PLANNING AND ZONING

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PLANNING- AND DEVELOPMENT-RELATED LEGISLATION ADOPTED IN THE 2003 SESSIONS OF THE NORTH CAROLINA GENERAL ASSEMBLY

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The 2003 sessions were especially productive in terms of economic development legislation. Some of the most significant development-related legislation in 2003 was adopted late in the year in the second extra session of the General Assembly. The Job Growth and Infrastructure Act, S.L. 2003-435 Second Extra Session (H2), adopted over the course of two legislative days in December, provided appropriations and tax changes to allow North Carolina state government to better compete for industrial development. Another major economic development tool, tax increment financing, will become available if voters approve a ballot proposition in November 2004 that would authorize local governments to use this type of financing. Various other propositions relating to economic development were also adopted.

In addition, the 2003 General Assembly enacted a major transportation initiative, temporarily limited local authority to compel removal of nonconforming billboards, adopted appearance standards for some types of factory-built housing, and ratified a number of local bills concerning a wide variety of land development and code enforcement topics. Several bills that would have expanded the general authority of local government and that would have affected the powers of cities and counties to plan and regulate development failed to advance.

Land-Use Planning and Development Regulation

Zoning

In 2003 the General Assembly considered several bills to limit the use of amortization of billboards and various nonconformities. Senate Bill 534 and House Bill 429 would have completely eliminated amortization of nonconforming buildings, structures, and signs. Under these bills cities and counties would have had to pay monetary compensation for removal of nonconformities. House Bill 429 passed the House of Representatives but remained in a Senate committee at adjournment. An alternative bill, H 984, would have provided detailed guidelines for limitations on nonconformities but would have allowed continued amortization of nonconforming signs, adult businesses, and junkyards.

S.L. 2003-432 (H 754), the only statewide zoning bill adopted in 2003, was adopted as a compromise. It establishes a moratorium, which will expire on December 31, 2004, on the adoption of any new ordinance regulation

amortizing an off-premises advertising sign. It also provides that no local government shall "extend or expand" existing amortization ordinances regulating such signs. The act apparently allows the completion of amortization programs begun prior to July 20, 2003 (the date of the bill's enactment).

Five local zoning bills were also enacted.

- S.L. 2003-3 (H 35) exempts Waynesville from mailed notice requirements if it rezones its entire territory before January 1, 2004. The town will have to make four half-page published notices in lieu of the mailed notices.
- S.L. 2003-83 (H 124) amends the protest petition statute for Durham County to provide that the protest must be received in time to allow the county at least four working days before the hearing to verify the sufficiency of the petition.
- S.L. 2003-162 (H 249) amends the Wilmington city charter to allow the city to use legislative conditional zoning without an accompanying special or conditional use permit. The statute allows the zoning only upon request of the landowner, requires the rezoning to be made "in consideration of" relevant plans, and requires the petitioner to hold a community meeting prior to making the rezoning petition. This scheme is similar to the process established by local legislation in Charlotte and approved by the court of appeals in *Massey v. City of Charlotte*, 145 N.C. App. 345, 550 S.E.2d 838, *rev. denied*, 354 N.C. 219, 554 S.E.2d 342 (2001) and *Summers v. City of Charlotte*, 149 N.C. App. 509, 562 S.E.2d 18, *rev. denied*, 355 N.C. 758, 566 S.E.2d 482 (2002).
- S.L. 2003-330 (H 440) provides that agricultural land uses are exempt from town zoning in Wentworth.
- S.L. 2003-237 (S 494) authorizes Chapel Hill to require reservation of school sites as part of zoning approvals (including site plan and special use permit reviews). The school sites must be included in the comprehensive plan along with town council and school board approval of the sites. The statute also requires mailed notice to affected owners prior to plan adoption.

Electronic Notice

Two local bills may be indicative of a new trend—substitution of electronic posting of hearing notices for newspaper publication. S.L. 2003-81 (S 425) allows Cabarrus County to post notices of public hearings on ordinance amendments on the Internet rather than in a newspaper. The county must use the same schedule that is required for published notices and will still have to make any required mailed notices. S.L. 2003-161 (S 292) creates the same provisions for Raleigh and Lake Waccamaw but specifies that these municipalities are not relieved of any required posting of notice on the affected sites themselves.

Land Subdivision Control

No statewide bills regarding subdivision regulation were enacted. As in most sessions of the past decade, several local bills were adopted making modest changes in the definition of subdivisions subject to local regulation. S.L. 2003-79 (H 765) adds an exemption to the definition of subdivisions for Chowan County. It provides that the division of land as part of an estate settlement is exempt from local subdivision regulation [as the court of appeals ruled thirty years ago in *Williamson v. Avant*, 21 N.C. App. 211, 203 S.E.2d 634, *cert. denied*, 285 N.C. 596, 205 S.E.2d 727 (1974)], but that compliance and building permits can be denied for the resultant lots if they do not meet minimum size requirements for zoning, septic tanks, or building setback ordinances. S.L. 2003-245 (H 70) repeals a 1991 subdivision exemption applicable to Pender County.

Planning

Several advocacy groups, particularly the North Carolina Chapter of the American Planning Association, have supported various legislative reforms to implement Smart Growth concepts. Senate Bill 914, introduced by Sen. Dan Clodfelter of Charlotte, was introduced to address a number of these issues relative to modernization of the state's city and county planning enabling legislation. Although this bill was not enacted, its provisions were included as items for further study in the proposed omnibus studies bill, S 34, which remained in conference at adjournment and is eligible for enactment in 2004. Among other things, S 914 would have:

- provided various statutory clarifications and simplifications relating to extraterritorial jurisdiction, planning boards, electronic notice of public hearings, exactions in the subdivision approval process, and board of adjustment procedures;
- updated subdivision review provisions, including references to sketch plans, preliminary plats, enforcement options, and local flexibility for exemptions;
- updated the zoning enabling statement of purposes, established procedures for conditional zoning and the role of the comprehensive plan in rezonings, clarified the types of areas that can qualify for protest petitions, and extended local zoning powers to include land (as well as buildings) used by the state and other local governments;
- authorized multiple local governments to jointly agree to provide and finance various types of infrastructure and to enter into agreements with private parties for public intersection and roadway improvements; and
- authorized landowners and local governments to enter into development agreements.

Adult Entertainment

In 2001 the U.S. District Court ruled that the state's regulations applicable to dancers at clubs with ABC licenses were unconstitutional because they were content-based restrictions of free speech and were not narrowly drawn to address a compelling governmental interest. The case, *Giovani Carandola, Ltd. v. Bason*, 147 F. Supp. 2d 383 (2001), involved topless dancers at Christie's Cabaret, in Greensboro. In 2002 the Fourth Circuit Court of Appeals issued a narrower ruling [303 F.3d 507 (4th Cir. 2002)], but still upheld the injunction against enforcement, holding that the regulation was too broad because it covered serious artistic performances as well as adult clubs. S.L. 2003-382 (S 996) enacts G.S. 18B-1005.1 to address this statutory flaw by clarifying the state's authority to regulate sexually explicit performances at facilities with ABC licenses. The act codifies the regulatory prohibition against performers in these facilities exposing their genitals or simulating sexual acts, clarifies that the regulatory intent is to prevent adverse secondary impacts, and provides an exception for serious literary, artistic, scientific, or political expressions.

Historic Preservation

G.S. 105-129.35 provides that a taxpayer can receive a state income tax credit for rehabilitating an income-producing historic structure if the taxpayer qualifies for a corresponding federal income tax credit. The state tax credit is equal to 20 percent of the qualifying expenditures. This session several changes were made to this statute. Section 35A.1 of the appropriations act, S.L. 2003-284 (H 397), amends G.S. 105-129.35 to require that a taxpayer intending to claim the credit provide the Department of Revenue a copy of the certification made by the State Historic Preservation Officer verifying that the structure has been rehabilitated in accordance with the law. S.L. 2003-415 (S 119) liberalizes the ability of partnerships, joint ventures, and the like to take advantage of these credits by allowing the credit to be allocated among any of the structure's owners so long as the particular owner's adjusted basis for the property at the end of the year in which the structure is placed into service is at least 40 percent of the amount of the credit allocated to that owner. (Before this enactment, the credit could not exceed the owner's adjusted basis.) In addition, the act extends the expiration date for these "pass-through" provisions to January 1, 2008 (was, January 1, 2004).

Several decades ago state government acquired a number of historic homes adjacent to the state government complex in Raleigh and converted the structures to office space. S.L. 2003-404 (S 819) will return these homes to residential and commercial use. The law will allow the sale of most of these structures, subject to conservation agreements that will protect their historic and architectural character. Up to $5 million from the net proceeds of the sale are to be placed in a trust fund for upkeep, maintenance, and repair of the Governor's Mansion (a historic structure adjacent to this area). The act also creates an eight-member Blount Street Historic District Oversight Committee to monitor the act's implementation.

S.L. 2003-46 (H 512) allows nonresident property owners to serve on the Nags Head Historic Preservation Commission.

Nuisance Abatement Ordinances

Overgrown vegetation ordinances

S.L. 1999-58 authorized the City of Roanoke Rapids to give chronic violators of its overgrown vegetation ordinance a single annual notice announcing that the city may remedy (abate) the violation and charge the costs to the property owner. That idea proved popular and other cities followed the lead of Roanoke Rapids. This year several more cities were granted identical authority. S.L. 2003-77 (S 478) authorizes Durham and Monroe to use this procedure, and S.L. 2003-80 (S 83) adds Rocky Mount to the list of those cities that are included in the original act. S.L. 2003-120 (H 153) adjusts the authority of Winston-Salem under the original act by defining a *chronic violator* as someone to whom the city issued a violation notice at least three times in the previous calendar year (was, took remedial action against). S.L. 2003-40 (S 356) extends similar authority to the City of Henderson with respect to its “weeded-lot” ordinance. In addition this act authorizes the city to notify a repeat violator that not only may the city charge the expense of its remedial action to the owner, it may also impose a surcharge of up to 50 percent of the expense of the action to remedy the preceding violation.

Refuse and debris ordinances

S.L. 2003-133 (H 735) authorizes Durham to give annual notice to chronic violators of the city’s refuse and debris ordinance. A *chronic violator* is defined as someone against whom the city took remedial action under the ordinance at least three times in the previous calendar year. S.L. 2003-120 extends similar power to Winston-Salem but defines a *chronic violator* as someone to whom the city issued violation notices under the ordinance at least three times in the previous calendar year.

Nuisance ordinance procedure

S.L. 2003-51 (S 477) amends the Durham city charter to allow the city council to delegate to the housing appeals board the authority to hear public health nuisance cases.

Manufactured/Modular Housing

One of the more remarkable pieces of comprehensive legislation adopted by the General Assembly this year affects manufactured and modular housing. S. L. 2003-400 (H 1006)

- broadens the circumstances in which manufactured homes can be considered real property;
- requires the owners of manufactured home communities to give notice to tenants if the community is going to be converted to another use;
- adds new requirements governing the sale of manufactured homes;
- adds new requirements governing the licensure of manufactured home manufacturers, dealers, salespersons, and setup contractors; and

- requires that new modular homes meet certain design and appearance standards.

One section of S.L. 2003-400 provides the first definition for modular homes that the North Carolina statutes have ever included. According to new G.S. 105-164.3(21a), a *modular home* is a “factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance pursuant to G.S. 143-139.1.”

Legislation adopted in 2001 made important changes to the law affecting the classification of manufactured homes as real property. This law allows an owner of a single- or doublewide manufactured home to qualify the unit

as real property by, among other things, submitting an affidavit to the Division of Motor Vehicles stating that the owner of the manufactured home also owns the land on which the home is located. S.L. 2003–400, adopted this year, also allows a unit to be qualified as real property if the unit's owner has entered into a lease of at least twenty years for the land on which the manufactured home is affixed.

S.L. 2003-400 also adds new G.S. 42-14.3, which applies to an owner of a manufactured home community (which consists of at least five manufactured homes) if the owner intends to convert the land to another use. In such a case, the landowner must give each owner of each manufactured home notice of the intended conversion at least 180 days before the home owner is required to vacate and move, regardless of the term of tenancy. Local government code inspectors should note that if the manufactured home community is being closed under a valid order issued by the state or a local government (for example, if the manufactured home community's water system is contaminated), the owner of the manufactured home community must give notice of the closure to each community resident within three business days of the date on which the order is issued.

Perhaps the most remarkable feature of the act is an amendment to G.S. 143-139.1 establishing minimum appearance standards new modular homes must meet in order to qualify for a label or seal that indicates conformance with the State Building Code. These appearance standards are similar to the zoning standards some local governments apply to manufactured homes to ensure that the units blend into existing neighborhoods. Few of these existing zoning appearance regulations have ever been applied to modular homes, however. The legislation, adopted with support from the modular home industry, represents a preemptive strike by the industry and others to dissuade local governments from applying zoning regulations to modular homes in the same manner the regulations are applied to manufactured homes. The following construction and design standards apply to modular homes manufactured after January 1, 2004:

- The pitch of the roof for homes with a single predominant roofline shall be no less than 5 feet rise for every 12 feet of run.
- The eave projections of the roof shall not be less than 10 inches (excluding roof gutters) unless the roof pitch is 8/12 or greater.
- The minimum height of the first story exterior wall must be at least 7 feet 6 inches.
- The materials used in and the texture of the exterior must be compatible in composition, appearance, and durability to the materials commonly used in the exteriors of standard residential construction.
- The modular home must be designed to require foundation supports around the perimeter. These may be in the form of piers, piers and curtain walls, piling foundations, perimeter walls, or another type of approved perimeter support.

Tree Protection

The topic of tree protection continues to generate interest among municipalities and in the General Assembly. In 2000 the towns of Apex, Cary, Garner, Kinston, and Morrisville gained authority to adopt ordinances regulating the planting, removal, and preservation of trees and shrubs [S.L. 2000-108 (H 684)]. In the 2001 session, Cary, Garner, and Morrisville, along with their sister Wake County municipalities of Knightdale and Fuquay-Varina, and the two cities of Durham and Spencer again turned to the General Assembly to clarify and expand their authority as regards tree preservation. S.L. 2001-191 (H 910) expressly authorizes these municipalities to adopt regulations governing the removal and preservation of existing trees and shrubs prior to development within certain buffer zones. The perimeter buffer zone extends up to 65 feet along roadways and property boundaries adjacent to undeveloped land. The regulations must allow for reasonable access onto and within the property they affect. In addition, they must exclude normal forestry activities that either are taxed at present-use value (in accordance with the state's program for use-value taxation) or are conducted pursuant to a forestry management plan prepared or approved by a registered forester. The 2001 legislation gives several important new powers to the affected cities. First, if all or substantially all of the perimeter buffer trees which should have been protected from clear-cutting are removed and afterward a property owner seeks a permit or plan approval for that tract of land, the city may deny the building permit or refuse to approve the site or subdivision plan for that site for a period of up to five years following the "harvest." Second, a municipality subject to the act may adopt regulations governing the removal and preservation of specimen or "champion" trees on sites being planned for new development. The application of these specimen or

champion tree regulations is not restricted to the corridors or buffer zones that are subject to the clear-cutting restrictions.

Legislation affecting six additional municipalities was adopted in 2003. S.L. 2003-128 (H 679) amends S.L. 2001-191 to add Raleigh to those municipalities included in the 2001 local act. Five other entities obtained local acts addressing their particular needs, but these acts are somewhat less ambitious than the 2001 legislation. The provisions governing tree protection in S.L. 2003-246 (H 516) (applicable to Statesville, Rockingham, and Smithfield), in S.L. 2003-73 (H 517) (applicable to Holly Springs), and in S.L. 2003-129 (H 679) (applicable to Rutherfordton and Wake County) are essentially identical. The notable features that apply to the five local governments are as follows.

- The perimeter buffer zone within which tree cutting is restricted can only extend up to 50 feet along public roadways and up to 25 feet along property boundaries adjacent to undeveloped properties.
- The area within the required buffer may not exceed 20 percent of the area of the tract, excluding road and conservation easements.
- Tracts of two acres or less that are zoned for single-family residential use are exempt.
- Local governments may not require surveys of individual trees.
- A local government may deny approval of a site plan or a subdivision plat for a period of just three years after an impermissible harvest of trees from the land involved.
- If the owner of a harvested area replants the buffer zone within 120 days of the harvest with plant materials consistent with the required buffer area, then site plan or subdivision approval may be denied for a period of only two years.

The local act affecting Holly Springs became effective June 25, 2003, but the provisions that affect the remaining local governments became effective January 1, 2004.

Economic Development

Industrial Development Incentives

Some of the most important economic development legislation of the year was adopted at the second extra session of the 2003 General Assembly. The Job Growth and Infrastructure Act, S.L. 2003-435 Second Extra Session serves as a comprehensive economic development package intended to aid North Carolina in its efforts to compete with other states for industrial development, particularly by attracting or retaining businesses through the use of particular economic incentives. The act makes the following changes.

- It adds new G.S. 143B, Article 10 and appropriates $24 million to a nonreverting Site Infrastructure Development Fund to be used for site infrastructure for major industrial projects. The funding may be expended in the form of a restricted grant or forgivable loan to a business or a grant to a government or nonprofit agency that would then administer the funds. Funded projects are exempt from state construction, purchasing, and contract requirements. Projects are also exempt from the State Environmental Policy Act, which requires detailed environmental impact statements for public projects and programs significantly affecting environmental quality. Eligible businesses must employ at least one hundred new full-time employees and invest at least $100 million of private funds in the project.
- It makes various changes to the Job Development Investment Grant (JDIG) Program. Under the new law, the state may consider a division or unit of a business rather than the entire business when determining whether that business has increased or maintained its number of employees. In addition, Section 2.3 of the act repeals the wage standard as it applies to the JDIG program.
- It extends the expiration date of the Bill Lee Act income tax credits until January 1, 2010, as those credits apply to (1) bioprocessing and (2) the manufacturing and distribution of pharmaceuticals and medicines. (Eligible companies must invest at least $100 million in acquiring, constructing, or equipping a facility in order to qualify for these credits.)

- It authorizes annual sales tax refunds for construction materials for major pharmaceutical and bioprocessing facilities, effective January 1, 2004.
- It extends the sunset on the cigarette exportation income tax credit from 2005 to 2018. It allows the credit to be used only if a business exports its cigarettes through the North Carolina State Ports.
- It allows a corporate income tax credit for a tobacco manufacturer that exports cigarettes to foreign countries, if it uses state ports and maintains employment levels in North Carolina that exceed its employment level in the state at the end of 2004.
- It establishes a Life Science Revenue Bond Authority to study and make recommendations for creating a credit enhancement program for financing the construction of infrastructure for life sciences manufacturing facilities. (An example of a credit enhancement program is a tax-exempt revenue bond program to finance the construction of manufacturing facilities.)

Tax Increment Financing

The economic development legislation that may have attracted the greatest media attention in 2003 authorized voter consideration in the November 2004 election of an amendment to the North Carolina Constitution that would allow local governments to use tax increment financing. This type of financing allows local governments to issue, without voter approval, debt obligations for public improvements associated with certain private development projects. The obligations are secured by and repaid with the increment of new property tax revenues generated by the new development. S.L. 2003-403 (S 725) would allow tax increment financing to be used for industrial site development, redevelopment of existing industrial and brownfield sites, and the restoration of blighted areas. The financing, which takes the form of bonds or other debt instruments, could be used for development in connection with airports, arenas and auditoriums, hospitals, museums, parking facilities, sewer and water systems, storm sewers and flood control facilities, public transportation facilities, railroads, affordable housing, land development for commercial or industrial purposes, and urban redevelopment.

If approved by voters, tax increment financing may be used in either urban redevelopment or economic development financing districts. An urban redevelopment financing district must include areas that are part of an urban redevelopment project. An economic development financing district must include property that is, generally speaking, either blighted or inappropriately developed, appropriate for rehabilitation and conservation, or appropriate for the economic development of the community. The project must increase net employment opportunities for residents of the district or within a two-mile radius of the project, whichever geographic area is larger. If an economic development financing district is located outside a city's central business district, then no more than 20 percent of the estimated floor area may be used for certain retail, financial, and commercial purposes. For both types of development financing districts, the act limits the total land area that may be located within a local government to 5 percent of the total land area of the unit.

Either a city or a county may undertake tax increment financing. A county may not include in such a project any land within an incorporated municipality unless the project is a joint venture with the municipality. In contrast, a city may undertake such a project anywhere it is authorized to use its urban redevelopment or economic development authority. In these cases, however, the proposal must be submitted to the board of county commissioners for approval. If the board vetoes or "disapproves" the project, the project may not be executed.

If voters approve the tax increment financing measure, a local government wishing to exercise this power would be required to create a development financing plan for each development financing district. The plan must include a description of how the proposed public and private development will benefit the residents and business owners of the district in terms of jobs, affordable housing, or services. If the proposed project would have any negative impacts, then the plan must describe appropriate ameliorative steps the local government would take to address them. In addition, the initial employers in any new manufacturing facilities located in the district must comply with certain wage requirements. Generally, they must pay employees an average weekly manufacturing wage that is either above the average manufacturing wage paid in the county in which the district will be located or not less than 10 percent above the average weekly manufacturing wage paid in the state.

Tax Credits

S.L. 2003-414 (H 1294) extends two state income tax credits that were due to expire on December 31, 2003. The legislation was recommended by the North Carolina Economic Development Board, which advises the North Carolina Department of Commerce and the Governor. First, the act extends qualified business investments tax credits, which apply to certain startup companies, to January 1, 2007. In addition, these credits have been expanded to include investments in companies for commercialization of technologies developed within the University of North Carolina system. Second, the act extends the state ports tax credit (which encourages North Carolina businesses to use state ports) to January 1, 2009. Two other bills, S 944 and H 1284, would have significantly expanded the tax credit for research and development activity and established a sales tax incentive that would have benefited certain manufacturing firms, but they failed to advance. Senate Bill 944 is eligible for consideration in the 2004 session.

Industrial Recruitment

The 2003 appropriations act, S.L. 2003-284, directs the North Carolina Department of Commerce to allocate $1 million of the General Assembly's 2001-2003[Au: years okay?] appropriation to the One North Carolina-Industrial Recruitment Fund for financial assistance to Johnson and Wales University to establish a campus in Charlotte. (The General Assembly appropriated $15 million to the fund during the 2002 legislative session.)

Redevelopment Commission Property Conveyance

Cities have for some years had the power to dispose of property within urban redevelopment project areas by private sale to an organization involved in some public project. In doing so a city may attach covenants or conditions on the conveyance to ensure that the purchaser will put the property to public use. S.L. 2003-66 (H 1065) now allows a redevelopment commission to do the same.

Economic Development Districts

S.L. 2003-418 (S 168) authorizes counties to establish special tax districts called economic development and training districts. These districts are intended to provide skills training centers to prepare county residents for jobs in certain industries, including manufacturing, research and development, and related service and support jobs in the pharmaceutical, biotech, life science, chemical, telecommunications, and electronic industries. A county may levy additional property taxes within the district, in addition to those levied throughout the county, to finance the skills training center.

The act also delineates the property that may initially be included within an economic development and training district located in Johnston County should its board of commissioners elect to establish one. In addition, if such a district is created in Johnston County, no municipality may annex the property within it.

The act became effective August 14, 2003.

Joint Economic Development Undertakings

S.L. 2003-417 (H 1301) makes two changes in the law to enhance economic development projects undertaken by two or more local governments. It adds new G.S. 158-7.3 to allow local governments to enter into an interlocal agreement so that each participating local government contributes resources for the development of a commercial or industrial site or park. Specifically, it allows the units to agree to share the proceeds derived from the property taxes imposed on the site or park. In addition, the act adds new G.S. 160A-466 to allow local governments undertaking a joint project to agree to share financing arrangements, expenditures, and revenues associated with the project.

Transportation

The "Moving Ahead" Transportation Plan

The most significant piece of transportation legislation adopted in 2003 was advocated by Governor Easley and became known as the North Carolina Moving Ahead Transportation Initiative. S.L. 2003-383 (H 48) requires the state to spend $700 million in the next two years to improve roads and public transit. The main objective of the act is to provide money for infrastructure maintenance, preservation, and modernization, particularly for two-lane highways. The plan assigns $630 million to improve and widen roads, in accordance with the current equity distribution formula used for general highway funds. In suburban areas the money will be used to add turn lanes and pave shoulders to enhance traffic safety. In rural areas the money will be used to pave dirt roads and widen lanes. In addition, a number of bridges will be improved. Some $70 million is targeted for public transportation development. Although the act does not specify particular projects, it appears that some of these funds will be used to build a commuter rail line that will extend from Raleigh to Durham and a light rail system in the Charlotte region.

The "Moving Ahead" initiative allows cash balances to be borrowed from the Highway Trust Fund, which was established in 1989 and is funded with certain gas tax revenues and highway use, vehicle registration, and title fees. (Moneys in the Trust Fund have been previously limited to new construction projects, including seven urban loops.) The act is based on the state's apparent intention to replenish the Trust Fund money when it sells $700 million in bonds that remain unsold from a $950 million bond issue voters approved in 1996. The act also amends G.S. 136-176 to require the North Carolina Department of Transportation (NCDOT) to report to the Joint Legislative Transportation Oversight Committee twice each year, first on its intended use of the funds and later on its actual current and intended future use of the funds. Each year NCDOT must also certify to the committee that use of the Highway Trust Fund cash balances will not adversely affect the delivery schedule of any Highway Trust Fund project. The funds made available for Moving Ahead projects must be reduced to the amount above which NCDOT cannot so certify.

S.L. 2003-383 also amends Section 2.2(j) of the appropriations act to establish a complicated reimbursement arrangement by which $490 million is transferred from the Highway Trust Fund to the General Fund during fiscal 2003–2005 to partially compensate the General Fund for the annual transfer over the last fourteen years of motor vehicle sales tax revenues from the General Fund to the Highway Trust Fund. However, the act requires that this transfer of $490 million be repaid to the Highway Trust Fund over the next five years.

The Moving Ahead transportation act also establishes a twenty-seven-member Blue Ribbon Commission to study "the unique mobility needs of urban areas in North Carolina." The commission is to study (1) innovative financing approaches to address urban congestion, (2) local revenue options which would give urban areas more control over regional mobility, and (3) any other urban transportation issues that the commission cochairs approve for consideration.

Funding of Urban Loops

For the second year in a row the General Assembly made some slight changes in the description and location of urban loop highway projects in the North Carolina Intrastate System. These projects are funded by the North Carolina Highway Trust Fund and are delineated in G.S. 136-179 and G.S. 136-180. Section 29.11 of the appropriations act, S.L. 2003-284,

- adds two new urban loop sections: the Fayetteville Western Outer Loop (upgrading a proposed connector) and a multilane extension of the Greenville Loop to the west and south of the city.
- adds two interchanges to the Greensboro Loop and makes changes to the Raleigh Outer Loop, the Wilmington Bypass, and the Winston-Salem Northbelt.
- identifies seven different road sections that are eligible for funding as part of the Durham Northern Loop.
- provides that the cross sections for these Durham Northern Loop projects will be established by the metropolitan planning organization (MPO) and NCDOT through the state and federal environmental review process.

Priorities must be set by mutual agreement of the MPOs and NCDOT through the Transportation Improvement Program.

MPO/RPO Funding

Section 29.14(a) of the appropriations act allocates $750,000 from the Highway Trust Fund to the rural transportation planning organizations (RPOs). In addition, $2 million is appropriated for matching loan funds to be made available to MPOs located in air-quality nonattainment or maintenance areas under the federal Clean Air Act. The lead planning agency of an MPO must provide matching funds and the money may be used only in efforts to avoid a lapse in conformity with the air-quality plan. The loans must be repaid within five years.

Section 29.14 also allocates $750,000 for matching grant funds to be used by regional transportation agencies located in nonattainment or maintenance areas. The funds must be matched by the regional agency and must be used to support regional transportation planning, but they need not be repaid.

Virginia-North Carolina Interstate High-Speed Rail Commission

Section 29.19 of the appropriations act amends legislation adopted in 2001 that established the Virginia-North Carolina Interstate High-Speed Rail Commission. It directs the commission to study the establishment of an interstate high-speed rail compact not only between North Carolina and Virginia, but between these states and other states as well. Since the commission failed to report its findings to the Governor and the General Assembly by October 20, 2002, as specified in 2001 legislation, this year's act allows the commission to report before November 30, 2004, and terminates the commission as of that date.

Environmental Permits and NCDOT Construction Projects

Section 29.6 of the appropriations act creates G.S. 136-44.7B concerning the modification and cancellation of permits issued by the Department of Environmental and Natural Resources (DENR) for construction projects included in the Transportation Improvement Program. The new legislation provides that once issued by DENR, such permits do not expire and may not be modified or canceled unless one of several exceptions is met. One such exception involves a change in federal law that would necessitate changes in a permit to avoid jeopardizing federal program recognition or funding or that would mandate the expiration of the permit. Another basis for modifying or canceling a permit is any change in state law that includes an express statement that the change is applicable to "ongoing transportation construction programs."

Bikeway Funding

G.S. 136-71.12 authorizes NCDOT to spend any of its available federal, state, local, or private funds to establish bikeways and trails. S.L. 2003-256 (S 232) amends this statute to allow counties and municipalities to spend "any funds available" for these purposes as well.

Rail Corridor Subdivisions

Section 29.23(a) of the appropriations act amends G.S. 160A-376 and G.S. 153A-335, the statutes defining the scope of coverage of local government land subdivision control ordinances. The new provision exempts from regulation the purchase of strips of land for public transportation system corridors. A similar exemption remains in effect for land division associated with the widening or opening of streets.

Municipal Funding of State Roads outside City Limits

S.L. 2003-132 (H 627) allows Greensboro and Kernersville to fund the construction of roads outside their respective city limits and outside their respective extraterritorial planning jurisdictions. However, the funds may be appropriated only if the roads are to be state roads maintained by NCDOT. The act also provides that the authorized cities may not fund roads within the limits of another municipality without that municipality's consent.

Studies

The appropriations act provides for several new major studies, indicating a certain legislative dissatisfaction with the state's transportation project planning process. Section 29.12 establishes a Highway Trust Fund Study Committee made up entirely of members of the General Assembly, including the chairs of the Joint Transportation Oversight Committee. The committee is to study the current status and feasibility of current Highway Trust Fund projects and the "(u)nanticipated problems with the structure of the Highway Trust Fund." The committee is also directed to study questions about the equity of existing funding distribution, the feasibility of altering project eligibility requirements with an eye to allowing NCDOT to add projects if these projects will not jeopardize those previously planned, and the possibility of using Highway Trust Funds as matching funds for certain federal projects. The committee must report to the Joint Legislative Transportation Oversight Committee no later than November 1, 2004.

Section 29.21 of the appropriations act directs the Joint Legislative Transportation Oversight Committee to contract with an independent consultant to study transportation project processes from the inception of the projects to their completion. The study is to examine NCDOT planning, design, and contract-letting procedures; the effect of other resource and regulatory agency decisions on the project-delivery process; and "all significant causes of delay" in project processes.

Incorporation and Annexation

Incorporation

The General Assembly enacted legislation allowing the potential incorporation of four new cities. S.L. 2003-268 (S 76) incorporates Misenheimer in Stanly County, and S.L. 2003-242 (H 232) incorporates Mills River in Henderson County. Two other acts allowed incorporation subject to voter approval. S.L. 2003-317 (H 685) allows the incorporation of Sunset Harbor in Brunswick County, and S.L. 2003-75 (H 790) allows the incorporation of Cashiers in Jackson County. Voters subsequently defeated both proposed incorporations. Since then, Jackson County, which previously had no zoning, has zoned the Cashiers area.

Annexation

Specific areas can be annexed or deannexed by act of the General Assembly. While there were no statewide amendments to the annexation laws, several cities opted to use local legislation to add territory to the city. Jurisdictions securing new territory through local acts include: Carolina Shores [S.L. 2003-78 (H 742)], Chadbourn [S.L. 2003-18 (S 419)], Dallas [S.L. 2003-26 (S 475)], Jonesville [S.L. 2003-44 (H 326)], Kitty Hawk [S.L. 2003-364 (H 751)], Raeford [S.L. 2003-17 (S 396)], Roanoke Rapids [S.L. 2003-7 (S 135) and S.L. 2003-200 (H 598)], Matthews S.L. 2003-273 (H 705)], and Waxhaw (S.L. 2003-273). Some area was added and some removed from Claremont and Conover [S.L. 2003-244 (H 725)]. Area was removed from the cities of Lumberton and Roanoke Rapids [S.L. 2003-271 (H 597)].

Several jurisdictions received authority to make additional satellite annexations. Local bills in 2001 exempted twelve cities from the provision in G.S 160A-58.1 that satellite areas not exceed 10 percent of the principal corporate area. An additional eleven cities were added in 2002. This trend continued in 2003. S.L. 2003-30 (S 122) exempts Bladenboro, Gastonia, Locust, Pine Level, and Ranlo from this statutory limit. S.L. 2003-321 (S 452) increases the limit from 10 percent to 20 percent for municipalities in Union County, allows these cities to annex parts of subdivisions, and allows annexation of satellite areas within two miles of other cities (rather than the

standard three-mile limit). S.L. 2003-204 (H 774) allows a specific satellite annexation for Beaufort and S.L. 2003-243 (H 511) allows Andrews to make satellite annexations of town-owned property without counting those properties toward the 10 percent limit.

Several acts limit particular future annexations. S.L. 2003-27 (H 645) prohibits annexation of any area of or extension of extraterritorial jurisdiction into Currituck County by any municipality outside the county (apparently to limit the reach of the recently incorporated town of Duck). S.L. 2003-326 (S 317) imposes a two-year moratorium on annexations into Cabarrus County by cities located primarily outside the county and limits annexation of a specified industrial area in the county until 2010. S.L. 2003-418 limits the annexation of an economic development district in Johnston County.

S.L. 2003-26 (S 482) authorizes Durham to annex streets bounded by city limits. S.L. 2003-316 (S 408) allows Eden to enter into annexation contracts. S.L. 2003-202 (H 626) allows Greensboro and the Piedmont Triad Airport Authority to amend their boundaries.

Scope of Local Authority

Senate Bill 160, introduced by Sen. Dan Clodfelter of Charlotte, proposed to clarify the scope of local government authority by explicitly repealing Dillon's Rule of strict construction. In its comprehensive update of the municipal statutes in 1971, the General Assembly adopted G.S. 160A-4 and 153A-4 directing the courts to give a broad construction to grants of authority to cities and counties. Prior to enactment of this statute, courts in North Carolina had for nearly a century applied a rule of strict construction of delegated powers known as Dillon's Rule. This rule limited cities to the exercise of those powers expressly granted, those necessarily or fairly implied by those express grants, and those essential to carrying out the powers expressly granted. Subsequent court decisions, most notably *Homebuilders Association of Charlotte v. City of Charlotte*, 336 N.C. 37, 442 S.E.2d 45 (1994), recognized and followed this legislative directive for a broad construction of powers granted to cities. A few other decisions, principally in the North Carolina Court of Appeals, however, continued to use and cite the outdated Dillon's Rule. Senate Bill 160 proposed to confirm the decision to direct a broad construction of delegated powers by expressly stating an intent that Dillon's Rule of strict construction is no longer applicable in North Carolina. The bill also clarified that adoption of reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions is a routine part of executing delegated authority and is within the scope of delegated authority unless specifically limited by legislation. Senate Bill 160 explicitly specified that it would not increase local government authority to impose taxes or impact fees and likewise does not expand nor restrict the purposes for which regulations may be enacted.

The bill also addressed several other less controversial matters. It provided that where there are multiple grants of authority to cities and counties to regulate a particular matter, cities and counties may freely choose to elect among these multiple grants, but when doing so they must specify which grant they are using and must follow the procedures specified for the grant they have chosen. Several recent court of appeals decisions regarding moratoria, sign regulations, and regulation of adult businesses have held that local governments have this flexibility, but several older cases (on regulation of quarry locations, adult business locations, and moratoria) have held otherwise.

Senate Bill 160 would have specifically allowed cities and counties to combine various ordinances into a single ordinance and to consolidate procedures and administrative provisions. For example, many cities are attempting to coordinate and simplify various regulations in an effort to make them easier to understand. An increasingly common example of this approach is to merge zoning, subdivision, and other development regulations into a single unified development ordinance. Some local governments believe local legislation is necessary to accomplish such administrative reorganizations; others are uncertain whether tools and institutions used under one authority can be used in a different context (for example, using zoning variance power in subdivision regulation or allowing the zoning board of adjustment to hear housing code appeals).

Another section of S 160 would have clarified the authority of cities and counties to finance joint undertakings. These joint arrangements are currently allowed, but uncertainty has existed about the financing, expenditures, and revenues for joint projects, even if a project is located entirely outside of one of the cooperating jurisdictions. This last provision was subsequently introduced and enacted as a separate bill [S. L. 2003-417 (H 1301)].

Senate Bill 160 was approved by the Senate Judiciary Committee but had not received floor action at adjournment. Although the bill was not enacted, its provisions were included as items for further study in the

proposed omnibus studies act, S 34 (which remained in conference at adjournment and is eligible for enactment in 2004).

Environment

Coastal Management

S.L. 2003-427 (H 1028) creates G.S 113A-115.1 to add to the statutes the state's ban on oceanfront bulkheads, groins, jetties, and similar shoreline hardening erosion control devices. A form of the ban has been in place as an administrative rule adopted by the Coastal Resources Commission (CRC) since 1979. Limited use of sandbags to protect imminently threatened oceanfront structures is still permissible. S.L. 2003-427 also allows the CRC to issue a general permit for offshore parallel sills of stone or riprap used as estuarine shoreline erosion control devices when the sills are employed in conjunction with existing, created, or restored wetlands.

S.L. 2003-149 (S 959) amends G.S 130A-233.1 to direct the Health Services Commission to develop a water quality monitoring program for coastal recreation waters, allowing the posting of information about water quality along beaches. S.L. 2003-111 (H 1134) extends the timetable for production of coastal habitat protection plans to December 31, 2004. The appropriations act, S.L. 2003-284, includes a provision authorizing the Department of Environment and Natural Resources to create expedited permit processes (funded by higher permit fees) for a variety of programs, including coastal permits. S.L. 2003-282 (H 542) adds Bald Head Island, Caswell Beach, Oak Island, Ocean Isle Beach, and Sunset Beach to those local governments authorized to condemn land for beach erosion control, flood and hurricane protection, and beach access purposes.

Site Work Prior to Air Permits

S.L. 2003-428 (S 945) allows limited site preparation work on projects that require an air quality permit prior to that permit being issued. The work can include site clearing and grading, construction of access roads, utility installation, and construction of ancillary structures (offices, fences, and so forth). The act also creates G.S 215.108A(g) specifically to provide that the state's air quality permitting program does not affect the validity of local zoning, subdivision, or other land use regulatory programs.

Water

S.L. 2003-387 (H 1062) addresses several water supply issues. It amends G.S 143-355(1) to require community water systems serving one thousand or more service connections or three thousand or more individuals to prepare local water supply plans as previously required of local government water systems. It also creates G.S 143-355.1 to establish a state Drought Management Advisory Council.

S.L. 2003-433 (H 566) disapproves a portion of the rule adopted by the Environmental Management Commission reclassifying the waters of Swift Creek as Outstanding Resource Waters (and thus subject to stricter management control). S.L. 2003-340 extends to September 1, 2004, temporary rules regarding management of portions of the Catawba River basin.

Other Environmental Actions

The General Assembly addressed a wide range of other environmental issues in the 2003 session.

The appropriations act, S.L. 2003-284 (H 397), appropriates $62 million to the Clean Water Management Trust Fund to continue a dedicated source of funding for land acquisition and related protection programs. This act also directs the Property Tax Subcommittee of the Revenue Laws Study Committee to study the fiscal impacts of conservation land acquisition on local property taxes. The act also amends G.S. 130A-309.14 to require recipients of state funds to specify recycled steel in their procurement processes, provided its price is reasonable and it meets

appropriate performance standards. S.L. 2003-424 (H 855) increases the cost of personalized license plates by $10, with the revenue from the sale of these plates to be divided between the Natural Heritage Trust Fund and the Parks and Recreation Trust Fund.

Several actions addressed hog farm issues. S.L. 2003-266 (S 593) extends the existing moratorium on new or expanded large swine farms originally enacted in 1997 from September 1, 2003, to September 1, 2007. S.L. 2003-28 (S 733) delays the effective date of several new general nondischarge permits for swine, dairy, and poultry operations from May 1, 2003, until October 1, 2004. The new permits include enhanced monitoring and reporting requirements. S.L. 2003-340 extends a pilot program for animal operation inspections for two more years.

Several acts make additions to the state parks and natural areas system. Two new parks were authorized. S.L. 2003-106 (H 1078) authorizes the addition of a new Mayo River State Park in Rockingham County. S.L. 2003-108 (H 1025) authorizes the addition of Haw River State Park in Guilford and Rockingham counties. S.L. 2003-234 (S 627) makes several changes to the existing state parks and natural areas. The parks affected include Beech Creek Bog State Natural Area, Bushy Lake State Natural Area, Elk Knob State Natural Area, and Lea Island State Natural Area.

Building Code

Homeowner Recovery Fund Permit Fee

Since 1991, local inspection departments have collected a fee from each general contractor that applies for a single-family residential building permit. This fee is then remitted to the Licensing Board of General Contractors and earmarked for its Homeowners Recovery Fund. The fund provides financial assistance for homeowners who have suffered a loss resulting from dishonest or incompetent work performed by a licensed general contractor or someone who fraudulently acts as one. S.L. 2003-372 (S 324) doubles the fee from $5 per permit to $10. The act provides that the inspection department may continue to retain $1 of each such permit fee collected.

Elimination of Architect or Engineer Review

S. L. 2003-305 (H 994) amends G.S. 133-1.1(c), the statute that specifies when a registered architect or engineer must review plans and specifications for a government project. It allows cities, counties, local boards of education, and the state of North Carolina to erect pre-engineered structures without the involvement of a registered architect or engineer, if several requirements are met. First, the structure must be a garage, shed, or workshop no larger than 5,000 square feet in size. Second, the buildings must be for the exclusive use of city, county, public school, or state employees for purposes related to their work. Third, these pre-engineered structures must be located at least 30 feet from other buildings or property lines.

Subcontractor Bids

The general contractor's licensing law, G.S. 87-1, requires that a person who submits a bid for a public contract have a license covering the work involved in that contract. In many cases, however, a project involves multiple trades, and the bidding contractor may subcontract these. S. L. 2003-231 (S 437) authorizes the North Carolina General Contractors Licensing Board to adopt rules allowing a licensed HVAC or electrical contractor to bid on projects that include general contracting work, so long as the cost of the general contracting work does not exceed a percentage of the total bid price, as established by board rules. The act also allows the board to adopt temporary rules to exercise this authority.

Pyrotechnic Displays

A recent tragic fire caused by a fireworks display in a Rhode Island nightclub spawned several legislative reactions in this state. The first affects the authority of local governments to approve pyrotechnic displays at concerts and various public exhibitions. S. L. 2003-298 (S 521) amends G.S. 14-413 to provide that a board of county commissioners may not issue a permit for the indoor use of pyrotechnics at a concert or public exhibition unless the local fire marshal or the State Fire Marshal certifies their safety. In particular a fire marshal must certify that (1) adequate fire suppression will be used; (2) the structure is safe for the use of pyrotechnics, given the type of fire suppression available; and (3) egress from the building is adequate, based on the size of the expected crowd. The statute also requires such certifications from cities authorized by local act to grant pyrotechnic permits. In addition the act also authorizes the State Fire Marshal to certify the pyrotechnics used in certain concerts or exhibitions authorized by The University of North Carolina at Chapel Hill. Most of the act became effective December 1, 2003.

Sprinkler Requirements

The North Carolina Building Code does not require sprinklers in clubs and bars. S. L. 2003-237, however, allows Carrboro to adopt an ordinance to require sprinklers in bars, clubs, and other similar places of public assembly if these establishments sell alcoholic beverages and are designed for occupancy by at least 100 people. Restaurants are exempt. The requirement may be made applicable to any new occupancy, and the sprinklers must be installed before the certificate of occupancy is issued. The regulation may also be made applicable to any existing occupancy three years following the date the ordinance is enacted. Another act, S.L. 2003-247 (H 773), extends similar authority to the Town of Chapel Hill. However, Chapel Hill may apply such regulations to bars and clubs with occupancies of over 100 but less than 200 people only if required egress points are one story above or below grade. Otherwise the regulation does not apply except to occupancies exceeding 200 people. The Chapel Hill legislation allows an existing club lacking sprinklers up to five years to comply, if its existing occupancy exceeds 200. It also allows a club up to five years to comply if its occupancy exceeds 150 and it lacks suitable at-grade egress.

Building Condemnation

The municipal building condemnation statutes (G.S. 160A-426 to G.S. 160A-432) have authorized all cities to use summary procedures to demolish nonresidential buildings in target areas. Using summary procedures a city can demolish such a building without a court order if the owner refuses to do so. However, the power to demolish residential buildings without a court order has been available to only a few cities that have managed to obtain the necessary local legislation. S.L. 2003-23 (S 465) allows two cities (High Point and Goldsboro) and S.L. 2003-42 (S 123) allows three more (Clinton, Lumberton, and Franklin) to use summary procedures under the unsafe building condemnation statutes to demolish residential structures in community development target areas.

Housing Code

Current legislation (G.S. 160A-441) governing the application of minimum housing ordinances seems to imply that if a dwelling is deteriorating (but not yet dilapidated), a minimum housing inspector’s order must allow the owner the choice of whether to repair the dwelling or, alternatively, whether to close it and board it up. Because of the blighting effect of boarded-up houses, some local governments have sought other options. S.L. 2003-76 (S 290) and S.L. 2003-320 (S 357) allow Greensboro and Roanoke Rapids, respectively, to require owners to repair such properties rather than vacating them. A bill that would have extended this power to all local governments, H 628, remained in a House committee at adjournment.

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