GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

SESSION LAW 2001-394
HOUSE BILL 882

AN ACT TO INCORPORATE THE TOWN OF DUCK, AND TO MODIFY THE FORMULA FOR DISTRIBUTING THE PROCEEDS OF THE LOCAL OCCUPANCY TAX AND LOCAL LAND TRANSFER TAX.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Duck is enacted to read:

"CHARTER OF THE TOWN OF DUCK.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town are a body corporate and politic under the name 'Town of Duck'. The Town of Duck has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Duck are as follows:

BEGINNING at the point of intersection of the northeast corner of the corporate limits of the Town of Southern Shores in Dare County, North Carolina, with the mean high watermark of the Atlantic Ocean; thence along a line in a general easterly direction for a distance of 1,000 feet to a point along an eastern projection of the northern Town of Southern Shores limit line to a point in the Atlantic Ocean; thence, in a northwesterly direction along a line 1,000 feet parallel to the mean high watermark of the Atlantic Ocean until such line forms a point of intersection with another line, such line being the projection of the Dare County boundary line 1,000 feet easterly from the mean high watermark of the Atlantic Ocean; thence, in a westerly direction along the projected line to the intersection of Dare County boundary line with the mean high watermark of the Atlantic Ocean; thence, in a westerly direction along the Dare County boundary line to a point of intersection of the Dare County boundary line with the mean high watermark of the Currituck Sound; thence, along a line in a general westerly direction for a distance of 1,000 feet to a point along a western projection of the Dare County boundary line to a point in the Currituck Sound; thence, in a southeasterly direction along a line 1,000 feet parallel to the mean high watermark of the Currituck Sound until such line forms a point of intersection with another line, such line being the projection of the northern line of the Town of Southern Shores corporate limits 1,000 feet westerly from the mean high watermark of the Currituck Sound; thence, in an easterly direction along the projected line to the intersection of the northwest corner of the Town of Southern Shores corporate limits with the mean high watermark of the Currituck Sound; thence, in an easterly direction along the northern line of the Town of Southern Shores corporate limits to the place of beginning.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Duck shall be the Town Council, which shall have five members.

"Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial election of 2002 provided for by Article IV of this Charter, Allan W. Beres, Nancy R. Caviness, Paul F. Keller, Manfred E. Schwarz, and Judith L. Wessel are appointed to the Town Council of the Town of Duck. The temporary officers shall elect persons to

serve as Interim Mayor and Interim Mayor Pro Tempore. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the initial election is held.

"Section 3.3. **Manner of Electing Council; Term of Office.** The qualified voters of the entire Town shall elect members of the Town Council from the Town at large, and the members shall each serve a term of two years, except that the members elected in 2002 shall serve until the organizational meeting after the 2003 municipal election. To be eligible for election to the Town Council, an individual must reside in the Town of Duck. Vacancies on the Town Council shall be filled in accordance with G.S. 160A-63.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The Mayor shall be elected from among the members of the Town Council at the organizational meeting after the initial election in November 2002 and shall serve for a term of one year. In 2003 and biennially thereafter, a Mayor shall be chosen by the same process for a term of two years. The Mayor shall attend and preside over meetings of the Town Council, shall advise the Town Council from time to time as to matters involving the Town of Duck, and shall have the right to vote as a member of the Town Council on all matters before the Council, but shall have no right to break a tie vote in which the Mayor has participated.

"Section 3.5. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The Mayor Pro Tempore shall be elected from among the members of the Town Council at the organizational meeting after the initial election in November 2002 and shall serve for a term of one year. In 2003 and biennially thereafter, a Mayor Pro Tempore shall be chosen by the same process for a term of two years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor Pro Tempore are both absent from a meeting of the Town Council, the members of the Town Council present may elect a temporary chairman to preside in the absence. The Mayor Pro Tempore shall have the right to vote on all matters before the Town Council and shall be considered a member of the Town Council for all purposes.

"Section 3.6. **Compensation of Mayor and Town Council.** The Mayor and members of the Town Council shall be reimbursed for ordinary and necessary expenses and may receive salary and honoraria only upon a majority vote of the qualified voters of the Town who vote on the question in a special referendum.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes, except that the first election shall be held on November 5, 2002.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE V. ORGANIZATION AND ADMINISTRATION.

"Section 5.1. **Form of Government.** The Town shall operate under the Council-Manager plan as provided in Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Town Manager; Appointment; Powers and Duties.** The Town Council shall appoint a Town Manager who shall be responsible for the administration of all departments of the Town government, except as otherwise directed by the Town Council. The Town Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Town Council, so far as authorized by general law.

"Section 5.3. **Town Manager's Authority Over Personnel; Role of Elected Officials.** As chief administrator of the Town, the Town Manager shall have the power to appoint, suspend, and remove all Town officers, department heads, and employees, except the Town Attorney, Town Clerk, and any other official whose appointment or

removal is vested in the Town Council by this Charter or by general law. Neither the Town Council nor any of its members shall take part in the appointment or removal of officers or employees in the administrative service of the Town of Duck, except as provided by this Charter. Except for purposes of inquiry, or for consultation with the Town Attorney, the Town Council and its members shall deal with Town employees solely through the Town Manager or Acting Town Manager, and neither the Town Council nor any of its members shall give any specific orders to any subordinates of the Town Manager or Acting Town Manager, either publicly or privately.

"Section 5.4. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties required by law or as the Town Council may direct.

"Section 5.5. **Town Clerk.** The Town Council shall appoint a Town Clerk to keep a journal of the proceedings of the Town Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Town Council may direct.

"Section 5.6. **Other Administrative Officers and Employees.** The Town Council may authorize other offices and positions and appoint persons to fill the offices and positions, or the Council may authorize the offices and positions to be filled by appointment by the Town Manager. The Town Council may organize the Town government as deemed appropriate, subject to the requirements of general law.

"Section 5.7. **Consolidation of Functions.** Where positions are not incompatible, the Town Council may combine in one person the powers and duties of two or more officers created or authorized by this Charter.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and fees authorized by general law. An affirmative vote equal to a majority of all the members of the Town Council shall be required to change the ad valorem tax rate from the rate established during the prior fiscal year.

"Section 6.2. **Budget.** From and after July 1, 2002, the citizens and property in the Town of Duck shall be subject to municipal taxes levied for the fiscal year beginning July 1, 2002, and, for that purpose, the Town shall obtain from Dare County a record of property in the area herein incorporated that was listed for taxes as of January 1, 2002. The Town may adopt a budget ordinance for fiscal year 2002-2003 without following the timetable in the Local Government Budget and Fiscal Control Act but shall follow the sequence of actions in the spirit of the Act insofar as is practical. For fiscal year 2002-2003, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 2002. The Town may adopt a budget ordinance for fiscal year 2001-2002 without following the timetable in the Local Government Budget and Fiscal Control Act but shall follow the sequence of actions in the spirit of the Act insofar as is practical, but no ad valorem taxes shall be levied for that year.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of Duck is authorized to adopt such ordinances as the Town Council deems necessary for the governance of the Town.

"ARTICLE VIII. MISCELLANEOUS.

"Section 8.1. **Conflicts of Interest.** No person, or member of the person's immediate family, who is employed by or is an official of the Town of Duck, shall do business with the Town unless such activity is approved by the Town Council. All appointed officials of the Town shall inform the Town Council of any conflicts of interest, and the failure to so inform shall constitute grounds for immediate dismissal for cause. No official of the Town may accept any gratuity from any business, person, or other official if the gratuity is related to his or her official duties.

"Section 8.2. **Enlargement of Town Council.** The qualified voters of the Town of Duck may seek to enlarge the number of members of the Town Council by submitting a petition to that effect signed by twenty percent (20%) of the qualified voters. Upon passage of a resolution as provided in G.S. 160A-102 or upon receipt of a valid petition, the Town Council shall immediately take steps as provided in Part 4 of Article 5 of Chapter 160A of the General Statutes to determine by referendum whether the number of members of the Town Council should be increased. If a majority of the votes cast in the referendum are in the affirmative, a special election shall be held at the earliest possible date to elect the additional members required to enlarge the Town Council to the number set forth in the referendum.

"Section 8.3. **Amendments to Charter.** The Town Council may propose and enact amendments to this Charter in accordance with Part 4 of Article 5 of Chapter 160A of the General Statutes. No amendment to this Charter shall become effective until public notice is given and a public hearing is held to receive comments on the proposed Charter amendment. Notwithstanding G.S. 160A-103, upon receipt of a referendum petition bearing the signatures and residence addresses of twenty percent (20%) of the qualified voters of the Town, the Town Council shall submit ordinances adopted under G.S. 160A-102 to a vote of the people.

"Section 8.4. **Provision of Services and Administration of Functions.** The Town Council may enter into agreements with other governmental bodies and private enterprises for the provision of services and the administration of corporate functions in order to provide the services and administer the functions in the most efficient and cost-effective manner.

"ARTICLE IX. SPECIAL PROVISIONS.

"Section 9.1. **Ad Valorem Taxes.** The Town Council shall not increase the ad valorem tax rate more than ten cents (10¢) per one hundred dollars ($100.00) valuation above the ad valorem tax rate initially established after incorporation of the Town of Duck without the vote or consent of a majority of the qualified voters of the Town of Duck. The procedures of G.S. 160A-209 shall be followed for any such election.

"Section 9.2. **Fire Protection.** The Town of Duck shall contract with the Duck Volunteer Fire Department, Inc., to provide fire protection for the Town. The contract terms and amount paid by the Town of Duck to the Duck Volunteer Fire Department, Inc., shall be mutually agreed upon and annually renewed by the Board of Directors of the Duck Volunteer Fire Department, Inc., and the Town Council."

SECTION 2. The Dare County Board of Elections shall conduct an election on November 6, 2001, for the purpose of submitting to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Duck the question of whether or not the area shall be incorporated as the Town of Duck. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

SECTION 3. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

Incorporation of the Town of Duck."

SECTION 4. In the election, if a majority of the votes on the question are cast "For Incorporation of the Town of Duck", Section 1 of this act becomes effective May 1, 2002, and Sections 5 and 6 of this act become effective with respect to distributions made on or after July 1, 2003. Otherwise, those sections do not become effective.

SECTION 5. Section 1(e) of Chapter 449 of the 1985 Session Laws, as amended by Chapter 826 of the 1985 Session Laws and Chapters 177 and 906 of the 1991 Session Laws, reads as rewritten:

"(e) Use and Distribution of Tax Revenue. Each fiscal year, Dare County shall distribute ~~two-thirds~~ sixty-eight percent (68%) of the net proceeds of the tax, on a monthly basis, ~~to the Towns of Kill Devil Hills, Kitty Hawk, Manteo, Nags Head, and Southern Shores~~ among the towns of the county that had been incorporated for at least one year as of the beginning of the fiscal year. This amount shall be divided among the

towns in proportion to the amount of ad valorem taxes levied by each town for the preceding fiscal year. The county shall retain the ~~remaining one-third~~ remainder of the net proceeds. Revenue distributed to a town or retained by the county under this subsection may be used only for tourist-related purposes, including construction and maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, police protection, and emergency services."

SECTION 6. Section 2(e) of Chapter 525 of the 1985 Session Laws reads as rewritten:

"(e) Use and Distribution of Tax Revenue. ~~For the first 12 fiscal years in which a tax levied under this section is in effect, all proceeds of the tax shall be retained by the county and shall be placed in a special Capital Reserve Fund in the general fund of the county. Revenue in this Fund may be used by the county only for capital expenditures for the following: courts, jails and detention facilities, emergency medical services, libraries, recreation, education, administration, water, sewage, health, and social services.~~

~~Beginning with the 13th fiscal year in which a tax levied under this section is in effect, the county shall distribute one-third (1/3)~~ Each fiscal year, Dare County shall distribute thirty-five percent (35%) of the net proceeds of the tax on a quarterly basis among the towns of the county that had been incorporated for at least one year as of the beginning of the fiscal year. This amount shall be divided among the towns ~~to the Towns of Nags Head, Kill Devil Hills, Kitty Hawk, Southern Shores, and Manteo in Dare County~~ in proportion to the amount of ad valorem taxes levied by each town for the preceding fiscal year. Revenue distributed to a town may be used only for capital expenditures. ~~The remaining two-thirds (2/3) of the net proceeds shall be retained by the county and placed in the special Capital Reserve Fund established under this subsection, to be used only for the purposes listed above.~~ The county shall retain the remainder of the net proceeds of the tax and place them in a special Capital Reserve Fund in the general fund of the county. Revenue in this Fund may be used by the county only for capital expenditures for the following: courts, jails and detention facilities, emergency medical services, libraries, recreation, education, administration, water, sewage, health, and social services. As used in this subsection, 'net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of August, 2001.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives