



2013 North Carolina Legislation Related to Planning and Development Regulation

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The 2013 session of the North Carolina General Assembly marked the first time in modern history that the Republican Party controlled both houses of the legislature and the Governor's Office. While significant amendments were made to state laws in many areas, this shift did not produce major new legislation on planning and development regulation. More substantial changes were made to environmental laws.

One significant legislative initiative was a comprehensive modernization of the statute regarding quasi-judicial decision making and boards of adjustment. New statutes also addressed development near military bases, removal of vegetation for billboard visibility, and billboard repair and replacement. Legislation was considered, but not adopted, to limit use of design standards in development regulation, to eliminate zoning protest petitions, and to change municipal extraterritorial planning jurisdiction.

In related fields, a major initiative was adopted to establish stronger data-driven priorities for transportation funding. New state programs were established to promote energy development, regulate hydraulic fracking for natural gas production, and regulate wind energy projects. Other legislation reconstitutes major environmental regulatory commissions.

Zoning and Development Regulation

Quasi-judicial Procedures and Boards of Adjustment

Session Law (hereinafter S.L.) [2013-126](#) (H 276), effective October 1, 2013, modernizes the board of adjustment statute. The new legislation does not drastically alter the fundamental aspects of the prior law, but it does make several important changes. The bill was proposed by the North Carolina Bar Association. It had general support from most affected parties and was unanimously approved by both the House of Representatives and the Senate.

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The new law includes a number of stylistic and organizational changes to clarify the statute. Outdated, awkward, and confusing language and syntax are removed. Gender-neutral language is used throughout. Related provisions are consolidated and section headings are added for readability. The separate section on boards of adjustment in the county statutes is repealed and replaced with Section 153A-345.1 of the North Carolina General Statutes (hereinafter G.S.), a cross-reference to the city statute. This change eliminates current and future city-county differences. The law incorporates reference to recent legislation (G.S. 160A-393) on judicial review of quasi-judicial decisions.

The act also modernizes the statute and establishes uniform procedures to be applied across the state. Several provisions were added to the statutes to codify case law on various points, particularly the basic due process rules for all quasi-judicial zoning matters set by *Humble Oil & Refining Co. v. Board of Aldermen*, 284 N.C. 458 (1974).

Specialized Boards

In addition to the standard board of adjustment, G.S. 160A-388(a) now authorizes (but does not require) appointment of specialized boards to hear technical appeals. Some cities and counties have expressed an interest in having such special boards to hear appeals on stormwater plans, subdivision plats, or other engineering and technical matters. The law also continues to allow an ordinance to designate the planning board or governing board to hear any quasi-judicial matter.

Notice of Hearings

G.S. 160A-388(a2) creates a uniform notice requirement for hearings on quasi-judicial matters. The prior law required “reasonable notice to parties,” and local ordinances defined this notice in varying ways, if at all. The new notice provisions are similar to those required for a zoning map amendment, with the exception that newspaper published notice is not mandated. Notice of the hearing must be mailed to the person who submitted the application that is the subject of the hearing, the owner of the affected property (if that is not the person requesting the hearing), adjacent owners, and anyone else entitled to mailed notice under the local ordinance. A notice of the hearing must be posted on or adjacent to the site that is the subject of the hearing. Both the mailing and posting must be made in the ten- to twenty-five-day period prior to the hearing.

Hearing Process

Reflecting the law established in *Humble Oil*, G.S. 160A-388(e2) provides that decisions must be based on competent, material, and substantial evidence in the hearing record. The new law makes several adjustments to hearing practices. G.S. 160A-388(f) authorizes the board’s clerk to administer oaths to witnesses. Previously the law provided that the board chair would administer oaths, which is still also allowed. G.S. 160A-388(g) clarifies the process for requesting and objecting to subpoenas. Requests are made to the board chair by a person with standing to participate in the hearing. The chair is to issue subpoenas that are “relevant, reasonable in nature and scope, and not oppressive.” The chair is also to rule on motions to quash or modify a subpoena. Appeals of rulings on subpoenas may be made to the full board. False testimony under oath remains a misdemeanor, but the provision of the prior law limiting the use in any subsequent legal action of testimony made pursuant to a subpoena is now deleted.

Decisions

Again codifying the law from *Humble Oil*, G.S. 160A-388(e2) provides that decisions must be in writing and reflect the board's determination of contested facts and the application of those facts to the applicable standards. The statute goes on to provide that the decision must be made in a reasonable time and be signed by the chair or other duly authorized member. The decision is effective when it is filed with the clerk to the board or another official specified by the ordinance. The decision must be delivered to the applicant, the property owner, and any other person who prior to the effective date submitted a written request for a copy of the decision. It can be delivered by personal delivery, electronic mail, or first-class mail. The person required to make delivery must certify that proper notice of the decision has been made.

These changes strongly suggest that a letter or other written decision document should be prepared for each quasi-judicial decision. In the past some boards relied on the minutes of the board meeting to serve as the written record of its decisions.

Appeals

G.S. 160A-388(a1) defines the decisions that are subject to these appeals. It codifies the rule on the jurisdiction of the board by specifying that the decisions that can be appealed to the board are "any final and binding order, requirement, or determination" made by an administrative official charged with enforcement of a zoning or unified development ordinance. The ordinance may, but is not required to, assign appeals of decisions on other development regulations to the board of adjustment.

A number of changes were made regarding appeals to the board of adjustment. G.S. 160A-388(b1) consolidates the provisions on these appeals.

Appeals are initiated by a person with standing to appeal. A notice of appeal must be filed with the city or county clerk and must state the grounds for the appeal. New issues may be raised at the hearing, but if doing so would unduly prejudice a party, the board must continue the hearing to allow time for an adequate response.

The act adds a uniform time to make appeals to the board. Appeals must be filed within thirty days of notice of a final, binding administrative decision. Previously the law allowed each individual ordinance to set a time limit for making an appeal.

A question now arises of when this thirty-day period begins to run. G.S. 160A-388(b1)(2) stipulates that a final, binding determination by a zoning administrator must be provided in writing and delivered by personal delivery, electronic mail, or first-class mail to the person requesting it. That person then has thirty days from receipt of the decision to make the appeal. Any other person with standing, such as an affected neighbor, has thirty days from receipt of actual or constructive notice of the decision to file an appeal. An example of actual notice would be receipt of a copy of the decision, such as is provided to the person requesting the decision. Constructive notice can be provided by activity on the site, such as grading, surveying, or other clearly visible indicators that a regulatory determination has been made. Constructive notice can, however, be nebulous. For example, if the determination addressed building height or a particular land use, the construction or activity on site would have to proceed to the stage that the implications of the determination become visible to a neighbor. G.S. 160A-388(b1)(4) adds an alternative for owners who want a more definitive point for determining that constructive notice has been provided. It gives the landowner the option of posting notice of the determination on the site to provide constructive notice to parties who may appeal that determination to the board of adjustment. This posted notice can be provided for zoning or subdivision determinations and

is the responsibility of the owner, not the local government. It is not mandatory unless the local ordinance requires it. Posted signs must be prominent, must include contact information for the local official making the decision, and must remain on the site for at least ten days. The owner must verify the posting to the local government. If a posting is made, constructive notice has been provided, and the thirty-day period to appeal begins to run from the date the notice is first posted.

Once an appeal is made, the official who made the decision being appealed must compile all of the documents and exhibits related to the matter and transmit this record to the board. A copy of this administrative record must also be provided to the person making the appeal (and to the landowner if that is not the person making the appeal).

As with the prior statute, an appeal of an enforcement action stays enforcement unless there is imminent peril to life or property or the violation is transitory in nature. In those instances where enforcement is not stayed, the appellant may request an expedited hearing. If that request is made, the board must meet within fifteen days to hear the appeal. An appeal does not stay further processing of permit applications, but the appellant may request, and the board may grant, a stay of a final decision or issuance of building permits pending resolution of the appeal. Such a stay or issuance of a permit does not occur automatically; the appellant must request it.

Zoning officials whose determinations are appealed must appear as witnesses at the appeal hearing.

When the board of adjustment hears an appeal from another board, the statute confirms that the board does not take any new evidence but rather reviews the record made by the other board's hearing. For example, in the review of a decision on a certificate of appropriateness made by a historic preservation commission, the board of adjustment acts as an appeals court and does not conduct a new hearing.

The law also expressly authorizes the parties to an appeal to agree to voluntary alternative dispute resolution (such as mediation). The zoning ordinance may set up procedures to facilitate and manage this process.

The statute eliminates the provision in prior law for the board of adjustment to hear cases involving disputed lot lines. The rationale for this deletion is that the board has no particular expertise on surveying or property boundaries; thus these issues are best resolved judicially if necessary. Since the location of zoning district boundaries is an interpretation of the ordinance, a staff determination of those lines can be appealed to the board.

Finally, the statute now requires only a simple majority vote for board decisions on appeals. Previously a four-fifths vote was required to overturn a staff decision or rule in favor of an appellant on an appeal. The statute was also clarified to provide that only the seats occupied by members eligible to vote on a matter are considered when calculating the requisite majority vote (that is, vacant seats and the seats of members disqualified from voting due to a conflict of interest are not considered in the calculation if no alternate is available to occupy that seat for the matter). The seats of members who are simply absent or who do not vote are counted for calculation of required majorities.

Special and Conditional Use Permits

The only substantial amendment specifically applicable to special and conditional use permits involves voting majorities. G.S. 160A-388(e) now provides that only a simple majority is required for the board of adjustment to issue these permits. A similar change was made in 1981 for governing board and planning board decisions on special and conditional use permits.

Variations

The standard for variations is simplified by deleting the “practical difficulty” language. It retains the requirement for a showing of “unnecessary hardship,” which under North Carolina case law has long been the principal consideration for variations.

One of the more significant substantive changes made by the law is clarification as to what should be deemed an unnecessary hardship. G.S. 160A-388(d) provides that the hardship must result from conditions peculiar to the property (such as location, size, or topography), not the personal circumstances of the applicant. Hardships common to the neighborhood or general public also do not qualify for a variance (on the rationale that those hardships were anticipated and relief from them is more appropriately obtained through an ordinance amendment). A self-created hardship cannot be the basis for a variance, though purchasing the property knowing that circumstances exist that might justify a variance cannot be deemed a self-created hardship (as the new owner essentially steps into the shoes of the prior owner and is eligible to make the same request as that owner could have made). Finally, although the alleged hardship must be real and substantial, the applicant is not required to show no reasonable use could be made of the property without a variance. The statute continues the prohibition on use variations and the requirement that any variance be consistent with the spirit, purpose, and intent of the ordinance. Conditions on variations are also still authorized.

The four-fifths majority vote is retained for variations. Several local governments were subject to local legislation changing the four-fifths majority rule. These new rules are preserved until June 30, 2015, to allow time for consideration of new local legislation if there is an interest in extending these particular provisions.

Variations for development ordinances other than zoning are authorized but not required.

Development near Military Bases

Two new laws affect development and notice of potential development near military bases.

[S.L. 2013-59](#) (H 254) amends provisions regarding notice to military bases concerning adoption or amendment of local land use ordinances. It amends G.S. 160A-364(b) and G.S. 153A-323(b), which previously required notices of pending zoning map amendments be provided to base commanders. The updated law, effective May 22, 2013, expands the types of development regulation notices that must be submitted to the military base for review and comment. If no comments are received in thirty days, the opportunity to comment is deemed to be waived.

If the ordinance changes affect areas within five miles of a base perimeter, written notice must now be provided for the following:

1. Zoning maps
2. Permitted land uses
3. Telecommunication towers and windmills
4. New major subdivision preliminary plats
5. An increase in the size of an approved subdivision by more than 50 percent of its land area

While the statute addresses submission of proposed ordinances for review and comment, the last two items listed above concern individual project review rather than legislative amendments, thereby creating some ambiguity.

[S.L. 2013-206](#) (H 433) addresses construction of structures over 200 feet tall near military bases. The law (G.S. 143-151.70 to G.S. 143-151.77) is known as the “Military Lands Protection

Act of 2013” and is effective October 1, 2013. It applies to specified major military installations, including Fort Bragg and Pope Airfield, Seymour Johnson and the Dare County bombing range, Camp Lejeune (including New River and Cherry Point), the Elizabeth City Coast Guard Base, the ocean terminal at Sunny Point, the Naval Support Activity Northwest (on the Virginia–North Carolina border at Chesapeake), and the radar facilities at Fort Fisher. Associated support facilities for these installations located in the state are also covered.

The law prohibits cities and counties from authorizing (and persons from constructing) buildings or structures over 200 feet tall within five miles of these military bases unless the Building Code Council has issued a letter of endorsement for the structure. Cities and counties may not authorize extension of electricity, telephone, water, sewer, septic, or gas utilities to any unapproved tall structure. Entities proposing a tall structure must submit a notice of intent to seek an endorsement to the affected base commander and must provide such notice and a “Determination of No Hazard to Air Navigation” from the Federal Aviation Administration (FAA) to the Building Code Council. The council submits the application to the base for a review period of up to forty-five days and must deny endorsement if the base determines the proposed structure would interfere with the mission, training, or operation of the military installation or if no FAA determination is provided. The council must act on the application within ninety days. Prior existing tall buildings may not be reconstructed, altered, or expanded in ways that would aggravate or intensify a violation of these requirements. Civil penalties of up to \$5,000 are authorized for violations.

Cell Tower Modifications

Federal legislation in 2012 (47 C.F.R. Part 1, App. B, § I.C.) extending payroll tax cuts and unemployment benefits included a provision broadening federal preemption of local regulation of cell tower modifications. It provides that state or local governments “shall approve” any eligible request to make modifications to an existing wireless tower or base station that do not “substantially change” the tower or base station. Eligible requests include collocation of new transmission equipment and replacement of existing equipment. The Federal Communications Commission in 2013 provided notice that it interprets this law using the same standards for defining a “substantial modification” that were previously set in the context of reviewing collocation agreements and facilities in historic districts.

[S.L. 2013-185](#) (H 664) amends G.S. 160A-400.50 to G.S. 160A-400.53 and G.S. 153A-349.50 to G.S. 153A-349.53 to conform state law to these federal changes. The act notes that it is state policy to facilitate placement of wireless telecommunication support facilities in all parts of North Carolina. It sets state standards regarding expedited review of collocation and minor modifications requests. Minor modifications include the following:

1. Adding not more than 10 percent or the height of one additional antenna array to the tower (with a 20-foot separation from the nearest existing antenna)
2. Adding not more than 20 feet in width or the width of the support structure at the level of the new appurtenance
3. Adding not more than 2,500 square feet to the existing equipment compound

Minor modifications (termed “eligible facility requests” by the statute) must be approved. An application is deemed complete unless the local government objects within forty-five days. Approval is required within forty-five days of an application being deemed complete. If the application is for a collocation that does not qualify as a minor modification, a decision to

approve or deny must be made in the same forty-five-day period. Fees for collocation requests are capped at \$1,000. The fee may not include consultant travel costs or a consultant contingency fee.

Bona Fide Farm Zoning Exemption

The initial authorization for county zoning in 1959 included an exemption for agricultural operations. In recent years the scope of the farming exemption from county zoning has expanded to include silvaculture, horticulture, aquaculture, agritourism, and the like. The trend toward more expansive definitions of exempt activity continued in 2013.

[S.L. 2013-347](#) (S 505) adds grain drying and storage facilities to the county zoning exemption for bona fide farming activities and expands the permissible location of farm activities. This law amends the definition of *agriculture* in G.S. 106-581.1 to include grain warehouses and warehouse operations that receive, load, weigh, dry, and store grain. The zoning exemption in G.S. 153A-340(b) is amended to include these grain storage facilities. G.S. 153A-340(b) is also amended to expand where farming activity can take place and still allow application of the zoning exemption to marketing, selling, processing, storing, and similar activity related to farm products. The law now exempts these activities for farm products produced not only on the farm property within the county's zoning jurisdiction but also those products produced on any other farm owned or leased by the farmer, wherever located.

Fraternity and Sorority Zoning

A special provision related to zoning of fraternities and sororities was tucked in an omnibus regulatory reform bill adopted in 2013. Section 6 of [S.L. 2013-413](#) (H 74) provides that a city or county zoning or unified development ordinance may not differentiate between those fraternities and sororities that are approved or recognized by a college or university and those that are not. If a development ordinance would allow a sanctioned fraternity house in a particular zoning district, it must also allow unsanctioned houses. Similarly, special or conditional use permits for fraternity or sorority houses may not include a condition that the organization be sanctioned by a college.

Development Agreements for Brownfield Sites

Cities and counties are authorized to enter development agreements that create vested rights for up to twenty years for approved development projects. The law provides that sites subject to development agreements have at least 25 developable acres. Section 44 of the omnibus regulatory reform bill adopted in 2013 ([S.L. 2013-413](#)) deletes the minimum acreage requirement in G.S. 153A-349.4 and G.S. 160A-400.23 if the property involved is subject to an executed brownfields agreement.

Definitions for Facilities Serving Food or Providing Lodging

Two sections of the omnibus regulatory reform bill, [S.L. 2013-413](#), amend definitions of facilities subject to state public health regulations. These facilities are often subject to local zoning and development regulation as well. Occasionally local ordinances use or cross-reference the state definitions. Therefore these amendments may have modest effect on some zoning regulations.

Section 11 revises the definition of a *bed and breakfast* inn or home. These are facilities that are the permanent residence of the owner or manager and provide up to eight guest rooms with accommodations for periods of less than a week. The law revises G.S. 130A-247 to allow these

inns to provide three meals a day, provided the meals are not offered to the general public and the cost of any meals is included in the room rate.

Section 7 revises the definition of a *private club* in G.S. 130A-247 to include facilities deemed private clubs under the Alcoholic Beverage Control law in G.S. 18B-1000.

Local Bills

Two local bills modify zoning provisions for individual cities.

[S.L. 2013-264](#) (H 538) repeals G.S. 160A-393 (regarding judicial review of quasi-judicial decisions) and G.S. 160A-377 (appeals of subdivision plat decisions if they involve a quasi-judicial determination) for Apex, effective for quasi-judicial decisions made there after October 1, 2013. The stated purpose of this bill was to allow town board members to continue to communicate with residents about pending quasi-judicial matters. Of course the constitutionally based prohibition on undisclosed ex parte communications in quasi-judicial decision making continues to apply in Apex.

[S.L. 2013-270](#) (S 288) amends the text of the Aberdeen zoning ordinance to allow multifamily housing on three specific parcels totaling seven acres. Other than the multifamily allowance, development on the parcels must comply with the zoning regulations applicable to properties zoned R-10 as of March 1, 1989.

Bills Eligible for Consideration in 2014

In previous legislative sessions, several local governments secured approval to post notices of public hearings on zoning amendments electronically rather than publishing the notices in newspapers. As with several recent sessions, bills were filed in 2013 to add other local governments to this list (H 504) and to extend this option to all local governments (S 186). Newspapers strongly objected to these bills. Senate Bill 287 included a provision to allow electronic notice in lieu of published notice for Mecklenburg and Guilford counties and the municipalities in those counties. The bill passed both houses but was not enacted since a conference report reconciling the differences between the two adopted versions of the bill was not acted upon.

House Bill 769, which passed the House but not the Senate, would prohibit county zoning ordinances from prohibiting the placement of manufactured homes on individual lots in single-family zoning districts (except in historic districts). The bill is eligible for consideration in 2014.

A recurring issue in some communities has been the location of temporary housing for a health care provider on a lot that already has a principal dwelling. A bill on this topic passed the House in 2011 but was not taken up by the Senate. A similar bill, House Bill 625, passed the House in 2013 and is eligible for further consideration in 2014. The bill would require that a temporary residence for a relative providing care for a mentally or physically impaired person be allowed as a permitted accessory use in any single-family zoning district. The bill limits the temporary structure in several ways. It (1) would have had to have been a transportable unit primarily assembled off-site, (2) can be no larger than 300 square feet, (3) is limited to occupancy by one person, (4) cannot be placed on a permanent foundation, and (5) must be removed within sixty days after care giving ceases.

In the waning days of the legislative session, the regulatory reform bill (House Bill 74) was amended to include a provision eliminating zoning protest petitions. After spirited debate this provision was adopted by the House, but it was deleted without debate by the Senate and not included in the version of the bill finally enacted.

Community Appearance and Historic Preservation

Billboards

Two provisions of [S.L. 2013-413](#) (H 74) concern outdoor advertising, one regarding cutting vegetation and the other repair and replacement of billboards.

The North Carolina Department of Transportation (NCDOT) administers permitting for billboards within 660 feet of interstate and federal-aid primary highways. Section 8(a) of [S.L. 2013-413](#) allows owners of those NCDOT-permitted billboards to request tree cutting outside of the standard cut zone along on- and off-ramps as long as it will improve sign visibility and the total area of cutting does not exceed the permitted maximum. Governor McCrory's Executive Order No. 23 calls for NCDOT to consult with local governments before authorizing the expanded cut zone.

Section 8(b) of [S.L. 2013-413](#) provides that local governments may not regulate or prohibit the repair or reconstruction of any billboard with a valid NCDOT permit. Such repair or reconstruction may not, however, increase the square footage of the advertising surface area. The new law explicitly authorizes changing an existing multipole structure to a new monopole structure. Other changes are not expressly authorized or prohibited. Could a sign owner change a conventional billboard to an electronic billboard? Could the owner increase the height of the billboard? The answer is not clear and will depend on the applicable NCDOT rules. North Carolina courts previously affirmed that state permit rules trump local prohibitions against reconstructing nonconforming signs. The new legislation appears to go further and establish protection for repairing and reconstructing both conforming and nonconforming signs.

Enforcement against Terminated Uses

In the case of lawfully nonconforming uses that have been terminated, [S.L. 2013-413](#) now requires that local governments "bring an enforcement action" within ten years of "the date of the termination of the grandfathered status." The new legislation may apply to two separate scenarios: an expired amortization period or the restarting of a former nonconforming use.

First, consider the expired amortization period. Imagine a local government adopted a new ordinance limiting doughnut shops and provided a twelve-month amortization period for existing doughnut shops to comply. After the twelve-month amortization period, existing doughnut shops must comply with the new rules or face enforcement actions. Under the new legislation, the local government must bring such enforcement action within ten years of the expiration of the amortization. After that ten-year period of no enforcement, a noncompliant doughnut shop may continue the activity or use that was originally restricted.

Alternatively, the new legislation could be read to apply to restarting a former nonconforming use. A local government may prohibit the restarting of a terminated nonconforming use for ten years from the time when the nonconforming status expired under the local ordinance. The implication is that after ten years, the nonconforming status may be reestablished. Generally, this is a nonissue; most terminated nonconforming uses are unlikely to relaunch after ten years of inactivity. But there may be a rare circumstance where a use formerly was lawfully nonconforming, sat quiet for eleven years, and then relaunched. The local government would not have an option for enforcement except in the case of a public safety concern.

Other Legislation Related to Community Appearance

Additional laws concern matters of community appearance, including chronic violators of public nuisance ordinances, recycling stockpiles, and protection of farm operations.

G.S. 160A-200.1 sets the procedures for notifying chronic violators of a public nuisance ordinance. [S.L. 2013-151](#) (S 211) provides an additional option for notice. In addition to sending notice by registered or certified mail, the municipality may send notice by regular mail. Notice may be deemed sufficient if the regular mail is not returned by the post office within ten days of mailing and the notice is conspicuously posted on the premises in violation. Such notice is sufficient even if the registered or certified mail is unclaimed or refused.

Section 50 of S.L. 2013-413 provides that when nonhazardous recycling materials are stored in properly zoned storage facilities, local governments may not regulate the height or setback of the recyclable material stockpile except when it is on a lot within 200 yards of a residential district.

[S.L. 2013-331](#) (H 646) provides that no ordinance regulating trees may be enforced on land owned or operated by a public airport authority.

[S.L. 2013-314](#) (H 614) amends G.S. 106-701 to expand protection for agricultural and forestry operations (for convenience, a “farm operation”) from nuisance claims. If a farm operation is established for one year and was not a nuisance at the time it began, then an off-site change (new residential development, for example) will not make the farm operation a nuisance. A nuisance may be established if there is a fundamental change in the farm operation, although the legislation limits what may qualify as a fundamental change. Agricultural operations may include, among other things, commercial production of crops, livestock, poultry, and related products and appurtenances. Forestry operations include growing, managing, and harvesting trees. Sawmills are no longer excluded from the definition of forestry operations. If a nuisance claim is brought against a farm operation, attorneys’ fees may be awarded if the losing party (either the plaintiff asserting the claim or the defendant asserting an affirmative defense) made frivolous or malicious claims.

Local Bills

[S.L. 2013-317](#) (H 186) provides that the towns of Cornelius, Davidson, Huntersville, Mooresville, and Troutman may enforce municipal noise ordinances on the waters of Lake Norman, although boat engine noise has special allowance.

[S.L. 2013-182](#) (H 294) authorizes Brunswick and Dare counties to remove abandoned vessels from navigable waters within the counties’ ordinance-making jurisdiction in the same manner as those counties handle abandoned or junked motor vehicles. A vessel is abandoned if: (1) it is moored or anchored without permission of the dock owner for more than 30 consecutive days in any 180 consecutive-day period or (2) it has sunk or is in danger of sinking or is a hazard to navigation or a danger to other vessels. Shipwrecks and underwater remains in place for more than ten years are not considered abandoned vessels and continue in the legal custody of the Department of Cultural Resources.

Bills Eligible for Consideration in 2014: Design Controls

Legislation to limit local regulation of residential design and aesthetics had strong support when it passed the House but stayed in Senate committee. So the Senate could act on House Bill 150 in the 2014 legislative session. This bill prohibits regulation of building design elements for structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings. *Building design elements* are defined to include building color; siding style and materials; roof and porch style and materials; ornamentation; location and styling of windows and doors (including garage doors); and number, type, and layout of rooms. The inclusion of number, type,

and layout of rooms raises questions about other common zoning provisions. Residential units, for example, may be defined based on the number of kitchens included in the living area. The language of the design control bill may limit a local government's ability to define and enforce single-family residential uses.

Exceptions are provided for historic properties and regulations needed for safety codes, for manufactured housing, and for the National Flood Insurance Program. Additionally, design elements may be addressed through conditional use permits and conditional zoning if the owner consents.

Boundary Adjustments and Jurisdiction

Annexation and Extraterritorial Jurisdiction

In 2011 the General Assembly substantially amended state laws on municipal annexation. From 1959 until 2011, municipalities were allowed to annex territory as land became urbanized. When adjacent land met specific standards for population density or land subdivision, the city could unilaterally annex it. In 2011 the law was amended to provide that a proposed annexation was terminated if the owners of 60 percent of the parcels in the proposed annexation area signed an objecting petition. In 2012 the petition process was replaced with a requirement for referendum approval of voters in the area to be annexed prior to municipal annexation. The 2012 legislation also required that cities that provide water and sewer services must extend water and sewer to properties within annexed areas within three and a half years if so requested by a majority of property owners. The city must do this at no cost to the owners.

This year was quiet on the annexation front. No statewide annexation legislation was adopted in 2013. No action was taken on House Bill 79, which would have put forward to the voters a constitutional amendment to require two-thirds of the voters in an area to approve a proposed involuntary annexation and to prohibit exercise of municipal extraterritorial planning jurisdiction.

In recent legislative sessions there has also been a good deal of discussion about limiting municipal extraterritorial planning jurisdiction. As with annexation, no statewide bills were adopted on this topic in 2013. No action was taken on House Bill 276, which would have eliminated authority for municipal extraterritorial planning jurisdiction, or on House Bill 680, which would limit authority to those cities exercising extraterritorial jurisdiction as of 2013.

Local Bills

A number of local bills affecting municipal boundaries were enacted.

Notably, authority to have any extraterritorial jurisdiction was eliminated for Asheville ([S.L. 2013-30](#), H 224). A similar bill affecting Weaverville, House Bill 531, was adopted in the House but not in the Senate. It is eligible for action in 2014. Another bill that received considerable discussion and attention involved a large mixed-use development proposed to be located south of Durham. The owner sought city annexation in order to secure city water and sewer services. The city council denied the annexation and rezoning requests. The General Assembly reversed that decision. [S.L. 2013-386](#) (S 315) requires provision of city utility services to this property at the developer's expense and mandates eventual city annexation.

A number of bills annex specified areas to individual cities. These include areas added to Bessemer City ([S.L. 2013-354](#), H 1015) and Chadbourne ([S.L. 2013-214](#), H 526). Other bills

removed territory from the corporate limits of Grifton (S.L. 2013-315, H 191), Kannapolis (S.L. 2013-217, H 302), Lumberton (S.L. 2013-215, H 567), Marshville (S.L. 2013-213, H 421), Mills River (S.L. 2013-62, H 671), Salisbury (the Rowan County airport, S.L. 2013-60, S 269), and Shelby (S.L. 2013-218, H 409). A specified area was transferred from Kannapolis to Landis by S.L. 2013-212 (H 261). S.L. 2013-219 (H 412) allows Eden to accept fees in lieu of annexation for property occupied by a Duke Energy generating plant.

Two local bills affected authority for noncontiguous annexations (often referred to as satellite annexations). S.L. 2013-32 (S 56) expands this authority for Wallace, while S.L. 2013-248 (S 177) removes it for Hookerton and Maysville.

S.L. 2013-68 (S 257) is the latest in a series of bills clarifying county boundaries, applicable to the Guilford–Alamance County boundary.

Building and Housing Code Enforcement

Inspections

S.L. 2013-118 (H 120) provides that for buildings subject to the North Carolina Residential Code for One- and Two-Family Dwellings (including townhomes), local building code inspectors may only perform those inspections required by the North Carolina Building Code unless the local government has approval from the North Carolina Building Code Council for additional inspections or there are unforeseen or unique circumstances requiring immediate action.

S.L. 2013-160 (H 468) limits permitting for the installation of any natural gas, propane, or electrical appliance to an existing structure if the installer is licensed as a plumbing and heating contractor under G.S. 87-21 or as an electrical contractor under G.S. 87-43. In those cases the local government may only require one permit and the fee may not exceed the cost of any one individual trade permit.

S.L. 2013-117 (H 88) provides that certain “custom contractors” may designate a lien agent on behalf of the property owner for whom the contractor is building a single-family residence.

Building Code Updates

The North Carolina Building Code Council retains authority to periodically revise and amend the State Building Code on its own motion or upon application by a citizen, state agency, or political subdivision. S.L. 2013-118 now provides that the regularized updates to the Residential Code will be every six years rather than every three years. The North Carolina Residential Code for One- and Two-Family Dwellings and related provisions of the Energy Code, Electrical Code, Fuel Gas Code, Plumbing Code, and Mechanical Code will be updated only every six years as well, with the next revision scheduled to be effective in 2019. The act also provides that the Building Code Council will publish on its website and in the North Carolina Register all appeal decisions and formal opinions of the Council.

Building Code Exemptions

S.L. 2013-75 (H 774) extends building code exemptions applicable to certain farm buildings and greenhouses to primitive camps and primitive farm buildings. Primitive camps include structures such as shelters, outhouses, sheds, rustic cabins, tepees, and administrative support buildings. Such structures must be less than 4,000 square feet and not be intended to be occupied for more than twenty-four consecutive hours. Primitive farm buildings include sheds,

barns, and other structures used in relation to traditional or heritage farming. [S.L. 2013-265](#) (S 638) provides that a farm building may maintain exempt status even if used for events such as weddings, receptions, meetings, or demonstrations.

S.L. 2013-265 also exempts buildings used for migrant farmworker housing from fire prevention code sprinkler requirements if the building is one floor and meets certain state and federal requirements.

Section 41 of [S.L. 2013-413](#) (H 74) provides that no building permit is required for routine maintenance of fuel pumps.

Transportation

Strategic Transportation Investments

Perhaps the most significant legislative initiative in the field of transportation was a key part of Governor McCrory's legislative program and served to supersede some of the main features of Governor Perdue's North Carolina Mobility Act, enacted in 2010. The "Strategic Prioritization Funding Plan for Transportation Investments," [S.L. 2013-183](#) (H 817), is intended to allow NCDOT to more efficiently use its existing funds and, according to Republicans, to reduce the political influences on project selection that characterized highway funding arrangements under prior Democratic administrations. Supporters of the act, codified as G.S. 136, Article 14B, also pointed out that many transportation funding formulas were first established in 1989 and needed updating. In any event the new program appears more data-driven than prior transportation improvement programming and based more on analyses of transportation needs. The Strategic Prioritization Funding Plan, however, does not include any new sources of revenue for transportation projects or alter existing ones.

The new formulas are scheduled to be fully implemented by July 1, 2015. Projects funded for construction before then will proceed as scheduled. The Strategic Mobility Formula divides projects into three categories: statewide, regional, and division-level. Projects of statewide significance compete for 40 percent of the available revenue. The selection process for this money depends entirely upon factors such as traffic volumes, accident statistics, impact on economic competitiveness, and freight movement. Regional projects compete for 30 percent of the available revenue, which is divided among seven regions on the basis of population. Each region is composed of two of the fourteen transportation divisions. Some 70 percent of the regional project rating is based on transportation and related data factors; 30 percent of the rating is based on project rankings developed by area transportation planning organizations and NCDOT transportation division personnel. Finally, the act calls for the remaining 30 percent to be shared among all fourteen divisions equally. Half of these project rankings are based on data concerning safety, congestion, connectivity, and the like, and half on more subjective local rankings.

[S.L. 2013-410](#) (H 92), the technical corrections bill, adopted after the Strategic Prioritization Funding Plan act, affects local input regarding regional and division-level fund distribution. It requires the transportation division engineer to take into account public comments. It directs NCDOT to ensure that "the public has a full opportunity to submit public comments, by widely available notice to the public, an adequate time period for input, and public hearings."

The Strategic Prioritization Funding Plan act, S.L. 2013-183, repeals the 1989 distribution formula as well as provisions establishing the Intrastate Highway System, as defined with regard

to the 1989 Highway Trust Fund and the Urban Loop Program. However, some projects authorized under these programs that will be underway by July 1, 2015, will continue as programmed construction projects. The act calls for capital expenditures to come solely from the Highway Trust Fund instead of both the Highway Fund and the Highway Trust Fund. Operations and maintenance are now to be funded from the Highway Fund. This new delineation allows about \$1.5 billion in additional funds to be spent on capital projects over ten years.

Funds to support secondary road needs are substantially reduced. Sections 2.1 to 2.9 phase out the Highway Fund secondary road construction program by June 30, 2014, limiting funding to maintenance and improvement. The act continues to require that the NCDOT secondary road maintenance and improvement program funding be based on a uniformly applicable formula and clarifies that the system for distributing funds does not apply to projects to pave unpaved secondary roads. Arrangements for the paving of these roads are more dramatically altered. Section 2.6(c) repeals an earmarked source of funds for this program, a requirement that \$15 of each vehicle title application fee be deposited into the Highway Trust Fund and used for secondary road paving. Funding from the Highway Fund is still possible, but Section 2.5 provides that projects must be selected on the basis of statewide, rather than county, prioritization.

Section 4.5 of the act amends G.S. 136-66.3, the statute governing local participation in state transportation projects, to repeal the provisions that prohibit local governments from thereby being disadvantaged with respect to other projects and that limit NCDOT funding in exchange for the participation.

S.L. 2013-183 also changes the way state aid for municipal streets (Powell Bill funds) is handled. Section 4.8 of the act repeals the Highway Trust Fund supplement to Powell Bill funds. Section 3.1 amends G.S. 136-41.1 to change the amount of Highway Fund revenues allocated to cities from $1\frac{3}{4}$ cents per gallon of the motor fuels tax to 10.4 percent of the net amount generated during the fiscal year. These new allocations are intended to ensure that municipalities receive as much Powell Bill funding over the next five years as they would have under prior formulas. Section 3.5 provides another sign of things to come. It directs NCDOT to collect lane-mile data from each municipality eligible to receive funds and to do so by December 1, 2013. It must then report by March 1, 2014, to the Joint Legislative Transportation Oversight Committee concerning at least three options to change the distribution formula to include lane-mile data. On another front, Section 3.1 also amends G.S. 136-41.3(a) to allow Powell Bill funds to be used by cities for greenways as well as bikeways and sidewalks and to be used for these facilities regardless of whether they are located within public street rights-of-way. In addition, Section 3.4 allows cities to use funds for independent bicycle and pedestrian improvement projects inside town limits or within the area of the applicable Metropolitan Transportation Planning Organization (MPO) or Rural Transportation Planning Organization (RPO).

Section 5.1 of the Strategic Prioritization Funding Plan act expands the role of the North Carolina Turnpike Authority. It authorizes the authority to undertake nine projects. Five projects are already named in existing law: the Triangle Expressway (consisting of four different segment projects) and the Monroe Connector. Three Turnpike Authority projects previously authorized in G.S. 136-89.183—the Cape Fear Skyway, the mid-Currituck bridge, and the Garden Parkway (Gaston County)—are specifically deleted, and other sections of the act repeal specific gap funding for the last two of these. The four remaining authorized projects must meet the following conditions: two must be ranked among NCDOT's top thirty-five projects, and either or both may be subject to a partnership agreement. Of the other two, one may be subject to a partnership agreement. All four must be included in the appropriate local transportation

plan and the current state Transportation Improvement Program. Toll projects must also be approved by the affected MPO and RPO.

Sections 5.7 and 5.8 concern the southeastern segment of the Triangle Expressway. They direct NCDOT to “strive to expedite” the federal environmental impact statement process to define the route and the Joint Legislative Transportation Oversight Committee to monitor the process. Essentially identical language is found in [S.L. 2013-94](#) (H 10). The story behind this segment of the expressway has unfolded over several decades. Possible future locations of the segment were protected in the 1990s by NCDOT through the adoption of roadway corridor official maps. However, one primary corridor protected in the mid-90s involved certain environmental and transportation planning problems. So highway planners refocused their attention on two alternative routes for this portion of the expressway segment. A route alternative more to the north (the “red route”) would cut through a relatively developed, populated area of southern Garner. Presentation of this red route to the public resulted in significant local opposition. As a result, in 2011 the General Assembly amended G.S. 136-89.183(a)(2)a. to prohibit consideration of that alternative. However, federal highway authorities determined that the environmental impacts of the red route should be formally considered as an alternative, even if a third route (the “orange route”) was ultimately chosen as most appropriate. With the southeastern portion of the Triangle Expressway thus in limbo, the General Assembly in 2013 added Sections 5.7 and 5.8 to S.L. 2013-183 to delete the 2011 language prohibiting the location of the expressway in the “red” corridor. This change will enable the federal environmental impact statement process to proceed for the southeastern segment of the Triangle Expressway and, if the General Assembly has its way, for the process to be expedited.

Section 5.2 of the act allows NCDOT or the Turnpike Authority to enter into three partnership agreements with private entities for projects, subject to various requirements, including mandated public hearings on applicable toll rates. Section 5.3 authorizes the authority to retain and enforce tolls and fees and to designate high-occupancy toll (HOT) lanes. It also expands the purposes for which the authority may use revenues derived from turnpike projects.

Finally, Section 6.1 of S.L. 2013-183 requires NCDOT to submit reports to the General Assembly on its recommended formulas for ranking projects in the new Strategic Prioritization Plan on August 15, 2013, October 1, 2013, and January 1, 2014. Section 6.2 requires the department to submit reports to the General Assembly on its transition to the new plan on March 1, 2014, and November 1, 2014.

NCDOT Driveway Permits

NCDOT has adopted rules and policies concerning the size, location, direction of traffic flow, and the construction of driveway connections into State Highway System roads. In exercising this authority under G.S. 136-18(29), NCDOT may require the construction and public dedication of acceleration lanes, deceleration lanes, traffic storage lanes, and medians as they connect with any United States route, North Carolina route, or any secondary road route with an average daily traffic volume of at least 4,000 vehicles per day. These requirements, however, must be adequately related to the traffic generated by the development served by the driveway.

[S.L. 2013-245](#) (H 785) allows NCDOT to establish a statewide pilot program for sharing the costs of “oversized” transportation improvements in connection with driveway permits that should not legally be assigned to a single driveway permit applicant. The department is authorized to develop a formula for apportioning costs on a project-by-project basis between NCDOT

and private property developers. A developer is not required to participate in the program in order to obtain any necessary driveway permit.

The department must report on the pilot program to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Commission no later than the 2021 legislative session.

A second act, [S.L. 2013-137](#) (H 684), concerns stretches of roadway where minimum sight distances between driveways are not established in NCDOT's "Policy on Street and Driveway Access to North Carolina Highways." This uncodified law directs the department to "consider exceptions" to the sight-distance requirements for driveway locations where road curves are close and frequent. The law then directs that exceptions must be granted where sufficient sight distances can be provided through the use of advisory speed signs, convex mirrors, and advanced warning signs. NCDOT may also consider lowering the speed limit on the relevant "curvy road." S.L. 2013-137 expressly permits NCDOT to assign the cost to the applicant of installing appropriate signage (speed limit reduction and driveway warning signs) around the driveway and installing and maintaining convex or other mirrors to increase traffic safety. The law directs the department to report to the Joint Legislative Oversight Committee on Transportation on the implementation of the law within 180 days of the date the act became law (June 19, 2013).

Sidewalk Dining

One of the more intriguing legislative actions this year could renew interest in sidewalk dining in municipalities across the state. Until July 13, 2013 (the effective date of the act described below), NCDOT lacked authorization to allow restaurants to serve food and drink on sidewalk tables located within the right-of-way of a state highway or street. Municipalities have been free to allow or encourage the use of the right-of-way of city streets for this purpose. However, in many towns and cities at least some of the streets in downtown or other pedestrian-oriented areas are maintained by NCDOT. Even where wide sidewalks run along the business routes of U.S.- or N.C.-numbered roads, abutting restaurant owners were not free to serve customers seated at tables on sidewalks within the NCDOT right-of-way.

[S.L. 2013-266](#) (H 192) amends G.S. 136-18(9) and adds a new G.S. 136-27.4 to address this issue. Rather than delegate permitting authority directly to affected local governments, the act authorizes NCDOT to enter into an agreement with a city or county that wishes to allow the use of state rights-of-way within the local government's zoning jurisdiction. Certain standards apply. The posted speed permitted on the street adjacent to the sidewalk dining area may not exceed 45 miles per hour. Restaurant furniture must be placed at least 6 feet from any street travel lane and in a way that would permit at least 5 feet of unobstructed paved sidewalk to remain clear and offer adequate passing space. In addition, any benefitting restaurant owner must provide evidence of adequate liability insurance that protects both the local government and NCDOT and agree to indemnify either of them in case of any claim arising from the operation of sidewalk dining activities. Nothing prevents either the local government or NCDOT from refusing to allow such activities if they cannot be conducted in a safe manner. If the street or highway involved is a federal-aid route, then sidewalk dining activities must also be permitted by the Federal Highway Administration.

Ethics Standards for MPO and RPO Members

[S.L. 2013-156](#) (S 411) is intended to restrict various ethics requirements (such as submitting a statement of economic interest) to voting members of Metropolitan Transportation Planning Organizations (MPOs) and Rural Transportation Planning Organizations (RPOs). Legislation adopted in 2012 had expanded state ethics requirements to MPO and RPO employees and advisory committee members as well. This regulatory reach was likely greater than originally intended.

Charlotte Airport

The General Assembly adopted two acts concerning Charlotte Douglas International Airport, which is currently owned and operated by the City of Charlotte. The first ([S.L. 2013-272](#) (S 380)) would have transferred airport ownership and control to a newly created regional airport authority. Soon after this act became effective, the City of Charlotte obtained a court-issued temporary restraining order prohibiting the transfer. In response, legislators passed a second act ([S.L. 2013-358](#) (S 81)) to avoid the conclusion that the first legislative action was unauthorized. It created an airport commission that would be an agency of city government responsible for all airport operations. The city retains ownership of the airport assets. The matter seems to be headed to court.

Environment

Preemption of New Environmental Ordinances

Section 10.2(a) of [S.L. 2013-413](#) (H 74) acts as a moratorium on local ordinances related to environmental issues through October 1, 2014. Under the new law, a local government may not enact an ordinance regulating a field that is also regulated by a state or federal statute or rule enforced by an environmental agency unless that local government approves the ordinance by unanimous vote of the members voting.

The defined *environmental agencies* include, among others, the Department of Environment and Natural Resources (DENR), the Environmental Management Commission (EMC), the Coastal Resources Commission, the Commission for Public Health, and the Sedimentation Control Commission. Given the broad coverage of the agencies identified as environmental agencies, this preemption rule covers many topics traditionally addressed by local regulation, such as stormwater controls, sedimentation controls, and stream buffers.

In conjunction with the moratorium on local environmental ordinances, the new law directs the Environmental Review Commission (ERC) to study the circumstances in which a local government should be able to regulate a field also regulated by environmental agencies. The commission will report its findings during the 2014 Session.

The legislation prohibits *enactment* of ordinances, except by unanimous vote. A plain reading of the law finds that existing ordinances may be maintained and enforced.

Membership of State Environmental Commissions

Section 14.23(a) of [S.L. 2013-360](#) (S 402) alters the membership of the EMC, the Coastal Resources Commission, and the Coastal Resources Advisory Commission. The new law terminates the terms of prior board members and adjusts the required qualifications for commission members. The EMC has been reduced from nineteen to fifteen members. Under the former

law, nine of the board members must not have had significant financial income from regulated industries or individuals. The new law eliminates that requirement. The Coastal Resources Commission now has thirteen members (previously, fifteen). The Coastal Resources Advisory Council now has twenty members (previously, forty-five).

Permitting Review

Section 58.(a) of S.L. 2013-413 provides that the DENR, along with the Departments of Transportation and Health and Human Services and certain local governments, will review the process for environmental permit programs. The review will include examination of the role of professional engineers and the unauthorized practice of engineering, the scope of review of each permitting process, and ways to streamline the permit process. DENR will report its findings to the ERC by January 1, 2014. The ERC, in turn, will study the matter with the North Carolina State Board of Examiners for Engineers and Surveyors and the Professional Engineers of North Carolina and report its findings to the 2014 General Assembly.

Stormwater and Water Quality

[S.L. 2013-395](#) (S 515) delays implementation of the Jordan Lake Rules until July 1, 2016. Jordan Lake has suffered from poor water quality resulting from upstream runoff since the lake's initial impoundment in 1983. In response, the General Assembly instructed the state EMC to address the high nitrogen and phosphorous levels in the lake. The rulemaking process began in the late 1990s when the EMC established a reservoir model and continued through stakeholder meetings and refinements from 2003–2008. The final rules were approved by the EMC in 2008. The General Assembly modified some provisions of the rules during the 2009 legislative session. The new act delays implementation until 2016. For additional information, see DENR's [Jordan Lake Rules](#) background materials.

For local governments enforcing the Sedimentation and Pollution Control Act, Section 33 of S.L. 2013-413 provides that a notice of assessment must state that the violator must either pay the assessment or contest it within thirty days.

For implementation under the state's stormwater runoff rules and programs, Section 51.(a) of S.L. 2013-413 excludes wooden slatted decks, the water area of swimming pools, or gravel from the definition of *built-upon area* in G.S. 143-214.7.

Section 52.(a) of S.L. 2013-413 exempts agricultural ponds from riparian buffer rules.

[S.L. 2013-121](#) (H 279) authorizes DENR to transfer stormwater runoff permits, water pollution source permits, and approved erosion and sedimentation control plans to new property owners provided there is no substantial change to the permitted activity. The department may not impose new or different terms and conditions upon such permits or plans without consent of the new owner except to comply with changes in law since the original permit issuance. The transfer of an erosion and sedimentation control plan is subject to the same local government review as for initial plan approval. Local governments administering erosion and sedimentation control programs are similarly authorized to transfer erosion and sedimentation control plans to new property owners.

[S.L. 2013-82](#) (H 480) directs DENR to develop Minimum Design Criteria for stormwater runoff permits. The department will submit its recommendations to the ERC by September 2014. In conjunction, the EMC will adopt rules to allow fast-track permitting without technical review for stormwater management system plans that comply with the Minimum Design Criteria and are prepared by professionals determined by the commission to be qualified to do so.

Surface Waters and Shorelines

Section 56.(a) of S.L. 2013-413 allows any water treatment plant authorization that has expired within the last ten years to be reauthorized to allow its system to withdraw surface water at the same rate from the same water body as in the expired authorization. Reauthorization does not require the state environmental document typically required for authorizations.

During a declared water shortage emergency, S.L. 2013-265 (S 638) allows a landowner to continue to withdraw water for agricultural activities from surface waters wholly located on the landowner's property or from groundwater sources unless the applicable state agency determines that the groundwater withdrawal causes negative impacts on neighboring groundwaters.

S.L. 2013-265 directs DENR and the N.C. Department of Transportation to jointly petition the Wilmington District of the U.S. Army Corps of Engineers to allow greater flexibility to perform stream and wetland mitigation outside of the immediate watershed where the impacting development occurs.

S.L. 2013-384 authorizes cities to enforce local ordinances to protect the public's rights to use state ocean beaches and to regulate placement of personal property on these beaches. Cities may enforce such ordinances on state ocean beaches within or adjacent to the municipal boundaries. The North Carolina Court of Appeals recently held in *Town of Nags Head v. Cherry, Inc.*, ___ N.C. App. ___, ___, 723 S.E.2d 156, 157, *appeal dismissed*, 366 N.C. 386, 732 S.E.2d 580, *review denied*, 366 N.C. 386, 733 S.E. 2d 85 (2012), that only the state has authority to protect the public's rights to use the state's public trust ocean beaches. The new legislation responds to the *Cherry* case and clearly authorizes municipalities to enforce local ordinances on public trust ocean beaches. The issue of whether counties are authorized to enforce similar ordinances on beaches has not been addressed .

S.L. 2013-384 also adjusts legislation enacted in 2011 regarding terminal groins on ocean beaches. In the 1980s the Coastal Resources Commission adopted regulations to prohibit "shoreline hardening" of ocean beaches. While measures such as beach nourishment were allowed, construction of bulkheads, seawalls, groins, jetties, and similar "hard" structures that attempt to stabilize the shoreline location was prohibited. The General Assembly codified this general policy into the statutes in 2003. In 2011, G.S. 113A-115.1(d) was adopted to require permitting up to four terminal groins constructed in association with beach nourishment projects. The statute specified the analysis and information needed for permit applications for terminal groins and required a plan to monitor, mitigate, and finance mitigation of any adverse project impacts. S.L. 2013-384 amends this statute by: (1) allowing terminal groins to include more than one structure; (2) deleting the requirement for a showing that structures be "imminently" threatened as a prerequisite to the project and that nonstructural alternatives are impractical; (3) providing that the mitigation plan may not impose costs that exceed the benefits of the nourishment project; (4) allowing use of local taxes and property owners' association assessments as financial assurances for management plan implementation; and (5) deleting the requirement that the management plan include restoration of public, private, or public trust property rights adversely affected by the project. The law also repeals DENR authority to adopt implementing rules.

Solid Waste

S.L. 2013-409 (H 321) provides that local governments are no longer required to adopt a solid waste management plan. Local governments still must report annually to DENR on the locality's solid waste management program, and topics previously included in the solid waste

management plan are now required in the report. These include disaster debris management, scrap tire disposal, white goods management, prevention of illegal dumping and litter, and abandoned manufactured homes (if a county opts to manage those).

[S.L. 2013-55](#) (H 706) provides that demolition debris from decommissioned manufacturing buildings—including electric generating stations—may be disposed on-site and is exempt from permitting as a solid waste management facility. In order to qualify, the material disposed must be inert debris (such as masonry, sand, gravel, or concrete) categorized as nonhazardous. The disposal must be within the footprint of the decommissioned building, be at least 50 feet from the property boundary, be 500 feet from the nearest drinking well, positioned to avoid the seasonal high groundwater table, be covered with 2 feet of graded soil, and comply with other applicable laws. The location of the debris must be filed with the county register of deeds and certified to DENR. Subsequent land transactions must state that the property contains demolition debris.

Under prior law sanitary landfills could not be located within one mile of state game lands. [S.L. 2013-25](#) now provides that a sanitary landfill may be sited as close as 500 feet from state game lands if it is limited to demolition debris, is located within the boundaries of a municipality with a population of less than 15,000, and is separated from the game land by a primary U.S. highway.

Energy

[S.L. 2013-365](#) (S 76) directs the Mining and Energy Commission, with assistance from other agencies, to study creation of a comprehensive environmental permit for hydraulic fracturing, the appropriate rate of severance tax, and registration requirements for land men (oil and gas workers). In addition, the legislation revises the membership of the Mining and Energy Commission, revises membership and adjusts responsibilities of the Energy Policy Council, allocates offshore energy revenues, addresses bonding requirements, and amends provisions for allocating “allowables” in oil production.

[S.L. 2013-51](#) (H 484) directs DENR to oversee permitting for wind energy facilities. The permitting applies to installation and expansion of facilities with a rated capacity of at least 1 megawatt. The permitting process will include submission of preapplication materials, notice to relevant agencies and parties, preapplication site evaluation, a scoping meeting, application and fees, and public notice and hearing. In addition to meeting applicable site-specific permit conditions, applicants must provide financial assurance for decommissioning and annual monitoring reports. The review process will consider risks to civil and military air travel and operations as well as impacts to species and habitats. Written notice will be provided to the Corps of Engineers, the U.S. Fish and Wildlife Service, the N.C. Wildlife Resources Commission, the commanding officer of potentially affected military installations, and other relevant parties. The criteria for permit approval include consideration of impacts to military and civilian air operations, impacts to cultural and natural resources, obstruction of navigation channels, applicable Mountain Ridge Protections, and any applicant compliance with other federal, state, and local requirements, including zoning.

Other Environmental Matters

[S.L. 2013-242](#) (H 628) directs that when undertaking major facility construction and renovation, state agencies will follow the requirements of the Sustainable Energy-Efficient Buildings Program only if DENR determines that the cost of the project plus ten years of operation costs would be less if the agency followed the requirements than if it did not. Third-party certification expenses must be included in the cost calculation. Renovation projects with guaranteed energy savings contracts are exempt from the savings calculation requirement. Building rating systems used for the Sustainable Energy-Efficient Buildings Program must provide credit for—and not disadvantage—building materials manufactured and produced within North Carolina.

[S.L. 2013-388](#) (S 341) authorizes the EMC to modify certificates for interbasin water transfers upon request by the certificate holder, the submission process for certain documentation by the certificate holder, and the procedures for public notice and hearing and document-related findings.

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