

5

Community Planning, Land Development, and Related Topics

Compared to 2005 (when major planning and land use legislation was adopted) and 2004 (when important outdoor advertising legislation was adopted), 2006 was a quiet legislative year for land use law. Several new laws passed this year, however, are of interest. A follow-up amendment to the municipal zoning statute concerning plan consistency statements was adopted. Additional state income tax credits were created to encourage rehabilitation of historic mill sites. North Carolina moved closer to establishing a system of toll roads and highways when the legislature named six specific road segments in the state for which tolls will be charged. In addition, the General Assembly prohibited local governments from condemning parcels of land in redevelopment areas that are not blighted. Major revisions were made to the statutory classification of North Carolina counties into tiers for purposes of offering state tax incentives and other economic development program benefits. Other important statutory changes will provide clarification and guidance to local governments expected to adopt local stormwater control programs in order to comply with federal Phase II stormwater requirements under the Clean Water Act.

Zoning

In 2005 the General Assembly made the most substantial revisions to the zoning enabling statutes since their original enactment. By contrast 2006 was a very quiet session for zoning issues. Only two technical corrections were made in the zoning statutes and only a few local bills were enacted.

One change in the zoning law enacted in 2005 requires local governing boards to adopt a statement of their rationale when adopting or rejecting a zoning ordinance amendment. This statement must address whether the proposed amendment is consistent with adopted plans and why the decision is considered to be reasonable and in the public interest. Prior to governing board action, the planning board must also send the governing board a written recommendation that addresses plan consistency. A standard practice that quickly developed around the state was for the staff to prepare a draft statement on these matters for consideration by both the planning board and the governing board, with each board making any amendments considered appropriate prior to adoption of the statement. However, in several cities the question arose as to whether a separate motion adopting the statement was required prior to action on the zoning amendment. While most local governments did not consider this two-step process necessary, Section 28 of the 2006 Technical Corrections Act, S.L. 2006-259 (S 1523), amends G.S. 160A-383 to clarify that the statement must be “approved when” adopting or rejecting the amendment (the prior language was that the statement must be “adopted prior to” action). A similar clarification has not yet been made for the comparable county statute.

The second clarification made to the statutes addresses the scope of the agricultural exemption from county zoning. An exemption for bona fide farming was included in the original authorization for county zoning in 1959. Over the years the breadth of the farm exemption has been the subject of much controversy and litigation. S.L. 2005-390 modestly expanded the bona fide farm exemption to allow sale of a limited amount of nonfarm products from farms subject to a conservation agreement. In Section 26 of the Technical Corrections Act, the General Assembly clarified that the expanded definition of *agricultural products* adopted in 2005 in G.S. 106-581.1 applies to the county zoning exemption. This definition includes not only production and harvesting of crops and livestock, but also horticulture, aquaculture, and the planting and production of timber. The definition also includes the following incidental activities when performed on the farm: agritourism; marketing of agricultural products; storage of agricultural materials; and packing, treating, processing, sorting, and similar activities that add value to agricultural items produced on the farm.

Another statewide act may affect some zoning and development regulations. Legislation enacted in 2000 allowed cities and counties to regulate the location of video poker machines and, as a result, a number of zoning ordinances set locational requirements for these machines. After several years of legislative controversy regarding these machines, the decision was made to phase most of them out. Prior to October 1, 2006, an establishment could have up to three video gaming machines. S.L. 2006-6 (S 912) amends G.S. 14-306.1 to reduce the number of permissible machines to two on October 1, 2006; to reduce the number to one on March 1, 2007; and to ban them altogether effective July 1, 2007. Machines located on tribal lands and operated under a Tribal-State Gaming Compact (such as the compact allowing the machines in the Cherokee reservation casino) are exempt from this ban.

In 2005 two of the bills making revisions to the zoning statutes were approved by the Senate but held over for consideration in 2006. Senate Bill 970 proposed a codification and revision of the procedures for judicial review of quasi-judicial land use decisions. Senate Bill 835 would have allowed creation of jet noise zones adjacent to certain airports, allowed mandatory notice to purchasers of property within these zones, and directed the Building Code Council to study additional noise insulation issues. The 2006 General Assembly did not take up either of these bills.

Several local acts addressed height limits for new buildings. S.L. 2006-126 (H 2688) sets a 35-foot height limit for buildings in the town of Kure Beach. The law exempts noninhabitable structures such as spires, cupolas, and antennas and provides that the town may not grant height variances. This same act creates a similar 64-foot height limit for the city of Hendersonville, with one difference. The Hendersonville height limit was subject to a city referendum on November 7, 2006. The voters approved the height limit by a wide margin, but the constitutionality of the limit has been challenged in court. In addition the Technical Corrections Act of 2006 amended the Hendersonville height limit to exclude hospitals, churches, cultural performing arts centers, and government buildings. S.L. 2006-60 (H 1069) clarifies the height limits for the town of Oak Island. Height limits had previously been adopted for Yaupon Beach and Long Beach, the two

towns that merged to form Oak Island, but amendments to those limits were slightly different. This law establishes a single height limit of 35 feet for buildings south of the Atlantic Intracoastal Waterway, with an exception allowing buildings up to 41 feet in height in areas designated as velocity zones under the National Flood Insurance Program.

Several studies authorized by the 2006 Studies Act, S.L. 2006-248 (H 1723), could affect zoning in certain areas. Section 9.2 of the act also extends the life of the Joint Legislative Growth Strategies Oversight Committee until January 2007, with a report from the committee to be made to the 2007 General Assembly. Other studies authorized in 2006 affecting land use and development address the following issues:

1. Waterfront access, focusing on the loss and potential loss of the diversity of uses along coastal shorelines and how these losses affect access to the public trust waters (Section 45.3)
2. Abandoned mobile homes, including impacts on public health and safety, the environment, and scenic resources; removal and transportation issues; solid waste disposal issues; design of local government programs and regional approaches for proper disposal; and the feasibility and advisability of imposing an advance disposal tax on the sale of new and used manufactured homes to fund deconstruction [Section 8.3(a)]
3. Utility provision in extraterritorial areas (Section 9.1)
4. The impact of regulations on housing costs, including ways to reduce or eliminate conflicting, duplicative, outdated, or unnecessary regulations, such as the consolidation or elimination of governmental agencies and programs [Section 2.1(b)]

Planning Jurisdiction and Annexation

As in past years, several local bills were enacted affecting the extraterritorial planning jurisdiction of individual local governments. S.L. 2006-171 (S 350) allows the towns of Marshville and Wingate to extend municipal extraterritorial jurisdiction without county approval to areas already subject to county zoning and subdivision regulation if the towns give Union County 180 days' notice of their intent to do so. S.L. 2006-51 (H 2524) gives the town of Chocowinity authority to extend its extraterritorial planning jurisdiction to a 278-acre area specifically described in the legislation. S.L. 2006-58 (H 2549) annexes a specified area into the town of Landis effective September 30, 2007, and allows the town to extend its extraterritorial jurisdiction to that area in the interim.

One new town was incorporated in 2006. S.L. 2006-37 (S 1852) creates the Town of Midway in Davidson County. The new town is prohibited from annexing additional territory into Forsyth County, and annexations in a specified area of Davidson County may be made only pursuant to an annexation agreement with Winston-Salem.

Four different categories of local bills affecting corporate limits were enacted in 2006. The first category allows additional satellite annexations. The second annexes specific areas. The third category deannexes specified areas. The fourth limits future annexations.

Ten municipalities received exemptions from the rule of G.S. 160A-58.1(b)(5) that the noncontiguous area of a city cannot exceed 10 percent of the land area within its primary corporate limits (sixty-three municipalities had been exempted from the 10 percent limit before 2006). S.L. 2006-62 (H 1989) adds Princeton and Smithfield to the municipalities authorized to exceed the 10-percent limit. S.L. 2006-130 (H 1820) does the same for Grimesland, Stem, and Stovall, and S.L. 2006-122 (S 1428) does the same for Benson, Burgaw, Clayton, Dobson, and Yadkinville.

Specific annexations were approved for six municipalities. S.L. 2006-36 (S 1905) annexes a specified area into the city of Asheville and provides that vested rights to development set forth in site-specific development plans previously approved by the county are to remain effective until 2010. S.L. 2006-47 (H 1992) adds two specified areas to Shallotte. S.L. 2006-53 (H 2725) adds a specified area to Chapel Hill. S.L. 2006-55 (H 2491) adds three tracts to Candor, effective January

1, 2007. S.L. 2006-57 (H 2604) adds a specified area to Clayton. S.L. 2006-58 adds nine specified tracts to Landis.

Specific areas were removed from the corporate limits of six municipalities. S.L. 2006-35 (S 1526) deletes a tract from Reidsville. S.L. 2006-44 (H 1881) deletes a tract from Pink Hill. S.L. 2006-46 (H 1913) deletes two tracts from Red Cross and provides that one of the tracts reverts to county zoning jurisdiction and the county zoning designation it had prior to annexation. S.L. 2006-56 (H 2656) removes tracts from Dortches and Morganton. It further provides that the tract removed from the Morganton corporate limits reverts to the Residential Transition zoning classification under city zoning. S.L. 2006-84 (S 1734) removes a tract from Harrisburg.

Two local bills limit future municipal annexations. S.L. 2006-4 (H 1819) prohibits any annexation of the area within the Lyons Station Sanitary District (adjacent to Camp Butner) until June 30, 2008. S.L. 2006-22 prohibits any municipality outside of Lincoln County from annexing or extending extraterritorial jurisdiction into Lincoln County. Senate Bill 386, which would have similarly limited annexation and extraterritorial jurisdiction extensions into Cabarrus County by municipalities located outside the county was approved by the Senate but not the House of Representatives. House Bill 2005, which proposed the same limits for Davidson County, was not adopted by either chamber.

Community Appearance

Tree Protection

In 2005 the General Assembly adopted statewide legislation that generally prohibits the application of local regulatory ordinances to forestry operations but allows local governments to enforce tree protection regulations that apply when land is converted from forest use to nonforest use. However, local acts governing the removal of trees were generally exempted, regardless of whether the local legislation was adopted prior to the effective date of the 2005 legislation. Several local acts were adopted in 2006 to take advantage of this legislative opportunity. S.L. 2006-115 (S 1928) authorizes the municipalities of Clayton and Reidsville to limit the clear-cutting of trees in perimeter buffer zones prior to development. These buffer zones may not exceed 20 percent of the area of the tract subject to the regulation. S.L. 2006-102 (H 2570) extends essentially identical authority to the City of Greenville. Section 94 of S.L. 2006-264 (S 602) allows the Town of Matthews to regulate the removal of trees from public and private property and repeals a more limited grant of power to Matthews included in a 2005 local act.

Junked and Abandoned Vehicles

In two statutes affecting municipalities that authorize the regulation of abandoned or junked motor vehicles (G.S. 160A-303 and G.S. 160A-303.2), the definitions of *junked motor vehicle* require the vehicle to be more than five years old and worth less than \$100. In 2005 a local act affecting the cities of Henderson and Louisburg raised this ceiling to \$500. This year a number of municipalities jumped on the legislative bandwagon to obtain essentially identical authority. S.L. 2006-15 (H 2001) makes this change for the towns of Matthews and Mint Hill. S.L. 2006-166 (S 1199) makes this change for the cities of Belmont, Bessemer City, Cherryville, Gastonia, Mount Holly, Dallas, and Stanley. S.L. 2006-171 makes this change for the cities of Ahoskie, Cramerton, Farmville, and LaGrange. (Each of these last two acts purported to amend the same local act on the same day at the end of the legislative session without acknowledging the other. A technical correction may be needed to address this oversight.)

Public Nuisances

Since 1999 at least one-half dozen local acts have concerned remedies that may be pursued by local governments in enforcing public nuisance ordinances (typically overgrown-vegetation ordinances). Most include variations on the themes of providing notice to chronic ordinance violators, abating the nuisance, and establishing a lien against the property for unpaid costs. These local acts, however, may run afoul of Article II, Section 24, of the North Carolina Constitution, which prohibits the General Assembly from enacting “any local, private, or special act . . . relating to health, sanitation, and the abatement of nuisances.” A person charged with violating an ordinance adopted pursuant to one of these local acts may be able to block enforcement by asserting the unconstitutionality of the act authorizing the ordinance.

In any event S.L. 2006-14 (H 2000) concerns actions that the Town of Mint Hill may take against chronic violators (those with at least three violations in the previous calendar year) to enforce its public nuisance ordinance. The act authorizes the town to provide one final annual notice that allows the town to take action to remedy the violation and makes the town’s expenses the subject of a lien that may be collected on the property like unpaid taxes.

Adequate Public Facilities, Dedication, and Land Subdivision Control

Adequate Public Facilities Ordinances

Section 2.1.(k) of the studies act authorizes the Legislative Research Commission to study issues related to the use by local governments of adequate public facility ordinances. These ordinances condition development approval on the availability or adequacy of public facilities and services. The commission is to study “the extent to which such ordinances increase the cost of housing and affect State and local tax revenues, employment, and economic development.”

Easements within Certain Public Rights-of-Way

G.S. 62-182.1 was enacted in 2005 to provide for how various utility services are accommodated within certain public road rights-of-way. The statute provides that the recordation of a subdivision plat for an unincorporated area that reflects the dedication of a new public street or highway automatically serves to make that public right-of-way available for use by a public utility or cable television provider for the installation of lines, cables, and other facilities to provide service. Section 15 of S.L. 2006-259 amends the statute to make these public road rights-of-way available to telephone membership corporations as well.

Local Legislation

Several local acts affect land subdivision control and required public improvements. S.L. 2006-189 (S 1442) repeals the definition of *subdivision* that has applied to Rutherford County (which provided for certain exemptions not otherwise applicable throughout the state) and aligns the scope of that county’s land subdivision control with G.S. 153A-335. S.L. 2006-103 (H 2724) allows the Town of Chapel Hill to adopt ordinance provisions allowing applicants for development permission to pay fees in support of the public transit system in lieu of providing transportation infrastructure improvements. The act authorizes the town to use the payments collected either for roads serving the new development or for transit capital improvements, including buses and bus shelters. S.L. 2006-10 (H 1863) permits the Town of Mebane to maintain sidewalks in its extraterritorial planning jurisdiction.

Historic Preservation

The decline and abandonment of textile, tobacco, and furniture plants throughout North Carolina have prompted renewed interest in the rehabilitation of many of these historic mill facilities. North Carolina income tax law already encourages historic rehabilitation by providing a 20 percent tax credit for eligible rehabilitation expenses incurred for income-producing properties and a 30 percent credit for properties that are not income-producing. Federal tax law provides a 20 percent credit for income-producing properties as well.

Effective beginning with the 2006 tax year, S.L. 2006-40 (H 474), as amended by S.L. 2006-252, adds a new G.S. 105, Article 3H (mill rehabilitation tax credit), to build on this existing tax-credit system by providing more generous tax credits for certain mill facilities. In order to qualify, the site must have been used for manufacturing, as an agricultural warehouse, or as a utility site. It must be certified by either the state or federal historic preservation office. It must have stood at least 80 percent vacant for at least two years immediately preceding the eligibility certification. Finally, the eligible rehabilitation expenses for the project must exceed \$3 million.

If the property is income-producing (and also qualifies for a federal tax credit), the amount of the state tax credit is equal to 40 percent (rather than 20 percent) of eligible expenses if the site is located in a development tier one or two county. If the site is in a development tier three county, the amount of the credit is 30 percent (rather than 20 percent) of qualifying expenditures.

If the property does not produce income (and thus is ineligible for a federal tax credit), the amount of the state tax credit is equal to 40 percent (rather than 30 percent), but only if the site is in a development tier one or two area. If the site is in tier three, no credit is allowed.¹

S.L. 2006-40 (H 474), as amended by S.L. 2006-252 (H 2170), also makes 40 percent rehabilitation tax credits available for any certified historic structure that at one time served as a state training school for juvenile offenders, without regard to the development tier in which the structure is located.

Building and Housing Code Enforcement

General Contractor Licensing

A building inspection department may not issue a building permit unless the applicant has furnished satisfactory proof that the applicant is a licensed general contractor, if the work requires the contractor to be so licensed. A firm or corporation may hold a license if one of its employees has passed the licensing exam. In the past, if that employee ceased to be associated with the employer, the license of the firm nevertheless continued to be valid for thirty days after the parting. S.L. 2006-241 (H 2882) amends G.S. 87-10(c) to extend the period during which the firm's license remains valid from thirty to ninety days.

Subcontractor Bids

Legislation adopted in 2003 authorized the North Carolina General Contractors Licensing Board to adopt rules allowing a licensed HVAC or electrical contractor to bid on public projects that include general contracting work as long as the cost of the general contracting work does not exceed a percentage of the total bid price as established by board rules. S.L. 2006-241 amends G.S. 87-1.1 to extend this authorization to permit licensed HVAC contractors to bid on public projects that include electrical work and to permit licensed electrical contractors to bid on public projects that include HVAC work, to the extent permitted by General Contractors Licensing Board

¹ For the 2006 tax year, the amount of the tax credit will depend on the enterprise tier of the county rather than its development tier. S.L. 2006-252 replaced the enterprise tier system with the development tier system, effective January 1, 2007.

rules. As before, all work must be performed by an appropriately licensed general contractor or subcontractor.

Studies by Legislative Commissions and Committees

Part XV of the studies act establishes the Study Commission on State Construction Inspections. Its fourteen members will include five members appointed by the House Speaker, five appointed by the President Pro Tempore of the Senate, and four nonvoting ex-officio members: the Commissioner of Labor, the Commissioner of Insurance, the Secretary of Administration, and the Secretary of Health and Human Services. The commission will study (1) the scope and nature of each type of inspection of private and public construction projects performed or required by state agencies, (2) the extent to which state inspections overlap with those performed by local governments, (3) the cost of state inspection of public and private construction projects and what efficiencies can be realized by combining inspections, and (4) what level of training is satisfactory for the types of inspections performed. The commission must submit its findings and recommendations to the 2007 General Assembly when it convenes.

The studies act also authorizes, but does not compel, the Legislative Research Commission to study other topics relating to code enforcement. Section 2.1.(9)s. of the act allows the study of the construction cost threshold above which a general contractor's license is required for someone that undertakes or manages a construction project. The current threshold is \$30,000. The threshold proposed by House Bill 2612, the bill upon which the study may be based, is \$5,000. Section 2.1.(9)d. of the act authorizes the study of unfit dwellings. Senate Bill 982, upon which the study may be based, concerns the waiting period before which cities may order unfit dwellings to be repaired or demolished under G.S. 160A-443(5) and proposes reducing it from one year to six months. The act also authorizes a study of the building permit requirements that should apply for on-site installation or repair of electrical equipment on a business premises. Section 2.1.(p) proposes a study of whether permits should be waived if the installation or repair is conducted by businesses on their own property, the property is not intended for sale or lease, and the business employs electricians or mechanics to install or repair its own equipment.

Local Legislation

S.L. 2006-116 (H 845) amends existing local legislation amending G.S. 160A-426 and G.S. 160A-432 as they apply to the City of Whiteville. The act allows Whiteville to declare residential buildings in community development target areas unsafe and to demolish those buildings using the same process the statutes authorize for the demolition of unsafe nonresidential buildings.

Transportation

Toll Roads and the Turnpike Authority

The North Carolina Turnpike Authority was established by the General Assembly in 2002 to assume responsibility for designing, financing, constructing, and operating certain turnpike (toll road) projects. The 2006 legislative changes focus on the specific toll road projects that are to be undertaken, as the General Assembly retracted some of the authority it had earlier delegated to the Turnpike Authority to select the location of toll roads. S.L. 2006-228 (S 1381) amends G.S. 136-89.183(a)(2) to delete the authorization for the authority to develop "nine Turnpike Projects" and then names six projects that the authority will develop. It then provides that any other project must be approved by the General Assembly prior to construction. The six projects include (1) the Triangle Parkway, (2) the Gaston East-West Connector, (3) the Monroe Connector, (4) the Cape Fear Skyway, (5) "a bridge of more than two miles in length going from the mainland

to a peninsula bordering the State of Virginia” (the long-discussed bridge connecting the Outer Banks with the mainland near Corolla), and (6) Interstate 540 in Wake and Durham counties. The Interstate 540 project (which extends from the intersection with Interstate 40 to N.C. 55) was expressly exempted from G.S. 136-89.187, which prohibits the conversion of any segment of the State Highway System to a toll facility. In addition, new G.S. 136-89.188(d) provides that toll revenues from a conversion project like the I-540 project may be used only for costs associated with that particular project. Finally, the act repeals the authorization of the North Carolina Department of Transportation (NCDOT) to issue a pilot toll project license to a private party, as originally recommended by the Joint Legislative Transportation Oversight Committee.

A closely related act, S.L. 2006-230 (H 749), authorizes NCDOT, with the approval of the North Carolina Board of Transportation, to enter into agreements with the Turnpike Authority, private contractors, and other governmental units to finance, construct, and operate roads, bridges, and the like.

Highway Projects

S.L. 2006-135 (H 1399) illustrates the growing trend of allowing local governments to play a larger role in financing and building highway projects that are part of the state’s highway system. This act adds new G.S. 136-66.8 to provide that NCDOT may enter into agreements with local governments to expedite projects that are already a part of the state’s Transportation Improvement Plan (TIP) if those projects are scheduled for construction more than two years after the date of such an agreement. The agreement would allow a local government to pay for the entire project at current prices and then be reimbursed the programmed cost once federal and state funding becomes available as scheduled. The act directs NCDOT to report to the Joint Legislative Transportation Oversight Committee by December 1, 2006, concerning any such agreements that have been executed.

The State Secondary Road System

In the late 1980s, the state committed to a goal of paving all state secondary roads by fiscal 2009–10. As those target years draw nigh, efforts to attain the goal are being accelerated. S.L. 2006-258 (H 1825) delays for one year the implementation of a revised formula for allocating some \$68.677 million in aid for construction and improvement of secondary roads. In so doing it corrects the formula so that funds will be allocated according to a county’s relative share of state secondary road mileage, whether the roads are paved or not. However, the act directs NCDOT to set aside \$5 million each year until 2009–10 for the paving of any unpaved secondary road previously determined to be ineligible for paving because of inadequate right-of-way or environmental problems. Although NCDOT is exhorted in the legislation to make every effort to acquire the needed rights-of-way for unpaved secondary roads, the act also amends G.S. 136-182 to allow a division engineer to reduce the required width of a right-of-way to less than 60 feet in order to pave an unpaved road with allocated funds, as long as safety is not compromised. The act also directs the Joint Legislative Transportation Oversight Committee to complete by March 1, 2007, a study of the cost of paving and maintaining both paved and unpaved secondary roads in different geographic areas of the state.

Transportation Corridor Official Maps

In 2005 the North Carolina Turnpike Authority joined a growing number of transportation-related entities that were authorized to adopt transportation corridor official maps to protect from development the rights-of-way for new transportation projects. S.L. 2006-237 (H 859) adds to the list by allowing the Wilmington Urban Area Metropolitan (Transportation) Planning Organization to adopt such a map for any segment of a project located within its urbanized boundaries if the project is included in the state TIP.

Highway Project Contractors

Based on a recommendation made by the Joint Legislative Transportation Oversight Committee, S.L. 2006-261 (H 1827) amends G.S. 87-1.2 and G.S. 136-28.14 to exempt from general contractor licensing requirements the work done on certain highway projects. No such license is required for “routine maintenance and minor repair” of pavements, bridges, drainage facilities, curbs and sidewalks, plantings, and rest areas. Also exempt are the installation and maintenance of pavement markings and markers, signs, guardrails, fencing, and landscaping.

Transportation Projects for Economic Development

Section 21.6 of the appropriations act, S.L. 2006-66 (S 1741), allocates \$2 million of NCDOT funds for economic development projects in each of the fourteen highway divisions. The projects are to be recommended by the board of transportation member representing the division in which the project is to be constructed in consultation with the division engineer and must be approved by the full board of transportation.

Studies by Legislative Committees and Commissions

Part IV of the studies act allows the Joint Legislative Transportation Oversight Committee to study several different transportation topics and report its findings and recommendations to the 2007 General Assembly. These topics include (1) the use of incentives and other arrangements that NCDOT may use in relocating public utilities for highway construction projects, (2) nonbetterment issues, and (3) the feasibility of a dedicated source of funding for public transit and alternative forms of transportation.

Section 2.1 of the studies act illustrates continuing legislative frustration with the pace of highway construction by authorizing the Legislative Research Commission to study the environmental review, permitting, and mitigation process used in the construction and expansion of state highways.

Section 7.10 of the act authorizes the Revenue Laws Study Committee to study the creation of an intermodal rail facility in North Carolina. If the committee undertakes the study, it must complete the study, propose a project “funding solution,” and report its findings to the General Assembly by January 1, 2007.

Section 29 of the studies act directs the Western North Carolina Regional Economic Development Commission, known as Advantage Western, to study the feasibility of establishing an inland port within the twenty-three-county region that makes up the commission’s jurisdiction. The study is to be conducted by the Institute for the Economy and the Future at Western Carolina University and must be submitted to the General Assembly by May 1, 2007.

Section 49 of the studies act establishes the Joint Legislative Commission on Expanding Rail Service. The commission must undertake a study of a variety of topics, including (1) the costs and benefits of expanding passenger rail service to the western and eastern areas of the state, (2) ways to preserve unused or abandoned rail corridors for future rail needs, and (3) the connection between rail service and economic development and tourism. The commission’s report and recommendations are due to the 2007 General Assembly.

Finally, Section 2.1(j) of the studies act permits the Legislative Research Commission to study the disposition of fines and penalties collected in connection with the operation of traffic control photographic systems used by some municipalities.

Airspace

S.L. 2006-157 (H 2868) allows NCDOT to lease a portion of the airspace under and adjacent to the mainland side of the Holden Beach Bridge in Brunswick County to a certain private firm so that the area may be used for a marina. The terms of the lease may be negotiated by the parties. In addition, S.L. 2006-236 (H 643) authorizes NCDOT to permit encroachment of airspace above

State Road 1250 near Rocky Mount for the construction of a material conveyance system. NCDOT, however, must determine that the conveyance system will not unreasonably interfere with or impair the property rights of abutting owners or with the public use of the road. The encroachment is subject to all NCDOT regulations and conditions concerning encroachments.

Eminent Domain

S.L. 2006-224 (H 1965) is North Carolina's response to the United States Supreme Court's decision in *Kelo v. City of New London*. In *Kelo* the Court held that a city's use of eminent domain strictly for economic development purposes and in the absence of blight was constitutional.

The North Carolina statutes generally do not authorize a *Kelo*-type use of eminent domain by local governments. To foreclose this possibility, however, the act amends G.S. 40A-1 to nullify the provisions of any local act authorizing eminent domain for any public use or purpose other than those listed in G.S. Chapter 40A. (That chapter authorizes the use of eminent domain by local government and private condemnors). The act also amends G.S. 159-83(a)(1) to eliminate an obscure provision that might have been interpreted to allow the use of eminent domain for certain economic development projects involving the issuance of revenue bonds. More importantly, the act includes an amendment offered on the floor of the Senate that amends the urban redevelopment act to prevent the use of eminent domain to condemn a parcel unless the particular parcel is blighted. In the past it was possible to condemn any land located within a qualifying redevelopment area even though not all parcels in the area were blighted.

The act was effective July 1, 2006, but does not affect condemnations commenced under local acts prior to that date.

Economic Development

Enterprise Tier Changes

For over a decade, the so-called Bill Lee Act has provided a system of income tax credits designed to foster business relocation and expansion. The tax system has divided North Carolina counties into five enterprise tiers so that more favorable tax treatment is available to businesses investing in the more disadvantaged counties. S.L. 2006-252 (H 2170) reorganizes the program by changing the enterprise tier system to a development tier system and by changing some of the criteria for classifying counties into the tiers. Various job creation, machinery and equipment investment, historic preservation, and worker training programs also refer to the tier system of this legislation and are thus affected by the following changes.

The old five-tier system is replaced with three tiers. The criteria for ranking counties now include the assessed property value per capita. The other factors are the unemployment rate, the median household income, and the rate of population growth. Initially some forty counties are eligible for tier one, forty for tier two, and twenty for tier three designations. Tier one counties (the most disadvantaged counties) include all counties with a population of less than 12,000. All counties with populations less than 50,000 are in either tier one or two. In addition, any county with less than 50,000 population and more than 19 percent of its population below the federal poverty level is in tier one. The classification of a county originally designated as tier one cannot be changed for two years.

The act also authorizes the creation of urban progress zones in cities with a population of more than 10,000. These zones are made up of census blocks or tracts with relatively high poverty or nonresidential blocks or tracts adjoining residential areas with high poverty. No more than 15 percent of a city may be included within urban progress zones. Both S.L. 2006-252 and Section 24.16 of the appropriations act authorize the creation of similar zones known as agrarian growth zones that may be established in counties having no city with a population of more than 10,000.

No more than one agrarian growth zone may be created in any one county. Businesses that develop in the urban progress and agrarian growth zones are generally eligible for more substantial tax credits than would otherwise be available.

The tier and tax changes apply to tax years beginning on or after January 1, 2007. The act expires January 1, 2011.

Job Development Investment Grant Program

S.L. 2006-168 (H 2744) makes several changes to the Job Development Investment Grant (JDIG) program, administered by the Economic Investment Committee (EIC). It extends the expiration date of the program from January 1, 2008, to January 1, 2010, and increases from \$15 to \$30 million the maximum amount of grant liability the state may incur for the program in 2006. Under the JDIG program, agreements entered into in one calendar year may result in annual grant payments for the succeeding twelve years. Therefore, this increase of \$15 million for 2006 could have a fiscal impact of up to \$180 million over a twelve-year period. The act further expands the JDIG program by making professional motor sports racing teams eligible to receive grants.

S.L. 2006-168 also relaxes the consequences for business that fail to comply with their JDIG agreements. The act amends G.S. 143B-437.51 to provide that the EIC is no longer required to terminate the incentives agreement of a business that fails to comply with the requirements for two consecutive years. Instead, if the business is still within its “base period,” during which new employees are to be hired for positions upon which the grant is based, the EIC may extend the base period for up to twenty-four months to give the business more time to come into compliance. Grants would be withheld during the base period if the business remains out of compliance and the agreement would be terminated if the business was not back in compliance by the end of the extended base period.

The act directs the Department of Commerce to conduct a comprehensive study of the costs of the JDIG program in relation to other state incentive programs and to provide information on the use of the program in urban, suburban, and rural areas throughout the various geographic regions of the state. The study must be submitted to the chairs of the House and Senate Finance and Appropriations committees by February 1, 2007.

Standards for Regional Economic Development Commissions

S.L. 2006-263 (H 1417) illustrates the General Assembly’s interest in improving and standardizing the activities and procedures of regional economic development commissions. The act requires each commission to provide an annual comprehensive evaluation report to various state agencies and legislative committees. It directs the Department of Commerce to develop uniform financial standards, personnel practices, and purchasing procedures. It provides that regional entities must share the costs of developing these standards equally up to a maximum aggregate amount of \$50,000. Further, it directs each commission to hold an orientation session for newly appointed commission members concerning the duties and responsibilities of commission members and addressing policies and laws governing conflicts of interest, financial disclosure, and ethical behavior.

Studies by Legislative Commissions and Committees

Part XXVII of the studies act establishes a thirty-two-member Study Commission on Economic Development with half of the members to be appointed by the President Pro Tempore of the Senate and half by the House Speaker. The act directs the commission to restructure and consolidate the organizational “infrastructure” of economic development efforts with an eye to improving their effectiveness. The commission is specifically directed to examine the roles of the Department of Commerce, the regional councils of government, the Economic Development Board, and regional planning and economic development commissions. It is also authorized to examine the feasibility of establishing a North Carolina Economic Disaster Task Force. The

commission's final report, including any legislative recommendations, is to be submitted to the 2007 General Assembly when it convenes.

Environment

Legislative actions concerning the environment and natural resources are discussed in detail in Chapter 12. Several that affect land use and development regulation in particular are briefly noted here.

The federal government increasingly requires states to address the water quality impacts of stormwater runoff through local government land use and development regulations. The state standards for the next major phase of this program have been the subject of rule making, litigation, and considerable controversy for several years. S.L. 2006-246 (S 1566) resolves many of these issues by establishing the framework for North Carolina's implementation of these requirements. It defines the cities and counties that must enact stormwater management programs, defines the options for development regulation, and incorporates the general state law on vested rights into these rules. This program, generally referred to as the Phase II Stormwater Program, extends management requirements to cities and counties in "urbanized areas." It sets limits on the amount of impervious surface that may be included in a development near sensitive waters (for example, no more than 12 percent built-upon area is allowed within a half-mile of shellfish resource waters and no more than 24 percent built-upon area or two dwelling units per acre is allowed for other low-density projects), requires a 30-foot unbuilt buffer adjacent to water bodies, and requires retaining on-site stormwater from a one-year, 24-hour storm in many situations.

S.L. 2006-229 increases the maximum civil penalties that may be assessed for violations of the Coastal Area Management Act to \$1,000 for minor development permit violations and to \$10,000 for major development permit violations. This law also allows recovery of investigative costs.

S.L. 2006-250 (H 1413) seeks to encourage more cities and counties to undertake erosion and sedimentation control inspections. The act allows the state to delegate inspection and permitting authority to local governments but leaves enforcement responsibilities with the state.

Other legislative actions discussed in Chapter 12 involve creation of a new inspection and permitting program for private drinking water wells, a new licensing board for on-site wastewater contractors, and extension of the Commission on Global Climate Change.

Housing

No statewide bills affecting housing were adopted in 2006. Two local bills authorized individual counties to undertake affordable housing projects for school teachers. S.L. 2006-61 (S 1896) allows the Bertie County Board of Education to provide affordable rental housing for teachers. S.L. 2006-86 (S 1903) allows the Hertford County Board of Education to do the same. See Chapter 8 for discussion of other action on community development issues.

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