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Land Use, Community Planning, Code Enforcement, and Transportation

The 2003 General Assembly enacted a major transportation initiative, temporarily limited local authority to compel removal of nonconforming billboards, adopted appearance standards for some factory-built housing, and ratified a number of local bills concerning a wide variety of land development and code enforcement issues.

Zoning

The only statewide bill adopted in 2003 directly affecting zoning establishes an eighteen-month moratorium on new amortization of off-premise billboards. Several bills were introduced to limit use of amortization (a regulatory requirement that land uses or structures that were legal when initiated but that violate current regulations come into compliance or be removed after a reasonable grace period). S 534 and H 429 would have broadly eliminated amortization of nonconforming buildings, structures, or signs. Under these bills cities and counties would have had to pay monetary compensation for removal of nonconformities. H 429 passed the House of Representatives but remained in Senate committee at adjournment. An alternative bill, H 984, would have provided detailed guidelines for limitations on nonconformities and would have allowed continued amortization of signs, adult businesses, and junkyards. S.L. 2003-432 (H 754) was adopted as a compromise. This act places a moratorium on any new ordinances and prohibits

extending or expanding existing ordinances amortizing off-premise advertising signs until December 31, 2004.

Five local bills affecting zoning were 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.

Subdivision

There were no statewide bills regarding subdivision regulation 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.

Building Code

Homeowner Recovery Fund Permit Fee

Since 1991 local inspection departments have collected a fee from each general contractor who 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 these may be subcontracted by the bidding contractor. 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 may not apply except to occupancies exceeding 200 people. The Chapel Hill legislation would allow an existing club lacking sprinklers up to five years to comply, if its existing occupancy exceeds 200. It would also allow 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.

Community Appearance

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).

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

Nuisance Abatement Ordinances

Overgrown vegetation ordinance. 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 ordinance. 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 here a *chronic violator* is 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 units 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 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:

- For homes with a single predominant roofline, the pitch of the roof 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 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.

1. 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.

2. The area within the required buffer may not exceed 20 percent of the area of the tract, excluding road and conservation easements.
3. Tracts of two acres or less that are zoned for single-family residential use are exempt.
4. Local governments may not require surveys of individual trees.
5. 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.
6. 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 become effective January 1, 2004.

Transportation

The “Moving Ahead” Transportation Plan

The most significant piece of transportation legislation adopted in 2003 must certainly be that advocated by Governor Easley and 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 the 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 reports 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.

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.

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.

Miscellaneous Related Topics

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 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. 303 F.3d 507 (4th Cir. 2002). 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.

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.

Raleigh Historic District

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.

Environment

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 [some 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. 2003-428 (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) to specifically provide that the state's air quality permitting program does not affect the validity of local zoning, subdivision, or other land use regulatory programs.

Richard D. Ducker

David W. Owens