

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1152
Committee Substitute Favorable 5/4/07

Short Title: Boiling Spring Lakes/Habitat Conservation.

(Local)

Sponsors:

Referred to:

March 29, 2007

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE CITY OF BOILING SPRING LAKES TO
2 PARTICIPATE IN AND FUND A HABITAT CONSERVATION PLAN FOR THE
3 RED-COCKADED WOODPECKER AND OTHER ENDANGERED SPECIES AS
4 A PUBLIC ENTERPRISE.
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 160A-174 reads as rewritten:

8 **"§ 160A-174. General ordinance-making power.**

9 (a) A city may by ordinance define, prohibit, regulate, or abate acts, omissions,
10 or conditions, detrimental to the health, safety, or welfare of its citizens and the peace
11 and dignity of the city, and may define and abate nuisances.

12 (b) A city ordinance shall be consistent with the Constitution and laws of North
13 Carolina and of the United States. An ordinance is not consistent with State or federal
14 law when:

- 15 (1) The ordinance infringes a liberty guaranteed to the people by the State
16 or federal Constitution;
- 17 (2) The ordinance makes unlawful an act, omission or condition which is
18 expressly made lawful by State or federal law;
- 19 (3) The ordinance makes lawful an act, omission, or condition which is
20 expressly made unlawful by State or federal law;
- 21 (4) The ordinance purports to regulate a subject that cities are expressly
22 forbidden to regulate by State or federal law;
- 23 (5) The ordinance purports to regulate a field for which a State or federal
24 statute clearly shows a legislative intent to provide a complete and
25 integrated regulatory scheme to the exclusion of local regulation;
- 26 (6) The elements of an offense defined by a city ordinance are identical to
27 the elements of an offense defined by State or federal law.

28 The fact that a State or federal law, standing alone, makes a given act, omission, or
29 condition unlawful shall not preclude city ordinances requiring a higher standard of

1 conduct or condition. Notwithstanding the provisions of G.S. 143-254.2, a unit of local
2 government may develop, adopt, and implement habitat conservation plans necessary to
3 minimize and mitigate the incidental take of threatened and endangered species."

4 **SECTION 2.** G.S. 160A-216 reads as rewritten:

5 **"§ 160A-216. Authority to make special assessments.**

6 Any city is authorized to make special assessments against benefited property within
7 its corporate limits for:

- 8 (1) Constructing, reconstructing, paving, widening, installing curbs and
9 gutters, and otherwise building and improving streets;
- 10 (2) Constructing, reconstructing, paving, widening, and otherwise building
11 or improving sidewalks in any public street;
- 12 (3) Constructing, reconstructing, extending, and otherwise building or
13 improving water systems;
- 14 (4) Constructing, reconstructing, extending, or otherwise building or
15 improving sewage collection and disposal systems of all types,
16 including septic tank systems or other on-site collection or disposal
17 facilities or systems;
- 18 (5) Constructing, reconstructing, extending, and otherwise building or
19 improving storm sewer and drainage ~~systems~~systems; and
- 20 (6) Developing and implementing habitat conservation plans for
21 threatened and endangered species."

22 **SECTION 3.** G.S. 160A-311 reads as rewritten:

23 **"§ 160A-311. Public enterprise defined.**

24 As used in this Article, the term "public enterprise" includes:

- 25 (1) Electric power generation, transmission, and distribution systems.
- 26 (2) Water supply and distribution systems.
- 27 (3) Wastewater collection, treatment, and disposal systems of all types,
28 including septic tank systems or other on-site collection or disposal
29 facilities or systems.
- 30 (4) Gas production, storage, transmission, and distribution systems, where
31 systems shall also include the purchase or lease of natural gas fields
32 and natural gas reserves, the purchase of natural gas supplies, and the
33 surveying, drilling and any other activities related to the exploration
34 for natural gas, whether within the State or without.
- 35 (5) Public transportation systems.
- 36 (6) Solid waste collection and disposal systems and facilities.
- 37 (7) Cable television systems.
- 38 (8) Off-street parking facilities and systems.
- 39 (9) Airports.
- 40 (10) Stormwater management programs designed to protect water quality
41 by controlling the level of pollutants in, and the quantity and flow of,
42 stormwater and structural and natural stormwater and drainage systems
43 of all types.

1 (11) Developing and implementing habitat conservation plans for
2 endangered species, including the red-cockaded woodpecker."

3 **SECTION 4.** G.S. 160A-314 reads as rewritten:

4 "**§ 160A-314. Authority to fix and enforce rates.**

5 (a) A city may establish and revise from time to time schedules of rents, rates,
6 fees, charges, and penalties for the use of or the services furnished by any public
7 enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to
8 classes of service, and different schedules may be adopted for services provided outside
9 the corporate limits of the city.

10 (a1) (1) Before it establishes or revises a schedule of rates, fees, charges, or
11 penalties for stormwater management programs and structural and
12 natural stormwater and drainage systems under this section, the city
13 council shall hold a public hearing on the matter. A notice of the
14 hearing shall be given at least once in a newspaper having general
15 circulation in the area, not less than seven days before the public
16 hearing. The hearing may be held concurrently with the public hearing
17 on the proposed budget ordinance.

18 (2) The fees established under this subsection must be made applicable
19 throughout the area of the city. Schedules of rates, fees, charges, and
20 penalties for providing stormwater management programs and
21 structural and natural stormwater and drainage system service may
22 vary according to whether the property served is residential,
23 commercial, or industrial property, the property's use, the size of the
24 property, the area of impervious surfaces on the property, the quantity
25 and quality of the runoff from the property, the characteristics of the
26 watershed into which stormwater from the property drains, and other
27 factors that affect the stormwater drainage system. Rates, fees, and
28 charges imposed under this subsection may not exceed the city's cost
29 of providing a stormwater management program and a structural and
30 natural stormwater and drainage system. The city's cost of providing a
31 stormwater management program and a structural and natural
32 stormwater and drainage system includes any costs necessary to assure
33 that all aspects of stormwater quality and quantity are managed in
34 accordance with federal and State laws, regulations, and rules.

35 (3) No stormwater utility fee may be levied under this subsection
36 whenever two or more units of local government operate separate
37 stormwater management programs or separate structural and natural
38 stormwater and drainage system services in the same area within a
39 county. However, two or more units of local government may allocate
40 among themselves the functions, duties, powers, and responsibilities
41 for jointly operating a stormwater management program and structural
42 and natural stormwater and drainage system service in the same area
43 within a county, provided that only one unit may levy a fee for the
44 service within the joint service area. For purposes of this subsection, a

1 unit of local government shall include a regional authority providing
2 stormwater management programs and structural and natural
3 stormwater and drainage system services.

4 (a2) A fee for the use of a disposal facility provided by the city may vary based on
5 the amount, characteristics, and form of recyclable materials present in solid waste
6 brought to the facility for disposal. This section does not prohibit a city from providing
7 aid to low-income persons to pay all or part of the cost of solid waste management
8 services for those persons.

9 (a3) Rents, rates, fees, charges, and penalties for habitat conservation plans may
10 cover any and all costs associated with minimizing and mitigating the impact of the
11 incidental take of red-cockaded woodpeckers and other threatened or endangered
12 species in the planning jurisdiction of the city. These costs include the development and
13 implementation of a habitat conservation plan for endangered species and any costs
14 necessary to ensure that all aspects of the habitat conservation plan and incidental take
15 permits for covered species are managed in accordance with federal, State, and local
16 laws, ordinances, and rules. Schedules of rents, rates, fees, charges, and penalties
17 authorized under this section or through the inherent regulatory authority of the city
18 may vary according to whether property served by the plan is residential, commercial,
19 or industrial property, the use of the property, the size of the property, the amount and
20 quality of habitat for covered species on the property, whether the property is
21 developed, undeveloped, or being developed, and any other factors that affect the
22 development and implementation of the habitat conservation plan. Schedules of rents,
23 rates, fees, charges, and penalties authorized under this section or through the inherent
24 regulatory authority of the city may also vary within designated districts in the city that
25 are identified as critical to the survival of covered endangered species or as currently
26 inadequate to support the survival of covered endangered species due to past loss of
27 habitat.

28 (b) A city shall have power to collect delinquent accounts by any remedy
29 provided by law for collecting and enforcing private debts, and may specify by
30 ordinance the order in which partial payments are to be applied among the various
31 enterprise services covered by a bill for the services. A city may also discontinue
32 service to any customer whose account remains delinquent for more than 10 days. When
33 service is discontinued for delinquency, it shall be unlawful for any person other than a
34 duly authorized agent or employee of the city to do any act that results in a resumption
35 of services. If a delinquent customer is not the owner of the premises to which the
36 services are delivered, the payment of the delinquent account may not be required
37 before providing services at the request of a new and different tenant or occupant of the
38 premises, but this restriction shall not apply when the premises are occupied by two or
39 more tenants whose services are measured by the same meter.

40 (c) Except as provided in subsection (d) of this section and G.S. 160A-314.1,
41 rents, rates, fees, charges, and penalties for enterprisory services shall be legal
42 obligations of the person contracting for them, and shall in no case be a lien upon the
43 property or premises served, provided that no contract shall be necessary in the case of

1 structural and natural stormwater and drainage ~~systems~~. systems or habitat conservation
2 plans.

3 (d) Rents, rates, fees, charges, and penalties for enterprisory services shall be
4 legal obligations of the owner of the premises served when:

5 (1) The property or premises is leased or rented to more than one tenant
6 and services rendered to more than one tenant are measured by the
7 same meter.

8 (2) Charges made for use of a sewage system are billed separately from
9 charges made for the use of a water distribution system.

10 (e) Nothing in this section shall repeal any portion of any city charter
11 inconsistent herewith."

12 **SECTION 5.** This act applies only to the City of Boiling Spring Lakes.

13 **SECTION 6.** This act is effective when it becomes law.