

NORTH CAROLINA GENERAL ASSEMBLY  
1973 SESSION

CHAPTER 526  
HOUSE BILL 702

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF  
EMERALD ISLE AND TO REPEAL PRIOR CHARTER ACTS.

The General Assembly of North Carolina enacts:

**Section 1.** The Charter of the Town of Emerald Isle is hereby revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF EMERALD ISLE

"ARTICLE I. INCORPORATION AND CORPORATE POWERS

"Section 1.1. Incorporation and General Powers. The Town of Emerald Isle shall continue to be a body politic and corporate under the name of the 'Town of Emerald Isle', and shall continue to be vested with all property and rights which now belong to the Town; shall have perpetual succession; may have a common seal and alter and renew the same at pleasure; may sue and be sued; may contract, may acquire and hold all such property, real and personal, as may be devised, bequeathed, sold or in any manner conveyed or dedicated to it, or otherwise acquired by it, and may from time to time hold or invest, sell, or dispose of the same; and shall have and may exercise in conformity with this Charter all municipal powers, functions, rights, privileges, and immunities of every name and nature.

"Sec. 1.2. Exercise of Powers. All powers, functions, rights, privileges, and immunities of the Town, its officers, agencies, or employees, shall be carried into execution as provided by this Charter, or, if this Charter makes no provision, as provided by ordinance or resolution of the Board of Commissioners and as provided by the general laws of North Carolina pertaining to municipal corporations.

"Sec. 1.3. Enumerated Powers Not Exclusive. The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein or implied hereby, or those appropriate to the exercise of such powers, the Town of Emerald Isle shall have and may exercise all powers which are granted to municipal corporations by the general laws of North Carolina and all powers which under the Constitution of North Carolina, it would be competent for this Charter specifically to enumerate.

"ARTICLE II. CORPORATE BOUNDARIES

"Sec. 2.1. Existing Corporate Boundaries. The corporate boundaries of the Town of Emerald Isle shall be as follows until changed in accordance with law: Beginning at a concrete marker at the high water mark of the Atlantic Ocean, this being the southwest corner of Wica Chemical Company property (formerly being the Roosevelt Estate southwest corner), this point also being located South 71 degrees 35 minutes West

7255.0 feet from the church spire at Salter Path Village, located North of the Salter Path Road; thence running with the Wica Chemical Company West property line North 03 degrees 35 minutes West 452.80 feet to a concrete monument marked 'A.H. (Alice Hoffman) Lane'; thence continuing same course 203.7 feet to a concrete monument at the high water mark of Bogue Sound (Wica Chemical Company northwest corner); thence continuing North 03 degrees 35 minutes West 1350 feet to a point in Bogue Sound; then in a westerly direction parallel to and 1320 feet from the water line of Bogue Sound to a point in Bogue Sound formed by the intersection of this call and a line perpendicular thereto passing through the westernmost projection of Bogue banks at the mean high water mark; thence southerly along said line as extended to a point where said line meets the high water line of the Atlantic Ocean; thence due South 2640 feet to a point in the Atlantic Ocean; thence in an easterly direction parallel to and 2640 feet from the high water line of the Atlantic Ocean to a point which is 2640 feet South 03 degrees 35 minutes East from the concrete monument which is heretofore described as the point of the beginning; thence continuing North 03 degrees 35 minutes West 2640 feet to the point of beginning. All the above courses are based on true meridian.

"Sec. 2.2. Extension of Corporate Boundaries. All extensions of the corporate boundaries shall be governed by the General Statutes of North Carolina.

#### "ARTICLE III. MAYOR AND BOARD OF COMMISSIONERS

"Sec. 3.1. Composition of Board of Commissioners. The Board of Commissioners shall consist of five members to be elected by the qualified voters in the manner provided in Article IV of this Charter.

"Sec. 3.2. Mayor and Mayor Pro Tempore. The Mayor shall be elected by and from the qualified voters in the manner provided in Article IV of this Charter. The Mayor shall be the official head of the Town government and shall preside at all meetings of the Board of Commissioners. When there is an equal division on a question, the Mayor shall resolve the deadlock by his vote, but he shall vote in no other case. The Mayor shall exercise such powers and perform such duties as are or may be conferred upon him by the general laws of North Carolina, by this Charter, and by the ordinances of the Town. The Board of Commissioners shall choose one of its number to act as Mayor Pro Tempore, and he shall perform the duties of the Mayor in the Mayor's absence or disability. The Mayor Pro Tempore as such shall have no fixed term of office, but shall serve in such capacity at the pleasure of the remaining members of the Board.

"Sec. 3.3. Terms; Qualifications; Vacancies. (a) The Mayor and members of the Board of Commissioners shall serve for terms of two years, beginning the day and hour of the organizational meeting following their election, as established by ordinance in accordance with this Charter; provided, they shall serve until their successors are elected and qualify.

(b) No person shall be eligible to be a candidate or be elected as Mayor or as a member of the Board of Commissioners or to serve in such capacity, unless he is a qualified voter of the Town.

(c) In the event a vacancy occurs in the office of Mayor or Commissioner, the Board shall by majority vote appoint some qualified person to fill the same for the remainder of the unexpired term.

"Sec. 3.4. Organization of Board of Commissioners, Oaths of Office. The Board of Commissioners shall meet and organize for the transaction of business at the first regularly scheduled meeting of the Board following each biennial election. Before entering upon their offices, the Mayor and each Commissioner shall take, subscribe to, and have entered upon the minutes of the Board the following oath of office:

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as \_\_\_\_\_, so help me, God.'

"Sec. 3.5. Meetings of Board. The Board of Commissioners shall fix a suitable time and place for its regular meetings, which shall be held at least as often as once monthly. Special meetings may be held according to the procedures and requirements designated by the general laws of North Carolina pertaining to special meetings of City Councils.

#### "ARTICLE IV. ELECTIONS

"Sec. 4.1. Regular Municipal Elections. Regular municipal elections shall be held biennially in odd-numbered years on the day set by general law for municipal elections. In each election, the candidate for Mayor who receives the largest number of votes cast for Mayor shall be declared elected for a term of two years and the five candidates for Commissioner who receive the largest numbers of votes cast for Commissioner shall be declared elected for terms of two years.

"Sec. 4.2. Regulation of Elections. The Town Board of Commissioners shall appoint a municipal board of elections to conduct the Town's elections and to certify the results thereof directly to the State Board of Elections. Permanent residents and natural persons who are freeholders in the Town of Emerald Isle and also residents of the State of North Carolina and otherwise qualified to vote in the State of North Carolina shall be allowed to vote in the municipal elections of the Town of Emerald Isle and to hold elective and appointive office in the Town of Emerald Isle. Except as set forth herein, all town elections shall be conducted in accordance with the general laws of the state of North Carolina relating to municipal elections.

#### "ARTICLE V. TOWN ATTORNEY

"Sec. 5.1. Appointment; Qualifications; Term; Compensation. The Board of Commissioners shall appoint a Town Attorney who shall be an attorney-at-law licensed to engage in the practice of law in North Carolina and who need not be a resident of the Town during his tenure. The Town Attorney shall serve at the pleasure of the Board and shall receive such compensation as the Board shall determine.

"Sec. 5.2. Duties of Town Attorney. It shall be the duty of the Town Attorney to prosecute and defend suits for and against the Town; to advise the Mayor, Board of Commissioners, and other Town officials with respect to the affairs of the Town; to draft all legal documents relating to the affairs of the Town; to draft proposed ordinances when requested to do so; to inspect and pass upon all agreements, contracts, franchises and other instruments with which the Town may be concerned; to attend all meetings of the Board of Commissioners when required by the Board; and to perform such other duties as may be required of him by virtue of his position as Town Attorney.

#### "ARTICLE VI. ADMINISTRATIVE OFFICERS AND EMPLOYEES

"Sec. 6.1. Town Clerk. The Board of Commissioners may appoint a Town Clerk to keep a journal of the proceedings of the Board of Commissioners and to maintain in a safe place all records and documents pertaining to the affairs of the Town, and to perform such other duties as may be required by law or as the Board of Commissioners may direct.

"Sec. 6.2. Town Tax Collector. The Board of Commissioners shall appoint a Tax Collector to collect all taxes, licenses, fees and other moneys belonging to the Town, subject to the provisions of this Charter and the ordinances of the Town, and he shall diligently comply with and enforce all the general laws of North Carolina relating to the collection, sale, and foreclosure of taxes by municipalities.

"Sec. 6.3. Town Budget Officer. The Board of Commissioners shall appoint a Town Budget Officer to perform the duties of the Budget Officer as required by the Local Government Budget and Fiscal Control Act.

"Sec. 6.4. Town Finance Officer. The Board of Commissioners shall appoint a Town Finance Officer to perform the duties of the Finance Officer as required by the Local Government Budget and Fiscal Control Act.

"Sec. 6.5. Consolidation of Functions. The Board of Commissioners may consolidate any two or more of the positions of Town Clerk, Town Tax Collector, Town Budget Officer, and Town Finance Officer, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions.

#### "ARTICLE VII. FINANCE

"Sec. 7.1. Custody of Town Money. All moneys received by the Town for or in connection with the business of the Town Government shall be paid promptly into the Town depository or depositories. Such institutions shall be designated by the Town Board in accordance with the regulations and subject to the requirements as to security for deposits and interest thereon as may be established by the General Statutes of North Carolina. All interest on moneys belonging to the Town shall accrue to the benefit of the Town. All moneys belonging to the Town shall be disbursed in accordance with the provisions of the Local Government Budget and Fiscal Control Act.

"Sec. 7.2. Independent Audit. As soon as possible after the close of each fiscal year, an independent audit shall be made of all books and accounts of the Town Government by a certified public accountant or an accountant certified by the Local Government Commission. The audit shall be secured in accordance with the provisions of the Local Government Budget and Fiscal Control Act.

#### "ARTICLE VIII. POLICE

"Sec. 8.1. Jurisdiction. The jurisdiction of the police force is hereby extended to include all Town-owned property and facilities whether located within or outside the corporate limits, and all members of the police force shall have upon and within such property and facilities all rights, power and authority as they have within the corporate limits.

#### "ARTICLE IX. STREET AND SIDEWALK IMPROVEMENTS

"Sec. 9.1. Street Improvements; Assessment of Costs. In addition to any authority which is now or may hereafter be granted by general law to the Town for making street improvements, the Board of Commissioners is hereby authorized to make street

improvements and to assess the cost thereof against abutting property owners in accordance with the provisions of this Article.

"Sec. 9.2. When Petition Unnecessary. The Board of Commissioners may order street improvements and assess the cost thereof, exclusive of the costs incurred at street intersections, against the abutting property owners, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A (or any successor or revision thereto) of the North Carolina General Statutes, without the necessity of a petition, upon the finding by the Board as a fact:

- (a) That the street improvement project does not exceed 1,200 linear feet, and
- (b) That such street or part thereof is unsafe for vehicular traffic and it is in the public interest to make such improvement, or
- (c) That it is in the public interest to connect two streets, or portions of a street already improved, or
- (d) That it is in the public interest to widen a street, or part thereof, which is already improved; provided, that assessments for widening any street or portion of street without a petition shall be limited to the cost of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Article.

"Sec. 9.3. Street Improvement Defined. For the purposes of this Article, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curbs, gutters and street drainage facilities.

"Sec. 9.4. Sidewalks; Assessment of Costs. In addition to any authority which is now or may hereafter be granted by general law to the Town for making sidewalk improvements, the Board of Commissioners is hereby authorized to make or to order to be made sidewalk improvements or repairs according to standards and specifications of the Town, and to assess the total cost thereof against abutting property owners; provided, however, that the Board of Commissioners may order the cost of sidewalk improvements made only on one side of a street to be assessed against property owners abutting both sides of such street.

"Sec. 9.5. Assessment Procedure. In ordering street and sidewalk improvements without a petition and assessing the cost thereof under authority of this Article, the Board of Commissioners shall comply with the procedure provided by Article 10, Chapter 160A (or any successor or revision thereto) of the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof.

"Sec. 9.6. Effect of Assessments. The effect of the act levying assessments under the authority of this Article shall for all purposes be the same as if the assessments were levied under authority of Article 10 of Chapter 160A (or any successor or revision thereto) of the General Statutes.

"Sec. 9.7. Acceptance of Conveyance in Satisfaction of Assessments. The Town Tax Collector or other official or employee of the Town having charge of the collection of special assessments, shall have the right, power, and authority, by and with the approval of the Board of Commissioners first obtained and had, to receive and accept a fee

simple conveyance to the Town of any lot or parcel of land in the Town, free and clear of other encumbrances, in full settlement and satisfaction of all street and sidewalk assessments outstanding and unpaid against such property. Such right, power, and authority, however, shall be limited to a conveyance of the whole of the lot or parcel of land against which the particular assessment or assessments involved were levied. No lot or tract of land may be divided and no such right, power, and authority exercised as to a part, only, of the property originally embraced in and covered by said assessment or assessments. In the case of such conveyance, it shall not be necessary that the street or sidewalk assessment or assessments against the property be foreclosed; but the Town, upon the receipt of any such conveyance, shall become and be the absolute fee simple owner of the property, as fully to all intents and purposes as if purchased in and through foreclosure proceedings for the enforcement of such street and sidewalk assessment or assessments.

#### "ARTICLE X. CLAIMS AGAINST THE TOWN

##### "Sec. 10.1. Presentation of Claims; Suit Upon Claims.

(a) All claims or demands against the Town of Emerald Isle arising in tort or in contract shall be presented to the Board of Commissioners in writing, signed by the claimant, his attorney or agent, within 90 days after the claim or demand is due or the cause of action accrues, and no suit or action shall be brought thereon within 30 days or after the expiration of 12 months from the time said claim or demand is so presented. Unless the claim or demand is so presented within 90 days after the cause of action accrues, and unless suit is brought within 12 months thereafter, any action thereon is barred.

(b) No action shall be instituted against the Town for damages to or compensation for real property taken or used by the Town for any public purpose, or for the ejectment of the Town therefrom, or to remove a cloud upon the title thereof, unless, within two years after such alleged use, the owner, his executor, administrator, guardian, or next friend, shall have given notice in writing to the Board of Commissioners of the claim, stating in the notice the date that the alleged use commenced, a description of property alleged to have been used, and the amount of the damage or compensation claimed.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if a complainant suffers from physical or mental incapacity that renders it impossible for him to give notice, his action shall not be barred if notice of claim is given by him or on his behalf within six months after the termination of his incapacity; provided, that minority shall not of itself constitute physical or mental incapacity. If the complainant is a minor, his action shall not be barred if notice of claim is given on his behalf within three years after the occurrence or the infliction of the injury complained of; or, if the minor suffers from physical or mental incapacity that renders it impossible for him to give notice, his action shall not be barred if notice of claim is given on his behalf within six months after termination of the incapacity, or within three years after the occurrence or the infliction of the injury complained of, whichever is the longer period. The Town may at any time request the appointment of a next friend to represent any person having

a potential claim against the Town and unknown to be suffering from physical or mental incapacity."

**Sec. 2.** The purpose of this act is to revise the Charter of the Town of Emerald Isle and to consolidate herein certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts which are consolidated into this act, so that all rights and liabilities that have accrued are preserved and may be enforced.

**Sec. 3.** This act shall not be deemed to repeal, modify, or in any manner affect any of the following acts, portions of acts, or amendments thereto, whether or not such acts, portions of acts, or amendments are expressly set forth herein:

(a) Any acts concerning the property, affairs, or government of public schools in the Town of Emerald Isle.

(b) Any acts validating, confirming, approving, or legalizing official proceedings, actions, contracts, or obligations of any kind.

**Sec. 4.** The following acts or portions of acts, having served the purposes for which they were enacted, or having been consolidated into this act are hereby repealed:

<u>Chapter</u>	<u>Laws</u>
1291	Session Laws 1957
161	Session Laws 1967
299	Session Laws 1967
696	Session Laws 1971

**Sec. 5.** No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

(a) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act;

(b) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of ordinances or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

**Sec. 6.** No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

(a) The repeal herein of any act repealing such law, or

(b) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

**Sec. 7.** (a) All existing ordinances and resolutions of the Town of Emerald Isle and all existing rules or regulations of departments or agencies of the Town of Emerald Isle, not inconsistent with the provisions of this act, shall continue in full force and effect until repealed, modified or amended.

(b) No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the Town of Emerald Isle or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

**Sec. 8.** Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid

provision or application, and to this end the provisions of this act are declared to be severable.

**Sec. 9.** All laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

**Sec. 10.** This act shall be effective upon its ratification.

In the General Assembly read three times and ratified, this the 16th day of May, 1973.