

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 602
Second Edition Engrossed 5/1/95

Short Title: Foscoe Incorporated.

(Local)

Sponsors: Senators Foxx and Martin of Pitt.

Referred to: Local Government and Regional Affairs

April 6, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE TOWN OF FOSCOE.

3 The General Assembly of North Carolina enacts:

4 Section 1. A Charter for the Town of Foscoe is enacted to read:

5 "CHARTER OF THE TOWN OF FOSCOE.

6 "CHAPTER I.

7 "INCORPORATION AND CORPORATE POWERS.

8 "Section 1.1. **Incorporation.** The citizens of the area described in Chapter II shall be
9 and constitute a body politic and corporate under the name of 'Town of Foscoe' and shall
10 have all the powers, authority, rights, privileges, and immunities conferred upon
11 municipal corporations by the Constitution and general laws of North Carolina.

12 "Sec. 1.2. **Powers.** The Town shall have all the powers, duties, rights, privileges, and
13 immunities now vested in the Town and now or hereafter granted to municipal
14 corporations by the laws of the State of North Carolina and by this Charter. The Town
15 shall exercise and enjoy all other powers, functions, rights, privileges, and immunities
16 necessary or desirable to promote or protect the safety, health, peace, security, good
17 order, comfort, convenience, and general welfare of the Town and of its citizens, unless
18 otherwise prohibited in this Charter.

19 "CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. Until changed in accordance with law, the boundaries of the Town are:

A 1.50 +/- square mile tract within the Foscoe-Grandfather Community of Watauga River and being briefly described as:

Beginning on the point of intersection of the Watauga River and the Avery-Watauga County line; thence northwest with the County line to Parcel #9618; thence easterly with the lines of Parcels 9618 and 4575 to the northern right of way of 105; thence with the northern R/W of 105 to the point where parcel 4675 leaves the highway; thence leaving the highway and running northeasterly with the lines of Parcels 4675, 1686, 4616, 8565, 9927, 4342, 2319, 7007, 9951, 4567, 3503, and 6566 to the corner of Parcel 6566 in the Town of Seven Devils line; thence southeasterly with the Seven Devils line to NC 105; thence with 105 to the point where the Seven Devils line leaves the highway; thence leaving the highway and with the Seven Devils lines northwesterly and then northeasterly to the corner of Seven Devils and Parcel 1638; thence northeasterly with the lines of Parcels 1638 and 4660 to the corner of Parcel 4060 and 8438 at the old Tweetsie Rail Road bed; thence northeasterly with the old Tweetsie Railroad bed and various tracts in the Devils Den Development to the point where Parcel 0035 leaves the old railroad bed; thence westerly with Parcels 1140, 1158, 1330, 1365, 1594, 7363, 6544, 2984, 4844, and 2984 to the northern R/W of NC 105; thence with the highway to the point where Parcel 2984 (Camp Rainbow) leaves the highway; thence leaving the highway and running northerly with parcels 2984 and 7585 to the corner of parcel 7585 at Clarks Creek Road, NCSR 1136; thence crossing the road and running southeasterly with the lines of Parcel 0389 crossing NC 105 to Watauga River; thence upstream to the eastern boundary of parcel 3775; thence with the lines of parcels 3775, 5538, and 1464 to the intersection of Riverbank Road; thence with the road to parcel 8271; thence with the lines of parcel 8271 to Riverbank Road; thence with the road to Church Road SR #1560; thence with Church Road to Parcel 5973; thence with the boundaries of parcels 5973, 6264, 4733, 7645, 7413, 6213, and 6055 to the intersection of Church Road; thence northwest with Church Road to Parcel 0561; thence with the lines of Parcels 0561, 7688 to 5789 and Moody's Mill Creek; thence with Moody's Mill Creek to Watauga River; thence with Aldridge Road to Parcel 6629; thence following the boundaries of Parcels 6629, 7797, 8913, 8144, 0560, 4914, 7059, 3940, 4614, 3422, 8163, 9988, 6678, 6391, 5443, 6008, 4141, 0340, 6980, 5400, 0180, 7389, 4711, and 1870; thence with the Community Park line to the Watauga River; thence; with the Watauga River to the beginning.

Containing 939 acres more or less (gross). From the above is excepted those areas within the corporate limits of the Town of Seven Devils, being approximately 17 acres satellite annexed in the vicinity of NC 105 and Seven Devils Road, NCSR 1151.

"CHAPTER III.**"GOVERNING BODY.**

"Sec. 3.1. **Number of Members.** The governing body shall consist of five members called aldermen.

"Sec. 3.2. **Manner of Election of Aldermen.** The qualified voters of the entire Town of Foscoe shall elect the aldermen.

1 "Sec. 3.3. **Term of Office of Aldermen.** Five aldermen are to be elected at the
2 regular Town election in November of 1995. The three persons who receive the highest
3 number of votes shall serve a four-year term, and the two persons receiving the next
4 highest number of votes shall serve a two-year term. In 1997 and quadrennially
5 thereafter, two aldermen shall be elected for four-year terms. In 1999 and quadrennially
6 thereafter, three aldermen shall be elected for four-year terms.

7 "Sec. 3.4. **Mayor.** A mayor will be selected from the Board of Aldermen by the
8 Board of Aldermen whose duties will be those provided by law.

9 "Sec. 3.5. **Recall.** Any member of the Board of Aldermen may be removed from
10 office in the following manner:

11 (1) Any elector of the Town may make and file with the Town Clerk an
12 affidavit containing the name of the alderman whose removal is sought
13 and a statement of the grounds alleged for his removal. The Clerk shall
14 thereupon deliver to the elector making such affidavit copies of petition
15 blanks for demanding such a removal, printed forms of which shall be
16 kept on hand. Such blanks shall be issued by the Clerk with the Clerk's
17 signature thereto attached and shall be dated and addressed to the Board
18 of Aldermen, indicating the person to whom issued and stating the name
19 of the officer whose removal is sought. A copy of the petition shall be
20 entered in a record book kept for that purpose in the office of the Clerk.
21 A recall petition to be effective must be returned and filed with the
22 Clerk within 30 days after the filing of the affidavit and to be sufficient
23 must bear the signature of at least thirty-three percent (33%) of the
24 registered voters of the Town as shown by the registration records for
25 the last preceding general municipal election.

26 (2) If a recall petition shall be certified by the Clerk to be sufficient, the
27 Clerk shall at once submit it to the Board of Aldermen with certification
28 to that effect and shall notify the officer whose removal is sought of
29 such action. If the officer whose removal is sought does not resign
30 within five days after such notice the Board of Aldermen shall
31 thereupon order and fix a day for holding a recall election. Any such
32 election shall be held not less than 70 nor more than 100 days after the
33 petition has been certified to the Board of Aldermen, and it may be held
34 at the same time as any other general or special election within such
35 period; but if no other election is to be held within such period the
36 Board of Aldermen shall call a special recall election to be held within
37 the time aforesaid.

38 (3) The question of recalling any number of officers may be submitted at
39 the same election, but as to each such officer a separate petition shall be
40 filed and there shall be an entirely separate ballot.

41 (4) Except that the spaces left for the name and date shall be filled by the
42 correct name and date, the ballots used in a recall election shall be in
43 form substantially as follows:

'RECALL ELECTION**TOWN OF FOSCOE**

_____, ____ (Month, day, and year)

[] FOR [] AGAINST**THE RECALL OF _____'.**

- (5) If a majority of the votes cast on the question of recalling an officer are not for such recall, the person shall continue in office for the remainder of the unexpired term, but subject to the recall as before. If a majority of such votes be for the recall of the officer designated on the ballot, the person shall, regardless of any defects in the recall petition, be deemed removed from office.
- (6) If an officer in regard to whom a sufficient recall petition is submitted to the Board of Aldermen shall resign before the election, or be removed as a result thereof, the vacancy so caused shall be filled in the manner provided by this Charter for filling vacancies in such office, except as provided in subdivision (8) of this section. An officer removed by the voters as the result of a recall election or resigning after a sufficient petition for his recall has been submitted to the Board of Aldermen, shall not be reelected to fill the vacancy caused by his own removal or resignation.
- (7) No recall petition shall be filed against an officer within three months after he takes office, during the last four months of his term, nor, in the case of an officer subjected to a recall election and not removed thereby, until at least six months after that election.
- (8) If the recall of a majority of the members of the Board of Aldermen shall be effected at a single recall election, the successors of the officers recalled shall be elected by the registered, qualified voters of the Town at a special municipal election and said successors shall serve for the unexpired part of the terms of the officers recalled. The members of the Board of Aldermen who have not been recalled may call said special election and make all necessary provisions regarding the same in conformity to the Constitution and general laws of North Carolina. If the recall of all of the members of the Board of Aldermen shall be effected at a single recall election, they shall be continued in office for the purpose, and only for the purpose, of calling a special municipal election for the election of their successors as above provided, and of ascertaining and declaring the result thereof.

"Sec. 3.6. **Pay for Aldermen.** The aldermen shall receive no pay.

"CHAPTER IV.**"ELECTIONS.**

"Sec. 4.1. **Conduct of Town Elections.** The Town officers shall be elected on a nonpartisan basis, and the results determined by plurality as provided in G.S. 163-292. Elections shall be conducted by the Watauga County Board of Elections.

"CHAPTER V.**"TAXATION.**

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3 "Sec. 5.1. **Fire District.** (a) The incorporation of the Town does not remove any
4 area from a fire protection district. Notwithstanding G.S. 69-25.15, annexation by the
5 Town does not remove any area from a fire protection district.

6 (b) This section does not apply if the Town levies ad valorem taxes as provided by
7 law and provides fire protection to its citizens, and the area of the Town is removed from
8 any fire protection district as of the first day of July of the year of that occurrence, and
9 G.S. 69-25.15 will then apply to the Town.

10 "Sec. 5.2. Limitation on Ad Valorem Taxes Without Referendum.

11 Notwithstanding G.S. 160A-209, the Town of Foscoe may not levy property taxes
12 except as approved by a vote of the people under G.S. 160A-209(e) or G.S. 160A-
13 209(f); and in any referendum under G.S. 160A-209(f), the city may establish the rate
14 limitation or increase it by referendum once it has been set.

15 "Sec. 5.3. Limitation on Annexation Without Referendum or Petition.

16 Notwithstanding Article 4A of Chapter 160A of the General Statutes, the Town of
17 Foscoe may not make any annexation under Part 2 of that Article unless the annexation
18 ordinance is submitted by the Town to the qualified voters of the area proposed for
19 annexation and receives the affirmative votes of seventy-five percent (75%) or more of
20 those voting in the referendum. The referendum shall be called and conducted in
21 accordance with general law on the subject, including G.S. 163-287 and G.S. 163-288.2.

"CHAPTER VI.**"ADMINISTRATION.**

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24 "Sec. 6.1. The Town of Foscoe shall operate under the mayor-council plan as
25 provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

26 Sec. 2. **Interim Budget.** (a) The Board of Aldermen may adopt a budget ordinance
27 for the 1994-95 fiscal year, following their qualifications for office, without having to
28 comply with the budget preparation and adoption timetable set out in the Local
29 Government Budget and Fiscal Control Act.

30 (b) The Board of Aldermen may adopt a budget ordinance for the 1995-96
31 fiscal year, following their qualifications for office, without having to comply with the
32 budget preparation and adoption timetable set out in the Local Government Budget and
33 Fiscal Control Act.

34 Sec. 3. **Initial Board.** Until the organizational meeting of the Board of
35 Aldermen after the 1995 municipal election, Dwight Gaines, Clarence Berry, Dan Klink,
36 Carolyn Aldridge, and Wesley Crum are appointed as members of the Board of
37 Aldermen.

38 Sec. 4. This act is effective upon ratification.