

PLANNING AND ZONING LAW

Number 16 November 2004

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PLANNING— AND DEVELOPMENT—RELATED LEGISLATION ADOPTED BY THE 2004 GENERAL ASSEMBLY

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By far the most significant legislation enacted in 2004 affecting land use and community planning was the legislation that very substantially limits the amortization of nonconforming commercial off-premises signs (billboards, that is) by local governments through zoning or other authority. The outdoor advertising industry overcame an eleventh-hour gubernatorial veto of another bill prohibiting amortization to gain what it has sought for years. The consolation for local governments is that the prohibition applies only to billboard amortization programs initiated after August 2, 2004, and does not apply to nonconforming on-premises commercial signs or other types of zoning nonconformities, which may still be amortized.

Other legislation this year is of moderate interest to those associated with land use and community planning. The life of the Joint Legislative Growth Strategies Oversight Committee has been extended to 2007, providing hope that the committee will focus attention on the need for changes in North Carolina's planning legislation. A provision in an obscure technical corrections bill gives cities the power to apply zoning not only to the buildings and structures of state and local governments, but also to other features of such properties (parking and landscaping, for example) that may not involve buildings and structures. Another act requires local governments to provide special notice to military bases within five miles of their boundaries if the local government is considering zoning amendments or other planning-related actions. In addition, the General Assembly has authorized a series of committees and special commissions and the Legislative Research Commission to undertake studies of a variety of topics that may spark interest.

Planning and Growth Management

Growth Strategies Oversight Committee

The 2004 Studies Act, S.L. 2004-161 (S 1152), authorizes a large number of studies that, if actually conducted, will be of substantial interest to the planning community. Perhaps of

greatest interest to planners is Part III of the act. It extends the life of the Joint Legislative Growth Strategies Oversight Committee for another two years, so that the committee terminates in January 2007 rather than January 2005. The committee is specifically authorized to study the delegation of additional authority to cities and counties, the modernization of city and county planning statutes, and the establishment of transferable development rights.

Planning agencies

One change to the city and county planning statutes was made this year with little fanfare. The state statutes authorize the creation of “planning agencies” within city and county government. The statutes have generally been understood to pertain to lay-member planning boards and commissions. Indeed, the statutes expressly allow a city or county to appoint a planning board or commission to function as a “planning agency.” The Senate’s technical corrections bill, S.L. 2004-199 (S 1225) amends G.S. 160A-361, 160A-363, 153A-321, and 153A-322 to change the references in those statutes from planning agencies to planning boards or commissions.

This change does create potential complications, however. The new act left untouched those references to planning agencies in the zoning and land subdivision control enabling statutes. In addition, some local governments have designated a technical review committee or planning department to serve as a “planning agency” for purposes of subdivision plat approval. Some further legislative clarification may be needed.

Transit-Oriented Development as Municipal Service District

Municipal service districts allow cities to impose an additional ad valorem levy on property within the district to finance municipal services or facilities in the district to an extent greater than provided elsewhere in the city. S.L. 2004-151 (S 137) authorizes cities to establish municipal service districts for “transit-oriented development.” Such districts may be established within a *public transit* area, which is defined as an area within a one-fourth mile radius of any passenger stop or station located on a mass transit line. A city may provide any service or facility that it could provide in a downtown revitalization municipal service district. It may also provide passenger stops and stations, parking facilities, and any facility it may by law provide, including retail, residential, and commercial facilities. The act also allows cities to use special-obligation financing for projects within any municipal service district.

Community Appearance

Billboard amortization

One of the most contentious issues facing the General Assembly in the land use and development area in 2004 was the issue of billboard amortization. The outdoor advertising industry has long opposed amortization requirements (that is, requiring nonconforming features to come into compliance by the time a certain grace period has expired) and has vigorously challenged them in court. However, North Carolina courts have consistently held these requirements to be legal, provided a reasonable grace period for compliance is allowed.

The General Assembly adopted a moratorium requirement in the 2003 session (S.L. 2003-432) prohibiting local governments from initiating any new program that would amortize nonconforming off-premises commercial signs. That moratorium had an expiration date of December 31, 2004. In the 2004 session the General Assembly again focused on the issue. H 429, which had passed the House of Representatives but not the Senate in 2003, would have amended state law to prohibit use of amortization to remove any nonconforming commercial off-premises sign. (Billboards adjacent to federally funded highways are already subject to such a prohibition.) Late in the session, this bill passed the Senate but was vetoed by Governor Easley.

The governor expressed concern that the financial payments suggested by the act were too generous for the billboard industry. He urged the interested parties to negotiate further to address concerns of both local governments and the industry. The House of Representatives promptly voted to override the veto, but the Senate did not immediately take up the veto and instead encouraged the affected interests to further discuss the matter.

In the last days of the session, a compromise was reached and approved by the legislature. S.L. 2004-152 (H 1213) creates G.S. 153A-143 and 160A-199 to provide that counties and cities may not require removal of off-premise outdoor advertising signs that do not conform to local ordinances, unless they pay monetary compensation to the owners of such signs. There are five exceptions to the monetary compensation requirement:

1. the local government and sign owners agree to relocation of the sign;
2. the local government and sign owner enter a voluntary agreement providing for removal of the sign after a set period of time in lieu of monetary compensation;
3. the sign is a public nuisance or is a detriment to public health or safety;

4. removal is related to construction of streets, sidewalks, or public enterprises and the sign is allowed to be relocated to a comparable location; or
5. the removal is required pursuant to an ordinance of general applicability to demolition or removal of damaged structures.

When required, the monetary compensation is to be the fair market value of the sign (without consideration of the removal requirement). Fair market value is to be determined by referring to the factors in G.S. 105-317.1(a) regarding valuation of personal property for tax purposes, the listed property tax value of the sign, and other items of information regarding value that are submitted to the taxing authority. If no agreement on monetary compensation is reached, the local government may bring an action in superior court to determine fair market value. The act allows local governments to make payment of any required monetary compensation over a three-year period, provided the nonconforming sign remains in place until compensation is paid.

The law also specifies the content and factors to be considered in relocation agreements. Relocation sites are to be "reasonably comparable to or better than" the existing sign site, considering visibility, traffic count, demographics, zoning, lease costs, and the like. The government has to pay the cost of relocation. Cities and counties are authorized to provide dimensional, spacing, setback, and use variances as deemed appropriate to accommodate relocation. The act further provides for binding arbitration if the local government and sign owner have agreed to relocation but fail to agree about what constitutes a comparable or better site for relocation. If arbitration results in a finding that the proposed relocation site is not comparable, the local government must compensate the owner if it elects to proceed with removal.

There are several important limitations to the application of this amortization law. These restrictions on the use of billboard amortization do not apply to regulations in effect as of the effective date of the legislation, which is August 2, 2004. They do not apply to billboards made nonconforming by the geographic expansion of existing municipal ordinances through annexation or extraterritorial jurisdiction changes. They do not affect the exercise of eminent domain. Finally, they do not affect amortization of nonconforming uses other than off-premise outdoor advertising.

Nuisances and Junked Vehicles

Several local acts were adopted in 2004 regarding nuisance lot enforcement, junk cars, and open space protection. S.L. 2004-93 (S 1355) adds Goldsboro to the list of cities authorized to give annual notice to chronic violators of the city's refuse and debris ordinance. S.L. 2004-30

(H 1447) amends the definition of a junked motor vehicle in G.S. 160A-303.2 for Greenville, Henderson, and Waynesville. These cities can apply their ordinance to unlicensed vehicles that appear to be worth less than \$500 rather than \$100 as in the state law.

Section 2.1(n) of the Studies Act of 2004 (S.L. 2004-161, S 1152) authorizes the Legislative Research Commission to study the environmental, aesthetic, and other public recycling impacts of junked and abandoned automobiles.

Tree Protection

Section 71 of one of the technical corrections bills (S.L. 2004-203, H 281) amends S.L. 2003-128 to add the Town of Rutherfordton to those municipalities that are authorized to adopt tree preservation regulations for areas along public roadways and property boundaries.

Historic Preservation

S.L. 2004-11 (H 1433) allows Wake County to appoint residents of municipalities and municipal extraterritorial planning areas within the county to its Historic Preservation Commission.

Other Zoning and Land Subdivision Control Legislation

Notice to Military of Zoning Hearings

The federal government will soon be undertaking a review of its military bases, considering whether to close or realign facilities. Military bases have a significant presence in North Carolina, particularly in the eastern portion of the state. Concern about potential loss or downsizing of these bases prompted a variety of state and local actions. As part of this effort, the General Assembly enacted S.L. 2004-75 (S 1161). This act creates G.S. 160A-364(b) and 153A-323(b) to require notices of hearings on certain proposed zoning ordinance changes to be provided to the military. If a proposed rezoning is within five miles of the perimeter boundary of a military base, notice of the hearing must be sent by certified mail to the commander of the base. Notice must also be mailed for any other ordinance adoption or amendment changing or affecting permitted uses in this area. The notice must be mailed in the ten- to twenty-five-day period prior to the hearing. The governing boards of cities and counties are also directed to take any military comments or analysis into consideration before acting on these ordinance adoptions or amendments.

Government Uses of Land

G.S. 160A-392 was added to the statutes in 1951 to require state and local governments to be consistent with municipal zoning. The statute made city regulations applicable to the “erection, construction, and use of buildings.” The Senate’s technical corrections bill, S.L. 2004-199 (S 1225), amends this provision to extend this law to provide that municipal zoning also applies now to use of land that does not involve buildings (city zoning regulations on parking lots, for example). This amendment also removes the requirement for state approval of application of overlay districts to state-owned properties, as these districts are now commonly used for routine zoning requirements (flood hazard districts, historic districts, entryway corridor districts, and the like). The amendment also allows the Council of State to delegate authority to apply for a conditional use district to appropriate staff.

Zoning/Land Subdivision—Local Bills

One local bill was enacted affecting zoning powers. In 2003 the Town of Chapel Hill secured authority to identify planned school sites and then require those sites to be reserved for acquisition as part of a special use permit or site plan development approval for up to twelve months. S.L. 2004-27 (S 1122) amends this local authorization to extend the reservation period to eighteen months.

An act concerning annexation in Cabarrus County (S.L. 2004-39, H 224) also provides that Cabarrus County and any of its municipalities are authorized to enforce any provision of the school adequacy review performed under the Cabarrus County subdivision ordinance, including the method used in that ordinance to address any inadequacy that may be identified as part of that review. The provision appears to be designed to authorize the conditioning of development approval upon the payment of a per-lot fee by developers. The fee is earmarked for school construction and is designed to mitigate inadequate school capacity.

There were no statewide bills affecting subdivision regulation adopted in 2004. One local bill, S.L. 2004-46 (H 1724), affects Harnett and Pitt counties. This act repeals 1997 and 2001 local acts modifying the definition of subdivisions for Harnett County and its municipalities. It adopts additional exemptions from subdivision regulation in Pitt County for divisions related to estate settlement and land transfers within an immediate family.

Development-Related Studies

The 2004 Studies Act, S.L. 2004-161 (S 1152), authorizes a large number of studies that, if actually conducted, will be

of substantial interest to the planning community. Special legislative committees or commissions will conduct five of these studies. For example, Part III of the act extends the life of the Joint Legislative Growth Strategies Oversight Committee for another two years, so that the committee terminates in January 2007 rather than January 2005.

The committee is specifically authorized to study the delegating of additional authority to cities and counties, the modernizing of city and county planning statutes, and the establishing of transferable development rights. Part IV of the act also establishes a seventeen-member Study Commission on Residential and Urban Development Encroachment on Military Bases and Training Areas. The commission is to examine zoning regulations, deed registration, the purchase of development rights, and the need for buffers around military bases, with a report due to the 2005 session of the General Assembly.

Another study commission, established by Part XLIX of the act, is the Study Commission on Economic Development Infrastructure. That commission is directed to develop a plan to restructure and consolidate the infrastructure for the delivery of economic development to improve its organization and effectiveness. A fourth commission, provided for in Part XXXII, is the Hurricane Evacuation Standards Study Commission, directed to study the development and establishment of hurricane evacuation standards for state government. One permanent commission, the Environmental Review Commission, is authorized to study the effectiveness of environmental programs, sharing floodplain mapping information, and water restriction.

In addition to the studies conducted by special committees and commissions, the Legislative Research Commission is authorized to study a number of development-related issues. Potential study topics, summarized in other chapters, include light pollution, urban cores, equity-building homes, state-local relations, and soil and water conservation issues.

Transportation

Highway Funding

Urban loops

The Highway Trust Fund was established in 1987 to provide money for a variety of different types of highway construction and improvement projects. One class of projects funded from this source consists of urban loops in and around most of the larger cities of the state. Section 30.19 of the Appropriations Act (S.L. 2004-124) amends G.S. 136-180(a), which lists the urban loop projects for which Trust Fund monies may be used. The act adds to the

list (a) the six-laning of a portion of the Charlotte Outer Loop; (b) a multilane Gastonia loop to be known as the Garden Parkway; (c) the completion of the Raleigh Outer Loop; and (d) an expanded Wilmington bypass.

The Intrastate Highway System

The Intrastate Highway System in North Carolina was established as a network of major, multilane arterial highways within and serving the state. These highways are also funded in part from the Highway Trust Fund. Section 30.21(a) of the Appropriations Act reorganizes the legislation affecting these routes and changes the standards for these routes. It also reclassifies those routes already funded by the Trust Fund as “first priority” and adds a second category of routes for which Trust Fund monies may be used once first-priority routes are funded. Finally it adds highway segments to the existing first-priority list and establishes an extensive list of projects that are second priority.

The legislation amends G.S. 136-178(a) to provide that the routes on the Intrastate System need *not* include at least four lanes if projected traffic volumes or environmental considerations dictate fewer lanes. Section 30.21(d) adds several routes to the priority list set forth in G.S. 136-179, including the Shelby Bypass and a portion of U.S. 321 in Watauga County that will allow the four-laning of that highway from the Tennessee state line to the South Carolina line. Section 30.21 also adds a new twist. It provides that funds allocated from the Trust Fund for the Intrastate System are primarily intended for use on first priority projects listed in G.S. 136-179. But if these funds, assigned by region, cannot be used for the listed projects, then the funds may be used for the other projects listed in G.S. 136-178. This new second priority list includes all of North Carolina’s interstate highways, many of the major U.S.–numbered highways, five North Carolina–numbered highways, and certain miscellaneous routes, including urban loop projects for which the initial construction has already been completed.

All of these changes expand the allowable uses of Intrastate System funds and grant the North Carolina Department of Transportation (NCDOT) and the Board of Transportation more flexibility in choosing projects for funding.

Joint Funding with Local Governments

The issue of whether and how local governments may contribute to or “participate” in the costs of highway improvement projects that are part of the state’s Transportation Improvement Program (TIP) has been debated for some time. In 1987 a coalition of legislators

representing rural areas and small towns was successful in securing legislation that limited the ability of local governments to contribute funds to state highway projects because of concern that such “participation” warped the state’s highway priorities.

In 2001, however, G.S. 136-66.3 was rewritten to provide that municipalities could participate in the right-of-way and construction costs of state projects so long as other state projects were not jeopardized. This year, the General Assembly enacted S.L. 2004-168 (S 1089) to add G.S. 136-18(38) to refine these arrangements. The act allows the NCDOT to receive funds from local governments and nonprofit corporations provided for the purpose of advancing the construction schedule of a project identified in the TIP. If the funds are to be repaid by NCDOT, the reimbursement arrangements must be shown in the TIP. NCDOT has *seven years* after receiving such funds in which to repay the local governments or non-profits. [This period of time may be compared with the *three-year* period that municipalities have to repay funds owed NCDOT under one of these project cost-sharing arrangements. See G.S. 136-66.3(e1).]

Medians in State Highways

Arrangements with respect to medians in major state highways running through urban areas can sometimes become a political issue with local governments. Section 30.16 of the Appropriations Act prohibit NCDOT from contracting for or building a median on U.S. 64 in Asheboro between Third Street and the intersection of U.S. 64 with N.C. 42. Section 30.17 of the act also directs NCDOT to construct six median cuts on Catawba Avenue in the Town of Cornelius at locations to be designated by the town.

Highway Studies

Last year, the General Assembly adopted legislation directing the Joint Legislative Transportation Oversight Committee to contract with a consultant to study the state’s procedures for planning, designing, and letting contracts for transportation projects. The study was to identify specific, practical solutions to decrease the time it takes to complete a transportation project. Section 30.14 of the Appropriations Act directs the Department of Transportation to review and implement the applicable recommendations of the study, which is dated June 2004. Beginning October 15, 2004, and continuing until October 15, 2006, the department must also report quarterly to the committee on the department’s progress in carrying out the study recommendations. Section 78 of S. L. 2004-203 (H 281) clarifies that the target date for the study to be completed was April 1, 2004, not April 1, 2003.

Meanwhile, the search for long-term solutions to highway funding problems continues. Section 20.1 of the Studies Act of 2004 (S.L. 2004-161, S 1152) amends sec. 20.1 of S.L. 2003-284 to extend the deadline for the final report of the Highway Trust Fund Study Committee to January 31, 2005. It was November 1, 2004.

Part XVII of the Studies Act of 2004 (S 1152) also authorizes the Joint Legislative Transportation Oversight Committee to study the imposition of tolls on Interstate 95 vehicle traffic. In addition, the commission may study all aspects of transportation, including planning and scheduling of projects, legislative and executive oversight, revenues, funding, and the expenditures of the Highway Fund, the Highway Trust Fund, and federal aid programs for transportation.

Other Transportation Modes

Rail service to western North Carolina

Sec. 30.8 of the Appropriations Act authorizes the Rail Division of the North Carolina Department of Transportation to use up to \$1,066,000 of the funds in the Western North Carolina Reserve to acquire property and make infrastructural improvements in the Biltmore Village area of Asheville to develop a terminus for western North Carolina passenger rail service.

Virginia–North Carolina Interstate High-Speed Rail

By adopting S.L. 2004-114 (S 1092) the General Assembly agreed to enter into a compact with the State of Virginia concerning the development of high-speed rail service within and through the two states. In a campaign spearheaded by North Carolina and Virginia, government and business leaders in certain southern states are planning to ask Congress for help in upgrading the track along key segments of the Charlotte to Washington corridor. By adopting the act, North Carolina consents to the establishment of the Virginia–North Carolina High-Speed Rail Compact Commission as a regional “instrumentality” for purposes of planning, promoting, and funding the system. Each state contributes five members to the commission. Transportation departments from the two states are directed to serve as the primary staff to the commission.

Organizational arrangements for a Regional Transportation Authority

The chair of each Metropolitan (Transportation) Planning Organization (MPO) within the territorial jurisdiction of a Regional Transportation Authority (RTA) is a member of the RTA Board of Trustees. Sec. 56 of the House technical

corrections bill (S.L. 2004-203, H 281) provides that any such MPO chair may appoint, as his designee on the Board of Trustees, either the chair of the MPO Transportation Advisory Committee or a designee approved by the Transportation Advisory Committee.

Local Legislation

Trolley Easements. S.L. 2004-53 (S 1233) allows the Town of Pinebluff to convey trolley easements to the owners of adjacent property at privately negotiated sales.

Building and Housing Code Enforcement

Code Handbooks

Section 21.2 of the Appropriations Act deletes a provision of G.S. 143-138(d) that required the Department of Insurance, no later than January 1, 2000, to publish handbooks providing explanatory materials concerning State Building Code requirements and each subsequent revision of the code. Handbooks meeting this deadline have not been completed, so the requirement was dropped.

Building Code for Prisons

Section 17.6B of the Appropriations Act directs that if construction is begun before July 1, 2005, the 1,000-cell close-security prison to be built in Columbus County by the State of North Carolina is to be constructed in accordance with the 1999 version of the North Carolina State Building Code instead of the version of the code that might otherwise apply when construction begins. (The section catchline implies that recently completed prisons in Scotland, Anson, Alexander, Greene, and Bertie counties were constructed under the 1999 code version.) The act does, however, provide that the 1999 code applies only if prison construction documents have been reviewed by the Department of Insurance, the State Construction Office, and the Department of Correction.

Toilets in Malls

Section 37(a) of S.L. 2004-199 (S 1225) adds a new G.S. 143-143.5 governing access to toilets in shopping malls. It provides that notwithstanding any other rule or law (including, apparently, the State Building Code) toilets for public use in covered mall buildings may be located at a horizontal travel distance of up to 300 feet from potential users within the mall.

Study of Residential Code

The Studies Act of 2004 (S 1162) directs the North Carolina Building Code Council to study the Residential Building Code to determine “which provisions, if any, are unnecessary, outdated, or overly stringent, or will otherwise unduly increase the cost of housing.” It authorizes the council to submit its final report to the General Assembly no later than March 31, 2006.

Dilapidated Buildings—Local Bills

The General Assembly in 2004 continued the recent trend of enacting local bills to provide individual jurisdictions greater flexibility and efficiency in enforcing code provisions regarding repair and demolition of dilapidated buildings. S.L. 2004-98 (H 1737) allows Winston-Salem and Reidsville to require that residences deemed unfit for human habitation under a minimum housing ordinance be either demolished or repaired after they have been vacated and closed for six months. S.L. 2004-70 (H 1726) allows Winston-Salem to order owners of residences that do not meet the housing code to repair rather than vacate the units. S.L. 2004-6 (H 1666) allows Garner to require demolition of unsafe residences in community development target areas under its unsafe building authority to use the same process as for demolition of nonresidential buildings.

Jurisdiction and Boundary Adjustments

New Incorporations

One new town was created in 2004. S.L. 2004-37 (S 1127) creates the Town of Wallburg in northern Davidson County. The law does not allow the new town to annex into Forsyth County and limits annexation in portions of Davidson County. Also, limitations on satellite annexation near other towns are not applicable to Kernersville and Winston-Salem relative to Wallburg.

Extraterritorial Planning Jurisdiction

S.L. 2004-4 (S 1189) allows Chadbourn to extend its extraterritorial jurisdiction up to two miles.

Annexation

A number of additional municipalities secured relief from the 10 percent limit on the area of satellite annexations. S.L. 2004-57 (H 1385) made this change for Creswell,

Fuqua-Varina, Garner, Holly Ridge, Knightdale, Leland, Mayodan, Morrisville, Mount Holy, Randleman, Rolesville, Washington, Wallace, Warsaw, Wendell, and Zebulon. S.L. 2004-99 (S 1309) does the same for Apex. Sec. 13(b) of the House of Representatives’ technical corrections bill, S.L. 2004-203 (H 281), adds Calabash, Catawba, Dallas, Godwin, Louisburg, Marion, Mocksville, Oxford, Pembroke, Rockingham, Rutherfordton, and Waynesville to this list.

Additional local bills annex or de-annex specific territory for municipalities. Among these are S.L. 2004-39 (H 224) for Kannapolis and Mount Pleasant; S.L. 2004-56 (H 1369) for Emerald Isle, Stanfield, and Midland; S.L. 2004-31 (H 1471) for Bakersville; S.L. 2004-40 (H 1475) for Badin; S.L. 2004-42 (H 1593) for Swansboro; S.L. 2004-43 (H 1678) for Norwood; S.L. 2004-17 (S 1096) for the Concord and Kannapolis boundary; S.L. 2004-107 (S 1343) for Whiteville; and S.L. 2004-86 (S 1356) for the Whitsett and Gibsonville boundary. S.L. 2004-103 (H 1688) allows use of a deferred effective date for voluntary annexations by Concord.

Environment

Stormwater Controls

In response to state and federal requirements, North Carolina local governments began in the mid-1990s to be required to adopt comprehensive stormwater management programs. These mandated stormwater control programs include both structural stormwater controls and management measures such as education and used-oil recycling programs. These programs are designed to manage both the quality and quantity of stormwater runoff.

Six municipalities with populations over 100,000 were required to implement stormwater management programs in Phase I of these requirements (Charlotte, Raleigh, Greensboro, Winston-Salem, Durham, and Fayetteville) and smaller municipalities (called “urbanized areas”) were required to adopt similar comprehensive stormwater management programs in what is generally known as Phase II of the storm-water program. This applies to municipalities with populations over 10,000 and a density of 1,000 persons per square mile. New development in unincorporated areas of counties in urbanized areas is also covered. At least 123 North Carolina cities are included, as are a number of unincorporated areas.

The state has been working since then to develop both rules and a permitting program for these mandated programs. A particular difficulty has been assignment of responsibility for stormwater management in urbanized areas outside city limits. The issue of how runoff from state roads is to be managed has also been difficult to resolve.

The State Environmental Management Commission adopted temporary rules for these programs in late 2002. The EMC adopted permanent rules in mid-2003, but there has been substantial controversy regarding adoption of permanent rules. The Rules Review Commission has delayed the effective date of the rules and litigation regarding this delay is pending. S.L. 2004-163 (S 1210) establishes a framework for affected local governments to comply with the Phase II stormwater management program requirements. New development in those included unincorporated areas must meet stormwater management standards if it is either within the federally designated urbanized area or is within the extraterritorial jurisdiction of a covered municipality. In some situations management must extend countywide.

Coastal Areas

Two enactments address individual situations subject to Coastal Area Management Act (CAMA) regulations. In previous legislative sessions the General Assembly has directed the Coastal Resources Commission to waive the general rule limiting the amount of impervious surface a development could have immediately adjacent to rivers and sounds in limited circumstances—generally situations involving redevelopment projects along already developed urban waterfronts. S.L. 2004-117 (S 732) extends this trend to at least one non-urban area. It directs the Coastal Resources Commission to implement a pilot program in a single non-oceanfront county whereby the county can in its land use plan designate an undeveloped area as a “new urban waterfront area.” The area may not exceed 500 acres or more than a mile of waterfront and may not be adjacent to waters classified by state agencies as outstanding resource waters, nutrient sensitive waters, high quality waters, SA waters, primary or secondary nursery areas, or critical habitat areas. Development in this designated area is to comply with CAMA permitting standards, except that it is to be treated the same as an existing urban waterfront area but must meet the thirty-foot vegetated buffer requirements. The development must secure a National Pollution Discharge Elimination System (NPDES) water quality permit for an overall stormwater management plan for the area within the common plan of development. If commercial, civic, and open space proposed in the permit application is not provided within six years of permit issuance, mitigation is required for encroachment into riparian buffers that would have otherwise been required absent this pilot program. Annual reports on the costs, benefits, and impacts of the development permitted under the pilot program are required. The pilot program requirement expires on July 1, 2010. It is anticipated that this pilot program will be applied to a proposed development along the Albemarle Sound in Chowan County. S.L. 2004-1

(H 1411) designates an area on Hatteras Island immediately west of the new inlet area temporarily opened by Hurricane Isabel as an unvegetated beach area for purposes of setting a vegetation line for setback determinations.

Farmland Preservation

The Appropriations Act, S.L. 2004-124 (H 1414) allocated \$62 million to the Clean Water Management Trust Fund and authorizes up to \$4.1 million of this to be used for farmland preservation projects. It also directs the Department of Agriculture to prepare a plan for farmland preservation.

Economic Development

Rural Economic Development Center Funds

Probably the most important economic development initiative begun in 2003–2004 grows out of a \$20 million special appropriation to the Rural Economic Development Center. S.L. 2004-88 (H 1352) establishes the North Carolina Infrastructure Program. Of this amount \$15 million must be used to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs to sites where the facilities will generate private job-creating investment. Plans call for the funding of over thirty water and sewer projects to help businesses locate in rural areas. In addition, plans call for building two telecenters to bring access to computers, training, and support for entrepreneurs and small businesses. The additional \$5 million is earmarked for matching grants to renovate and utilize vacant industrial buildings to house new businesses.

On another front, section 13.8 of the Appropriations Act (S.L. 2004-124, H 1414) increases prior appropriations made to the Rural Economic Development Center by \$1.144 million. An additional \$1 million is allocated to research and demonstration grants for the e-NC Authority to establish up to four business and technology telecenters. These centers are intended to enable high-speed Internet service and other forms of technology to be used in distressed urban areas and to provide digital literacy training to allow the creation of technology-based enterprises and enhance the productivity of these businesses. In addition, \$144,000 is appropriated for the Institute for Rural Partnership.

Department of Commerce

S.L. 2004-88 (H 1352) codifies provisions for and appropriates emergency nonreverting funds for the One North Carolina Fund for fiscal year 2003–2004. It adds G.S. 143B-437.70 to -437.74 to provide that money in this fund may be allocated only to local governments so that they may secure commitments for the recruitment, expansion, or retention of new and existing businesses. Local governments must use the money for (1) equipment; (2) renovations to existing buildings; (3) water, sewer, gas, or electric utility line improvements for existing buildings; or (4) utility improvements for new buildings to be used for manufacturing or industrial operations. Funds may be disbursed from the One North Carolina Fund only in accordance with agreements between the state and the local government and between the local government and a grantee business. The program requires local governments to match funds allocated by the state and to recapture funds from businesses who fail to provide or maintain the necessary jobs and to reimburse the state accordingly.

Another jobs program managed directly by the state is the Job Development Investment Grant Program. Adopted in 2002, the program allows the state to make a grant of up to \$6,500 per job to a new or expanding business that promises quality job growth. Section 32G of the Appropriations Act makes several program changes. It extends the expiration date of the Economic Investment Committee's authority to enter into new agreements from January 1, 2005, to January 1, 2006. It increases the cap on the amount of grants made in any year from \$10 million to \$15 million and increases the number of permissible grants from fifteen to twenty-five. In order to provide security to business applicants, it adds G.S. 143B-437.57(c) to provide that a community economic development agreement with a business is a legally binding obligation of the state and is not dependent upon state funding. It also adds G.S. 143-437.57(a) (25) to require the agreement to include a provision encouraging the business to contract with small businesses headquartered in the state for goods and services. Finally, section 32G directs the chairs of the finance committees of the two chambers of the General Assembly to conduct a comprehensive, systematic study of the Job Development Investment Grant Program for submittal by April 1, 2005. The study is to examine the costs and effectiveness of the program and the utilization of the program in various geographic areas of the state.

Legislators also gave attention to the Site Infrastructure Fund created in the Department of Commerce. Section 6.26 of the Appropriations Act amends G.S. 143B-437.02(b) to allow the money to be used not only for site development for new or relocating businesses but also to acquire options for the purchase of land for large, regional industrial sites that cannot be assembled by local governments. The

acquisition of the options must be approved by the Site Selection Committee.

Section 5.2 of the Appropriations Act appropriates \$45 million in federal Community Development Block Grant funds for further allocation by the Department of Commerce as follows:

State Administration	\$1 million
Urgent Needs/Contingency	\$50,000
Scattered Site Housing	\$13.2 million
Economic Development	\$10.96 million
Community Revitalization	\$12.2 million
State Technical Assistance	\$450,000
Housing Development	\$2 million
Infrastructure	\$5.14 million

The act also directs the Department of Commerce in partnership with the Rural Economic Development Center to award up to \$2.25 million in demonstration grants to local governments in very distressed rural areas for critical infrastructure and small business assistance.

Section 13.7 establishes the Trade Jobs for Success (TJS) initiative, led by the Department of Commerce in cooperation with the Employment Security Commission and the North Carolina Community College System. The program allows displaced workers to receive on-the-job training to learn new job skills and educational assistance to allow them to qualify for new jobs. The initiative also authorizes in-state relocation assistance and mentoring to workers and financial assistance to employers.

Regional Economic Development Funds

Section 13.6 of the Appropriations Act appropriates \$1.75 million to the North Carolina Partnership for Economic Development to be split equally among the several regional economic development partnerships for each to develop and implement a strategic economic development plan. In addition section 13.7 redistributes interest earnings (\$125,681) from money appropriated to the Global TransPark Development Zone according to a formula that favors disadvantaged counties with lower enterprise factors.

Industrial Revenue Bonds

In the past those who wished to take advantage of industrial revenue bonds issued by counties to finance new industrial development had to demonstrate that the project met a certain wage standard. The applicant had to demonstrate that the operator of the project paid an average weekly manufacturing wage that (1) was above the average manufacturing wage paid in the county or (2) was not less than 10 percent above the average weekly manufacturing wage paid in the state as a whole. S. L. 2004-132

(S 1063) amends G.S. 159C and 159D to eliminate entirely the wage standard for industrial revenue bonds. It also directs the Department of Commerce to encourage those applying for industrial revenue bonds to locate the projects in development zones.

Sales Tax Refunds and Exemptions

The General Assembly also provides a variety of new tax refunds, exemptions, and credits to particular classes of businesses in order to promote economic development. Section 32B.1 of the Appropriations Act adds (1) airplane manufacturing, (2) computer manufacturing, (3) motor vehicle manufacturing, and (4) semiconductor manufacturing to the list of businesses that may qualify for a refund of sales and use taxes paid. It also amends G.S. 105-164.14(j) to provide that if the new facility is located within an enterprise tier one, two, or three area, the amount of investment that a qualifying business must make is reduced from \$100 million to \$50 million. These sales and use tax refunds expire July 1, 2009.

Investment Tax Credits

Section 32C of the Appropriations Act changes the amount of a qualified business investment credit that may be used by a business in a particular tax year from \$6 million to \$7 million. It also postpones the expiration date of the business investment credit program from January 1, 2007, until January 1, 2008.

Section 32D of the Appropriations Act adds a new G.S. 105, article 3F, to establish tax credits that businesses may apply against their income or franchise taxes for their research and development costs, uncoupling the state's research tax credit program from the federal tax credit program in the process. If the research is conducted by a qualifying North Carolina university or college, the credit is equal to 15 percent of the expenses. If the research is conducted by others, the allowable percentage credit (based on the total amount of research expenses, whether the business is a small business, and whether the research is performed in a lower-enterprise-tier county) may not exceed 3 percent. The Research and Development Tax Credit applies to research activities conducted on or after May 1, 2005, and expires with respect to tax years beginning January 1, 2009.

Housing

Home Protection Pilot Program

One of the results of economic dislocations in North Carolina in recent years has been a rise in the number of houses lost

to foreclosure. The North Carolina Home Protection Pilot Program is designed to assist workers who have lost jobs and need temporary assistance to avoid losing their homes. Section 20A.1 of the Appropriations Act directs the North Carolina Housing Finance Agency (NCHFA) to develop and administer a pilot program in certain counties. NCHFA is to make loans to threatened home-owners, designate and fund nonprofit counseling agencies, and directly provide services such as direct mortgagee negotiations on behalf of unemployed workers. Remarkably, the act also provides that if a qualifying mortgagor files for loan assistance under this program, the mortgagee is prevented by law from taking certain steps that would disadvantage the mortgagor. For example, a mortgagee may not accelerate the maturity of a mortgage obligation, procure a deed in lieu of foreclosure, or enter a judgment by confession pursuant to a note accompanying a mortgage. The act directs NCHFA to report by May 1, 2005, on (1) the extent of the problem of increased foreclosure filings statewide, (2) improvements recommended to the laws affecting foreclosure procedures, and (3) the benefits and feasibility of creating a foreclosure avoidance loan fund.

Housing Authorities

The only new legislation affecting housing authorities is an obscure provision in a technical corrections bill. Section 40 of S.L. 2004-199 (S 1225) prohibits a housing authority from erecting or maintaining any fence or gate around occupied housing units that is electrified or that includes spikes or barbed wire.

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The University of North Carolina at Chapel Hill
Printed in the United States of America

This publication is printed on permanent, acid-free paper in compliance with the North Carolina General Statutes.

