNTY.

The General Assembly of North Carolina enacts:

**PART I. ORANGE COUNTY ADDED TO THOSE COUNTIES USING ATTACHMENT AND GARNISHMENT IN THE COLLECTION OF AMBULANCE SERVICE FEES**

Section 1. G.S. 44-51.8 reads as rewritten:

**"§ 44-51.8. Counties to which Article applies.**

The provisions of this Article shall apply only to Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Caswell, Catawba, Chatham, Cherokee, Chowan, Cleveland, Columbus, Craven, Cumberland, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Montgomery, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania,

1 Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wilkes, Wilson, Yadkin  
2 and Yancey Counties."

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4 **PART II. REGULATION OF OPEN BURNING**

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6 Section 2. G.S. 153A-136 reads as rewritten:

7 **"§ 153A-136. Regulation of solid wastes.**

8 (a) A county may by ordinance regulate the storage, collection, transportation, use,  
9 disposal, and other disposition of solid wastes. Such an ordinance may:

10 (1) Regulate the activities of persons, firms, and corporations, both public  
11 and private.

12 (2) Require each person wishing to commercially collect or dispose of solid  
13 wastes to secure a license from the county and prohibit any person from  
14 commercially collecting or disposing of solid wastes without a license.  
15 A fee may be charged for a license.

16 (3) Grant a franchise to one or more persons for the exclusive right to  
17 commercially collect or dispose of solid wastes within all or a defined  
18 portion of the county and prohibit any other person from commercially  
19 collecting or disposing of solid wastes in that area. The board of  
20 commissioners may set the terms of any franchise, except that no  
21 franchise may be granted for a period exceeding 30 years, nor may any  
22 franchise by its terms impair the authority of the board of  
23 commissioners to regulate fees as authorized by this section.

24 (4) Regulate the fees, if any, that may be charged by licensed or franchised  
25 persons for collecting or disposing of solid wastes.

26 (5) Require the source separation of materials prior to collection of solid  
27 waste for disposal.

28 (6) Require participation in a recycling program by requiring separation of  
29 designated materials by the owner or occupant of the property prior to  
30 disposal. An owner of recovered materials as defined by G.S. 130A-  
31 290(a)(24) retains ownership of the recovered materials until the owner  
32 conveys, sells, donates, or otherwise transfers the recovered materials to  
33 a person, firm, company, corporation, or unit of local government. A  
34 county may not require an owner to convey, sell, donate, or otherwise  
35 transfer recovered materials to the county or its designee. If an owner  
36 places recovered materials in receptacles or delivers recovered materials  
37 to specific locations, receptacles, and facilities that are owned or  
38 operated by the county or its designee, then ownership of these  
39 materials is transferred to the county or its designee.

40 (7) Include any other proper matter.

41 (b) Any ordinance adopted pursuant to this section shall be consistent with and  
42 supplementary to any rules adopted by the Commission for Health Services or the  
43 Department of Environment and Natural Resources.

1 (c) The board of commissioners of a county shall consider alternative sites and  
2 socioeconomic and demographic data and shall hold a public hearing prior to selecting or  
3 approving a site for a new sanitary landfill that receives residential solid waste that is  
4 located within one mile of an existing sanitary landfill within the State. The distance  
5 between an existing and a proposed site shall be determined by measurement between the  
6 closest points on the outer boundary of each site. The definitions set out in G.S. 130A-  
7 290 apply to this subsection. As used in this subsection:

- 8 (1) "Approving a site" refers to prior approval of a site under G.S. 130A-  
9 294(a)(4).
- 10 (2) "Existing sanitary landfill" means a sanitary landfill that is in operation  
11 or that has been in operation within the five-year period immediately  
12 prior to the date on which an application for a permit is submitted.
- 13 (3) "New sanitary landfill" means a sanitary landfill that includes areas not  
14 within the legal description of an existing sanitary landfill as set out in  
15 the permit for the existing sanitary landfill.
- 16 (4) "Socioeconomic and demographic data" means the most recent  
17 socioeconomic and demographic data compiled by the United States  
18 Bureau of the Census and any additional socioeconomic and  
19 demographic data submitted at the public hearing.

20 (d) As used in this section, "solid waste" means nonhazardous solid waste, that is,  
21 solid waste as defined in G.S. 130A-290 but not including hazardous waste.

22 (e) A county may by ordinance regulate and prohibit the open burning of trees,  
23 limbs, stumps, and construction debris. A county may, as a condition of approval of any  
24 permit for a subdivision, clearing, and development of land or construction of buildings  
25 within the planning jurisdiction of the county, regulate and prohibit the open burning of  
26 trees, limbs, stumps, and construction debris associated with the permitted activity."

### 27 28 **PART III. LOCAL IMPACT TAX FOR PUBLIC SCHOOL CAPITAL** 29 **IMPROVEMENTS**

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31 Section 3. Definitions. – The following definitions apply to this part:

- 32 (1) Commercial building enclosed floor space. – All enclosed floor space  
33 used for any purpose except:
- 34 a. Dwelling units and accessory structures to dwelling units.
  - 35 b. Recreational facilities constructed as part of a residential  
36 development and used primarily by residents of the development.
  - 37 c. Buildings owned by the United States, the State of North  
38 Carolina, any county, or any municipal corporation.
  - 39 d. Buildings owned and operated by nonprofit entities for  
40 noncommercial and nonresidential purposes.
  - 41 e. Schools or day care centers.

- 1 (2) Dwelling unit. – An enclosure containing sleeping, kitchen, and  
2 bathroom facilities designed for and used or held ready for use as a  
3 permanent residence by one family.
- 4 (3) Land development. –  
5 a. Land development includes any of the following:  
6 1. Construction of any dwelling unit, other than one  
7 excluded under sub-subdivision b. of this subdivision, for  
8 which a building permit was issued or should have been  
9 issued after the effective date of an ordinance adopted  
10 under this part.  
11 2. Construction of any commercial building enclosed floor  
12 space for which a building permit was issued or should  
13 have been issued after the effective date of an ordinance  
14 adopted under this part.  
15 3. Conversion of a building that adds one or more new  
16 dwelling units or that creates new commercial building  
17 enclosed floor space.  
18 4. The initial location of a manufactured home or other  
19 dwelling or commercial structure within Orange County.
- 20 b. For purposes of determining the impact of land development for  
21 this part, land development does not include:  
22 1. Construction of an addition to a dwelling unit.  
23 2. The relocation within Orange County of any structure  
24 located within the county on the effective date of an  
25 ordinance adopted pursuant to this part or any structure  
26 with respect to which an impact tax pursuant to this part  
27 has been paid.  
28 3. Within the county, the reconstruction or replacement of  
29 one dwelling unit by another or the replacement or  
30 reconstruction of commercial building enclosed floor  
31 space that was in existence on the effective date of an  
32 ordinance adopted pursuant to this part or of any such  
33 floor space with respect to which an impact tax adopted  
34 pursuant to this part has been paid.
- 35 (4) Net proceeds. – The gross proceeds of the tax less the cost to the county  
36 of collecting and administering the tax.
- 37 (5) Person. – An individual, a partnership, a corporation, a limited liability  
38 company, or another legal entity.
- 39 (6) Person responsible for the impact of land development. – The owner of  
40 any dwelling unit or commercial building enclosed floor space on the  
41 date an occupancy permit is issued for the dwelling unit or commercial  
42 floor space or, if no occupancy permit is issued, the date the dwelling  
43 unit or commercial floor space is occupied.

1 Section 4. Authorization of School Capital Impact Tax. – (a) Except as  
2 provided in subsection (b) of this section, Orange County may adopt an ordinance  
3 levying a tax on the impact of land development within the county and provide for the  
4 administration, enforcement, and collection of the tax.

5 Section 4.(b) Orange County may not adopt an ordinance pursuant to this part if  
6 there is in effect any ordinance pertaining to a system of impact fees to provide for capital  
7 improvements to public schools within the county adopted pursuant to Sections 17  
8 through 18.1 of Title IV of Chapter 460 of the 1987 Session Laws, as amended by  
9 Chapter 324 of the 1991 Session Laws.

10 Section 5. Use of Tax Proceeds. – The purpose of the tax authorized by this  
11 part is to generate funds to partially offset the cost of constructing new school capital  
12 facilities or replacing, expanding, or improving existing school capital facilities  
13 necessitated in part by new growth within Orange County. Accordingly, the net proceeds  
14 generated by the tax authorized by this part shall be deposited by Orange County in its  
15 capital reserve improvements fund or funds established under Part 2 of Article 3 of  
16 Chapter 159 of the General Statutes and may be expended, to the extent otherwise  
17 authorized by law, only for capital improvements projects related to public schools.

18 Section 6. Liability; Administration. – An ordinance adopted pursuant to this  
19 part shall provide that:

- 20 (1) A person responsible for the impact of land development shall pay an  
21 impact tax for each square foot of dwelling space and commercial  
22 building enclosed floor space for which an occupancy permit is issued  
23 or, if no occupancy permit is issued, for each square foot of dwelling  
24 space in an occupied dwelling and for each square foot of occupied  
25 enclosed floor space in a commercial building.
- 26 (2) The tax shall be due on or before the date an occupancy permit is  
27 initially issued for the dwelling unit or commercial building enclosed  
28 floor space in question or, if no occupancy permit is issued, the date the  
29 dwelling unit or commercial floor space is initially occupied. However,  
30 no tax due shall be considered delinquent until 60 days after the tax  
31 becomes due. There shall be added to delinquent taxes interest at the  
32 legal rate.
- 33 (3) Taxes authorized by this part may be collected pursuant to G.S. 153A-  
34 147 or G.S. 160A-207. In addition, taxes authorized by this part may be  
35 recovered in a civil action in the nature of debt including an award of  
36 reasonable attorneys' fees as part of costs.

37 Section 7. Rates. – Orange County shall establish annually at the time of the  
38 adoption of its annual budget the tax rate to be levied per square foot of dwelling space  
39 and per square foot of commercial building enclosed floor space for the ensuing fiscal  
40 year. Different tax rates may be established for different types of dwelling units and  
41 different types of commercial building enclosed floor space.

42 Section 8. Disclosure Requirements. – Whenever the sale of real property  
43 located in Orange County involves new construction, the seller shall prepare and sign,

1 and the buyer shall receive and sign, a disclosure statement. The disclosure statement  
2 shall either be included in a contract or sale or contained in a separate document executed  
3 prior to the execution of a sales contract. This disclosure statement shall fully and  
4 completely disclose that the owner of the property at the time an occupancy permit issued  
5 for the new construction or, if no occupancy permit is issued, the date the new  
6 construction is occupied, may be subject to a tax levied by the county on the impact of  
7 land development. If a seller fails to make this disclosure and the buyer suffers injury as  
8 a result of the seller's failure to disclose, the seller is liable to the buyer to the extent of  
9 the buyer's injury.

10       Section 9. Relationship with Impact Fee. – Orange County may repeal part or  
11 all of an ordinance pertaining to a system of impact fees to provide for capital  
12 improvements to public schools within the county, adopted pursuant to Sections 17  
13 through 18.1 of Title IV of Chapter 460 of the 1987 Session Laws, as amended by  
14 Chapter 324 of the 1991 Session Laws. With respect to an ordinance pertaining to a  
15 system of impact fees to provide for capital improvements to public schools within the  
16 county, Orange County may not adopt an ordinance pursuant to Sections 17 through 18.1  
17 of Title IV of Chapter 460 of the 1987 Session Laws, as amended by Chapter 324 of the  
18 1991 Session Laws, while an ordinance adopted pursuant to this part is in effect.

19       Section 10. Effective Date. – This part becomes effective January 1, 2001.  
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#### 21 **PART IV. APPLICABILITY AND EFFECTIVE DATE**

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23       Section 11. This act applies to Orange County only.

24       Section 12. This act is effective when it becomes law.