

15

Local Government and Local Finance

For local governments the most pressing issues of the 2006 General Assembly involved money—either revenues or expenditures required by various mandates. County governments remained concerned over the escalating cost of Medicaid and received some temporary help, delaying a permanent solution until another time. Cities and counties both were concerned about the expansive coverage mandated for stormwater programs by the Environmental Management Commission and were successful in scaling back the commission’s regulations. They were also concerned about proposals that would require making payments to solid waste collection firms displaced by local government action and were able to reduce, though not eliminate, the required payments. Local government revenues were at stake in the video programming legislation enacted this session, and although local governments lost (or were relieved of) responsibility for cable television regulation, they did receive new revenues that should more than replace the lost cable television franchise tax. This chapter describes much of the 2006 legislation important to cities and counties, although not all. Interested readers should also review Chapter 5, “Community Planning, Land Development, and Related Topics”; Chapter 8, “Economic and Community Development”; Chapter 12, “Environment and Natural Resources”; Chapter 16, “Local Taxes and Tax Collection”; Chapter 20, “Public Employment”; Chapter 21, “Public Purchasing and Contracting”; and the several chapters dealing with human services.

Video Service Competition Act

Local governments currently have the authority under federal and state law to award franchises for cable television services and impose cable franchise taxes on cable providers of up to 5 percent of gross receipts. Effective January 1, 2007, S.L. 2006-151 (H 2047) replaces the local cable television franchising system with a statewide video service franchising scheme and eliminates the authority of local governments to grant new, or renew existing, cable franchises and to assess and collect cable franchise taxes. It replaces local revenues from the cable franchise taxes

with a new distribution of shared state sales tax collections on telecommunications services, video programming services, and direct-to-home satellite services. The legislation is a product of a nationwide lobbying effort by telephone companies seeking to expand their businesses by offering the video programming services traditionally provided by cable companies. They view local franchise requirements as an impediment to their entry into the market and are engaging in campaigns to eliminate local franchising authority in numerous states across the country.

New Franchise Authority

The act designates the secretary of state as the exclusive state franchising authority for cable services provided over a cable system. Applicants must file a notice of franchise with the secretary of state and pay a filing fee equal to the filing fee for articles of incorporation (currently \$125). An entity that files a notice of franchise is required to begin providing service in the designated area within 120 days of filing. In addition, an entity providing service must submit an annual service report on or before July 31 of each year and pay a filing fee (currently \$200).

There are no build-out requirements for entities providing cable services under a state-issued franchise, but discrimination on the basis of race or income is prohibited and constitutes an unfair or deceptive act or practice under G.S. 75-1.1. An entity that provides video service but fails to file a notice of franchise or a notice of service must forfeit all revenue received during the period of noncompliance.

The Consumer Protection Division of the Attorney General's Office will be responsible for responding to all customer complaints regarding providers operating under the statewide franchising agreements. There are no provisions for increased staffing levels at this time, but the attorney general will monitor customer service complaint levels and make a report to the General Assembly recommending any additional staffing by April 1, 2007.

Changes to Existing Cable Franchises

Local cable franchise agreements in effect as of January 1, 2007, will remain valid. A cable service provider under an existing local agreement may terminate the agreement if (1) one or more households in the local area served are passed by both the local cable service provider and the holder of a state-issued franchise, (2) a local government has an existing agreement with more than one cable service provider for substantially the same area and at least 25 percent of the households have service available by more than one cable service provider, or (3) an entity provides wire-line competition in the franchise area by a method that does not require a franchise.

Public Access Channels

Cities with at least 50,000 residents will continue to operate any public access (PEG) channels currently activated, with a minimum of three. Cities with fewer than 50,000 residents and counties also will continue to operate any PEG channels currently activated, with a minimum of two. Cities and counties may be eligible for additional PEG channels, up to a maximum of seven, if specified programming requirements are met. The act also establishes a PEG Channel Fund, which will be administered by the e-NC Authority to provide loans to qualifying local governments and counties for capital expenditures necessary to provide PEG channel programming.

Local Government Revenue

The statewide franchising agreements will authorize the construction and operation of cable systems over public rights-of-way, but municipalities will retain their authority to regulate their public rights-of-way. Municipalities may impose a fee or charge for the use of the public rights-of-way (if otherwise authorized) if the fee is nondiscriminatory and of general applicability to all users of the public rights-of-way. Municipalities, however, may not impose license, franchise, or privilege taxes on any businesses engaged in providing video programming services (defined as

“programming provided by, or generally considered comparable to programming by, a television broadcast station, regardless of the method of delivery”). And, as stated above, cities and counties no longer will be authorized to impose franchise taxes on existing cable franchises.

In lieu of the cable franchise tax revenue, all cities and counties will receive shares of three state sales tax revenues—7.23 percent of the net proceeds of tax collections on telecommunications services, 22.61 percent of the net proceeds of taxes collected on video programming services, and 37 percent of the net proceeds of taxes collected on direct-to-home satellite services. (The share of telecommunications tax is in addition to the existing municipal share of this tax.) Based on current projections, local governments will at least break even and stand to gain over \$3 million in the aggregate under the new shared revenue scheme.

The first \$2 million of the local share of the proceeds from these three taxes will be distributed to local governments to support local public, educational, or governmental access channels (PEG channels). Local governments will receive \$6,250 per quarter for each qualifying PEG channel, up to a maximum of 3 channels. (A qualifying PEG channel is one that meets specified programming requirements.) If the aggregate distribution for qualifying PEG channels does not equal \$2 million, the remaining funds will be allocated to the PEG Channel Fund to be used to provide loans to local governments for the capital expenditures necessary to provide PEG channel programming. Conversely, if the aggregate distribution would exceed \$2 million, the amount to be distributed for each qualifying PEG channel will be proportionately reduced. The remaining funds will be distributed according to each local government’s proportionate share. A city’s or county’s proportionate share for 2006–07 is calculated by dividing the local government’s base amount by the aggregate base amounts of all the cities and counties. The base amount is determined in one of two ways: (1) for cities or counties that did not impose a cable franchise tax before July 1, 2006, the base amount is \$2 times the most recent annual population estimate; or (2) for cities or counties that did impose a cable franchise tax before July 1, 2006, the base amount is the total amount of cable franchise tax and subscriber fee revenue the city or county certifies to the secretary of state (by March 15, 2007) that it imposed during the first six months of the 2006–07 fiscal year. In subsequent fiscal years, the proportionate shares will be adjusted for per capita growth. Both for the initial distribution and for any subsequent distributions, a county’s population includes only its unincorporated population plus the population of any cities in the county that are ineligible to participate in a distribution because they do not levy at least a 5¢ ad valorem tax, do not provide a sufficient number of services, or do not open a majority of their street mileage to the general public.

The proceeds to local governments from the three state taxes are partially earmarked. A city or county that imposed subscriber fees during the first six months of the 2006–07 fiscal year must use a portion of the funds distributed to it for the operation and support of PEG channels, equal to two times the amount of subscriber fee revenue the county or city certifies it imposed during this period. In addition, a city or county that used part of its franchise tax revenue in fiscal year 2005–06 for the operation and support of PEG channels or a publicly owned and operated television station must continue the same level of support. The remainder of the distribution may be used for any public purpose.

Potential Federal Legislation

The United States Congress is considering legislation which would establish a national franchising system. The House of Representatives recently passed a video franchise reform bill and the Senate Commerce Committee approved a similar bill. Both bills currently allow states or local governments to assess franchise taxes, provide for PEG channel support, and retain at least some control over their public rights-of-way. The House bill contains no build-out requirements, but a number of proposed amendments in the Senate would establish build-out requirements. It is likely that any federal legislation passed would preempt statewide video franchise laws.

The State Budget

The state appropriations act, S.L. 2006-66 (S 1741), contains several provisions of interest to local government officials.

One-Time Cap on Medicaid County Share

North Carolina requires counties to pay 15 percent of the nonfederal share of all Medicaid service costs. The 2006–07 aggregate county Medicaid costs are projected to approach \$488 million, reflecting an 85 percent increase since 2000. Citing increasing Medicaid-eligible populations and escalating Medicaid costs, counties sought permanent relief of their share of the Medicaid burden. The House of Representatives passed a budget that would have permanently capped the county Medicaid costs at 2005–06 levels and provided \$35 million of additional one-time relief to the counties most affected by the county Medicaid burden. The Senate did not include any county Medicaid relief in its budget; instead it focused on other alternatives such as trading the county Medicaid burden for a portion of the counties' local option sales tax authority. After significant negotiations, House and Senate budget conferees reached a compromise agreement to include in the budget a one-time cap on the county Medicaid share for fiscal 2006–07 and to authorize a study committee to recommend a permanent solution.

The appropriations act provides that, for fiscal 2006–07, the state will pay the aggregate county share of the nonfederal share of Medical Assistance payments (including Medicare Part D) that exceeds the county share for the 2005–06 fiscal year, up to a maximum of \$27.4 million. The county share of Medical Assistance payments for fiscal year 2005–06 is the sum of the twelve county warrants for Medicaid expenditures from June 2005 through May 2006.

The General Assembly estimates that the increase in the aggregate county share for 2006–07 (over the 2005–06 level), excluding administrative costs, will not exceed \$27.4 million. If it does, the counties will be responsible for paying 15 percent of the nonfederal share of total Medical Assistance payments that exceed the aggregate 2005–06 costs plus \$27.4 million. If, however, an individual county's share for fiscal 2006–07 is less than the share that county paid in fiscal 2005–06, then the county will pay the lower amount for fiscal 2006–07. The Department of Health and Human Services will continue to track, on a monthly basis, each county's portion of the nonfederal share of Medical Assistance payments, excluding administrative costs, as if the counties were still paying 15 percent of all applicable nonfederal costs.

Additionally, S.L. 2006-248 (H 1723) establishes the State and Local Fiscal Modernization Study Commission. The study commission is directed, among other things, to study and recommend a permanent financing strategy leading to the elimination of county financial participation in Medicaid services and to report its findings and recommendations to the General Assembly by May 1, 2007.

Refund of Local Sales and Use Taxes to Local School Administrative Units

In 1998 the General Assembly authorized local school administrative units to receive refunds of state and local sales and use taxes paid on purchases of tangible personal property and services. In 2005 the legislature intended to repeal the state sales tax portion of the refund for local school administrative units, effective July 1, 2005, and direct an equivalent amount of state funds to the State Public School Fund for allotment to local units through the budgetary process, effective July 1, 2006. Through a technical error, the legislature also repealed the local sales and use tax portion of the refund for local school administrative units and directed state funds to the State Public School Fund equivalent in amount to both the state and local refunds. The appropriations act corrects this error, retroactive to July 1, 2005, by reinstating a refund of local sales taxes and by providing that the amount of state funds transferred to the State Public School Fund is based on the amount of the repealed refund of state sales taxes.

One-Year Cap on Variable Wholesale Component of Motor Fuels Tax Rate

The state imposes an excise tax on motor fuel at a flat rate of 17.5¢ per gallon plus a variable rate of 3.5¢ per gallon or 7 percent of the average wholesale price of motor fuel for the base period, whichever is greater. Effective July 1, 2006, through June 30, 2007, the variable wholesale component of the tax is capped at 12.4¢ per gallon. Section 2.2(g) of the appropriations act provides for the transfer of up to \$22.9 million from the Savings Reserve Account to the Highway Fund and the Trust Fund to offset any reduction that occurs from the tax cap.

G.S. 136-41.1 appropriates from the motor fuels tax proceeds an amount equal to the proceeds of 1¾¢ per gallon taxed, plus an additional 6.5 percent of the net proceeds of the North Carolina Highway Trust Fund, and distributes that amount among the state's cities. The proceeds are commonly known as Powell Bill funds. The cap on the variable wholesale component of the tax does not affect the appropriation to qualified cities of the 1¾¢ per gallon taxed but may affect the total funds available for distribution in the North Carolina Highway Trust Fund if the \$22.9 million transfer is not sufficient to hold the Highway Trust Fund harmless.

Public School Building Capital Fund

The Public School Building Capital Fund assists county governments in meeting their public school building capital needs and their equipment needs under their local school technology plans. G.S. 18C-164 directs that 40 percent of the net revenue of the Education Lottery Fund be transferred to the Public School Building Capital Fund, to be allocated among counties for capital school construction projects. Under G.S. 115C-546.2(d)(2), 35 percent of the monies transferred are allocated to local school administrative units located in whole or part in counties in which the effective county tax rate as a percentage of the effective state average tax rate is greater than 100 percent. The appropriations act clarifies that the actual county tax rate used to calculate the effective county tax rate includes any countywide supplemental taxes levied for the benefit of public schools.

Increase in Permit and Plan Review Fees under Drinking Water Act

Effective January 1, 2007, the appropriations act amends G.S. 130A-328 to increase the annual operating permit fees for community water systems and impose new fees for nontransient noncommunity water systems. It also imposes new fees for the review of plans submitted to the Department of Environment and Natural Resources (DENR) for construction or alteration of water distribution systems, groundwater systems, and surface water systems and authorizes DENR to charge an administrative fee of up to \$150 for the failure to pay the permit fees by January 31 of each year. The operating permit fees had not been increased since they were first implemented in 1992, and improvement in public water supply compliance and technical assistance staffing was a priority of the Governor and the secretary of Environment and Natural Resources this year. The appropriations act authorizes DENR to create a schedule for phasing in the new fees over multiple operating permit cycles.

Disaster Relief Grants

Under the North Carolina Emergency Management Act, the Governor or General Assembly may proclaim a state of disaster. If a state of disaster is proclaimed, the Governor is authorized to define the area subject to the state of disaster and categorize the disaster as Type I, Type II, or Type III according to specified criteria. The Governor also may make state funds available for disaster assistance to an eligible entity (including any political subdivision or private nonprofit utility). If the disaster is Type I, the Governor may award public assistance grants to an eligible entity that meets certain qualifications. The appropriations act modifies the qualifications by increasing the amount of required uninsurable loss from greater than 0.5 percent to greater than 1 percent of the annual operating budget of the eligible entity.

Various Revenue Law Changes

S.L. 2006-162 (H 1963) makes technical, clarifying, and administrative changes to the revenue laws. Of particular interest to local government officials are the following three provisions.

Occupancy Tax Administrative Changes

Local governments in more than seventy counties are permitted by local act to levy occupancy taxes, which are taxes on the occupancy of hotel and motel rooms in their jurisdictions. Every operator of a business subject to a room occupancy tax must collect the tax and remit it to the county finance officer each month. S.L. 2006-162 amends G.S. 153A-155(d) and G.S. 160A-215(d) to require that room occupancy taxes due and payable to a county each month must be paid to the county finance officer by the twentieth day of the month following the month in which the tax accrues. Previously, the taxes were due by the fifteenth of the month.

Municipal Service Districts Effective Date

The governing board of a city is authorized to define a part of the city as a service district, to levy a property tax in the district additional to the citywide property tax, and to use the proceeds to provide specified services to the district, if the proposed district needs the services "to a demonstrably greater extent" than the rest of the city. G.S. 160A-537(d) provides that a resolution defining a service district takes effect at the beginning of the fiscal year commencing after its passage. S.L. 2006-162 amends this subsection to authorize the governing body to make the resolution effective immediately upon its adoption if general obligation bonds are anticipated to be authorized for the project. No ad valorem tax may be levied for a partial fiscal year, however.

Imposition of Vehicle Rental Tax in Mecklenburg County

S.L. 2006-162 designates Mecklenburg County as a Regional Transit Authority under Article 50 of Chapter 105 of the General Statutes and, subject to the restrictions in G.S. 105-551, authorizes it to levy a privilege tax of up to 5 percent on the short-term lease or rental of U-drive-it vehicles or motorcycles by retailers whose places of business or inventories are located within Mecklenburg County. The proceeds of the tax must be transferred to the City of Charlotte and used only for financing, constructing, operating, and maintaining a public transportation system. The proceeds may supplant existing funds allocated for the public transportation system, which frees up general fund monies to be used for other purposes.

Minimum Wage Increase

Effective January 1, 2007, S.L. 2006-114 (H 2174) increases the minimum wage in North Carolina to equal the federal minimum wage or \$6.15 per hour, whichever is higher. (The federal minimum wage is currently \$5.15.) Pursuant to G.S. 95-25.14(d)(1), the minimum wage provision applies to cities, towns, counties, or other instrumentalities of government.

Capital Lease Financing for Public Schools

S.L. 2006-232 (S 2009) authorizes a school board to lease an existing building or arrange for a private firm to build a new one, then contract for its use as a school building or school facility for up to 40 years. It provides school districts with an alternative to the bond referendum as a mechanism to fund construction projects to keep pace with rapid enrollment growth. Capital lease financing does not require voter approval, but public notice must be given before the school board decides to proceed, and the funds to pay for the lease must be provided by the county

commissioners. It also is subject to approval by the Local Government Commission. A capital lease also may provide that the private developer is responsible for providing, or contracting for, construction, repair, or renovation work to the leased facilities. For a detailed description of the legislation's provisions, see Chapter 21, "Public Purchasing and Contracting."

Regional Planning Commissions and Regional Councils of Government Borrowing

S.L. 2006-211 (S 1436) authorizes regional councils of government, created under G.S. Chapter 160A, Article 20, Part 2, to pledge real property as security for indebtedness used to finance acquisitions of, or make improvements to, real property. It authorizes regional planning commissions, created under G.S. Chapter 153A, Article 19, both to acquire and improve real property and to pledge real property as security for indebtedness used to finance acquisitions of, or make improvements to, real property. Financing real property acquisitions and improvements for both regional councils of government and regional planning commissions must be approved by the Local Government Commission in accordance with G.S. 159-153.

State and Local Fiscal Modernization Study Commission

S.L. 2006-248 (H 1723) establishes a thirty-member State and Local Fiscal Modernization Study Commission. The commission is charged with the following:

- Examining state and local revenue-sharing and taxing authority and the division of responsibility for providing for infrastructure, public education, Medicaid and other needs in North Carolina and other states
- Reviewing and making recommendations with respect to modernizing North Carolina's state tax code
- Examining and recommending any changes to the authority of local governments to levy taxes and fees and their ability to pay for services required by their citizens
- Recommending to the Governor and the General Assembly any changes in state and local tax structure and sharing of revenues and responsibilities
- Studying and recommending a permanent financing strategy leading to the elimination of county financial participation in Medicaid services.

The commission must report its findings and recommendations to the General Assembly by May 1, 2007. The University of North Carolina will provide advice and staffing to the commission.

Protection of Private Solid Waste Collection Firms

In 1985 the General Assembly enacted legislation that offered some transitional protection to private solid waste collection firms whose business was adversely affected by a city's annexation. In general, if a collection firm qualifies for the statutory protections, the annexing city must either enter into a contract with the firm, allowing it to continue operating within the annexation area for at least two years after the annexation becomes effective, or reimburse the firm for its "economic loss," providing, essentially, a severance payment. The amount of the economic loss payment has been twelve times the firm's average monthly revenues from solid waste collection services in the annexation area during the period immediately preceding the annexation. S.L. 2006-193 (S 951) modifies the existing legislation, making it easier for a firm to qualify for the statutory protections and increasing the amount of economic loss payment. It also expands the policy of the existing law to other situations in which a city or county "displaces" an existing private solid waste collection firm. These new provisions resulted from extensive negotiations between the League of

Municipalities and representatives of private solid waste collection firms, and they are considerably more favorable to local governments than were the provisions in the original bill.

Annexation

The new legislation makes the following changes to the existing protections for solid waste collection firms adversely affected by a city's annexation:

1. In order to qualify for protection under the original statutes, a firm had to either have had at least 50 residential customers in the annexation area or have earned an average of at least \$500 a month from nonresidential customers in the annexation area. Under the 2006 revisions all that is necessary to qualify for protection is that the firm have at least 50 customers (of any sort) *in the county within which the annexation is taking place*. That is, as long as the firm has the requisite number of customers in the county as a whole, it does not matter how many customers it has in the annexation area itself.
2. The statutes have required the city to make a good faith effort to locate and then give notice to any firm that might be eligible for the statutory protections; in practice that has been occasionally difficult. In apparent response to that problem, the new legislation requires a firm that is providing solid waste collection services outside of cities to file a notice of its doing so to each city located within the firm's collection area or within five miles of the collection area.
3. As noted above, an annexing city has had the option of paying an eligible firm for the firm's "economic loss." That has been defined as twelve times the firm's average monthly revenues that will be lost because of the annexation. The new statutes increase the amount of the payment to fifteen times the firm's average monthly revenues that will be lost.
4. The legislation finally makes a number of minor changes to the statutory provisions concerning contracts with protected firms and to the procedures under which a city may request information from a firm seeking the statute's protections.

Displacement

The act adds new requirements, applicable to both cities and counties (as well as sanitary districts), that a local government must comply with if it "displaces" a private firm that is providing "collection services for municipal solid waste or recovered materials, or both." (These new provisions do not apply to annexations; the provisions described above govern there.) Displacement is defined as either of two events: some sort of formal action by a local government that prohibits a private company from continuing to provide collection services; or a local government's initiation of competing collection services that are funded, in some part, by "an availability fee, nonoptional fee, or taxes." The statute specifies, however, that displacement does not include a local government's failure to renew a franchise agreement or a contract with a private firm. There are two situations in which a local government might prohibit private firms from collecting solid waste within the government's jurisdiction, but only one of them is likely to trigger this new legislation. That situation is when a county or city for the first time adopts an ordinance requiring a franchise before a firm may collect solid wastes in some or all of the county or city. If a local government has adopted a franchise ordinance, it normally prohibits conducting the subject business without a franchise. Thus, it might be possible for a firm to be collecting solid wastes in an area and not receive a franchise; in such a case it has been prohibited from carrying on its business by a formal action of a local government and has therefore been displaced. The other situation is when a city takes advantage of the authorization in G.S. 160A-317(b)(4) to require city residents and businesses to use the city's collection services. Any such requirement, however, does not apply to customers with contracts with private collection firms, and so that city action could not lead to any firm being prohibited from continuing to serve existing customers.

If a local government plans to displace one or more existing collection firms, what does the new statute require? First, the local government must publish notice of the governing board's

intention to discuss the relevant change in solid waste collection service. This notice must be published once a week for four weeks, with the first notice appearing between thirty and sixty days before the first meeting at which the changes will be discussed. In addition a copy of the notice must be mailed to each firm that might be affected by the changes. (Each collection firm operating in or within five miles of a county or city must file a notice of that fact with the county or city in order to receive this notice.) The local government then has six months from the date of that first meeting to actually take some formal action that displaces one or more collection firms. Even after taking that action, the local government cannot implement the changes until fifteen months have passed from first publication of the notice unless it compensates each affected private collection firm. In essence, that compensation is a payment to a firm equal to the amount of the firm's total gross revenues in the displacement area for the six months immediately preceding the first published notice.

The new legislation becomes effective January 1, 2007. With respect to annexations, it applies to those annexations for which the resolution of intent was adopted on or after that date.

Eminent Domain for Economic Development

In the early summer of 2005 the United States Supreme Court decided the case of *Kelo v. City of New London*, in which it held that the federal constitution did not prohibit a local government from condemning private property for an economic development project and ultimately conveying the property to another private owner for development. Half a century earlier the court had upheld a similar condemnation in a blighted area; this case was an advance on the earlier case because the property being condemned in *Kelo* was not within a blighted area. The court's decision set off a storm of protest around the country, leading a number of states to adopt or propose state constitutional amendments that would prohibit the sort of condemnation permitted by *Kelo*. North Carolina was not immune from the turmoil, and the 2006 General Assembly had before it several proposed constitutional amendments as well as proposed statutory changes to ensure that a *Kelo* condemnation could not happen here. The proposed constitutional amendments eventually went nowhere, but the statutory changes, based on a bill proposed by the House Select Committee on Eminent Domain, were enacted into law in S.L. 2006-224 (H 1965).

The new legislation does three things. First, it makes ineffective all local acts that expand on the list of permitted purposes for eminent domain set out in G.S. Chapter 40A, the eminent domain statute. Chapter 40A does not permit and never has permitted the use of eminent domain for a purely economic development project, but the General Assembly has enacted a smattering of local acts over the years permitting such condemnations. This legislation provides that those local acts may no longer be used.

Second, the Select Committee discovered an obscure provision in the Revenue Bond Act that theoretically could allow the use of eminent domain for an economic development project. The act permits issuance of revenue bonds to fund certain sorts of economic development projects; it also permits the use of eminent domain for a revenue bond project. Although it would be very difficult to find a market for revenue bonds issued for an economic development project, S.L. 2006-224 provides that the eminent domain authority in the Revenue Bond Act will no longer apply to economic development projects.

Third, the legislation amends the urban redevelopment statutes to limit condemnation within redevelopment areas. As was noted above, the constitutionality of condemnation within urban redevelopment areas (usually "blighted areas") has been clear for fifty years. The characterization of an area as a redevelopment area, however, has depended on statutory definitions that were lengthy but not particularly precise. Furthermore, once an area has been defined as a redevelopment area, condemnation has been available as to all properties within that area, even properties that themselves were not in need of redevelopment. S.L. 2006-224 restricts condemnation within a redevelopment area by limiting it to "blighted parcels" only. It defines a blighted parcel as one

on which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare.

The definition is long, but the key words perhaps are at the beginning—a blighted parcel must have buildings or improvements or be predominantly residential in character. Thus, a vacant lot cannot be a blighted parcel, as it has no buildings or improvements and cannot be said to be residential in character. If a local government, then, were trying to assemble land for a redevelopment project, and that land included one or more vacant parcels, the local government would not be able to use eminent domain for the vacant parcels, giving the owners of those parcels considerable leverage in any negotiations for purchasing the parcels.

Miscellaneous

Animal Control

Civil remedy for animal cruelty. Under existing law, any person may file a complaint in district court alleging that a person who owns or possesses an animal has treated the animal cruelly. The court then has the authority to issue preliminary and permanent injunctions. S.L. 2006-113 (H 2098) makes several important changes to the procedures related to these injunctions and the overall scope of the civil remedy.

S.L. 2006-113 amends G.S. 19A-3 to clarify that when a person files a complaint seeking a preliminary injunction and the court orders the plaintiff (i.e., complainant) to take possession of the animal, the plaintiff becomes custodian of the animal. New language provides that once the preliminary injunction is in place, the plaintiff may employ a veterinarian to provide necessary care for the animal without any additional court order. The plaintiff must, however, attempt to consult with the defendant prior to obtaining veterinary care, but the defendant's consent is not required. The plaintiff does not have the authority under a preliminary injunction to consent to euthanasia of the animal; the defendant's consent or a court order is required for such a procedure. In addition to the language governing veterinary care, the law now also specifically authorizes a plaintiff who succeeds in obtaining a preliminary injunction to place the animal in foster care.

The new legislation also modifies the provisions related to permanent injunctions. It amends G.S. 19A-4 to allow a court to award a successful plaintiff the costs incurred in providing food, water, shelter, and care for an animal during the litigation. If the plaintiff is an operator of an animal shelter, it may already be receiving some financial support under an order issued pursuant to G.S. 19A-70 (see discussion below regarding shelters); this new language allows them to recover additional money. The law now specifically authorizes the court to enjoin the defendant from acquiring new animals or place a limit on the number of animals the defendant owns or possesses. It includes new language authorizing the court to provide for custody and care of the animal until the time to appeal has expired or until all appeals are exhausted. This last addition could, for example, be called upon if the plaintiff does not succeed in obtaining an injunction in district court but still does not want to surrender custody of the animal during the appeals process out of concern for the safety of the animal.

Animal shelters. In 2005 the General Assembly enacted a new statute, G.S. 19A-70, to provide some financial relief for animal shelters. The law authorizes animal shelters housing dogs allegedly used or trained for fighting to ask a court to require the defendant to deposit sufficient funds with the court to cover the shelter's cost of caring for the dogs during the course of the

criminal trial. [S.L. 2005-383 (H 1085).] This year, G.S. 19A-70 was amended to expand the scope of the law far beyond the dogfighting context [S.L. 2006-113 (H 2098)]. The law now allows shelters to seek such a court order when a shelter takes custody of an animal in a variety of different legal contexts. Specifically, the law now extends to all criminal cases prosecuted under Article 47 of Chapter 14 (e.g., cruelty, abandonment, fighting) or G.S. 67-4.3 (attacks by dangerous dogs) and any civil animal cruelty proceeding under G.S. Chapter 19A, Article 1, initiated by a county or municipality, a county-approved animal cruelty investigator, or an organization operating a county or municipal shelter under contract. This financial relief is not specifically authorized when an animal's owner is charged with a violation of a local ordinance.

In addition to changing the scope of the law, S.L. 2006-113 amends the provision that would have required the court or the shelter to refund any money deposited by the defendant if the defendant was found not guilty of the dogfighting charges, including those funds already spent on caring for the dogs. The law now provides that, at the conclusion of the litigation, a defendant who has deposited money with the court in conjunction with any of the above cited civil or criminal proceedings is entitled to a refund of any remaining funds *less* any costs incurred by the shelter in caring for the animals in the course of the litigation.

Dogfighting. S.L. 2006-113 also amends the criminal dogfighting and baiting statute (G.S. 14-362.2) to clarify that the prohibition in the law applies when a dog is fighting with another dog or any other animal. Before this clarifying amendment, some might have argued that the prohibition applied only when a dog fought with other dogs. The statute also now provides that the prohibitions related to dogfighting and baiting do not prohibit the use of dogs for lawful hunting activities under the jurisdiction of the Wildlife Resources Commission.

Roadside Solicitations

G.S. 20-175(d), enacted in 2005, authorizes local governments to enact ordinances restricting or prohibiting persons from standing on any street, highway, or right-of-way (excluding sidewalks) while soliciting or attempting to solicit employment, business, or contributions from vehicle drivers or occupants. Section 7 of S.L. 2006-250 (H 1413) adds a new provision permitting cities to grant authorization for persons to stand in, on, or near a street or state highway within the municipal corporate limits in order to solicit charitable (but not other) contributions, as long as certain conditions are met:

- The person seeking authorization must file a written application with the local government not later than seven days before the solicitation is to occur. A separate application must be filed and a separate fee paid (see below) for each event or each day of a multiday event.
- The application must include the date, time, and locations at which the solicitation is to occur, and the number of solicitors at each location.
- The applicant must furnish to the local government advance proof of liability insurance of at least \$2 million to cover damages that may arise from the solicitation. The insurance must provide coverage for claims against any solicitor and agree to hold the local government harmless.
- The local government may if it wishes charge a fee for a permit of \$25 or less per day per event.

The statute specifies that a local government acting under it does not waive or limit any immunity or create any new liability for itself. It further provides that the issuance of an authorization and the conducting of a solicitation are not to be considered governmental functions of the local government.

Section 7 of S.L. 2006-250 provides that if the event or the solicitors create a nuisance, delay traffic, or create threatening or hostile situations, the law authorizes any law enforcement officer with proper jurisdiction to order the solicitation to cease. Failure to follow a lawful order to cease solicitation is a Class 2 misdemeanor. This section was effective December 1, 2006, and applies to offenses committed on or after that date.

Some of the provisions of Section 7 may prove to be problematic under existing United States Supreme Court precedent that recognizes that restrictions on charitable and other solicitation must be consistent with the free speech clause of the first amendment to the United States Constitution, as applied to the states through the fourteenth amendment. Soliciting has long been considered protected speech in “traditional public forums” such as streets and highways, and it generally can be restricted only because of a compelling governmental interest. While traffic safety may be such an interest, any restrictions on solicitation must be reasonable; must apply only to the time, place, and manner of the speech; must be narrowly tailored to meet the government concern; and must leave open adequate alternative channels of communication.

Among the provisions of Section 7 that may cause constitutional problems are the requirements that a solicitor purchase a large amount of insurance and file a solicitation application a week in advance of the event. Both of these rules may be seen by the courts as having impermissible negative or “chilling” effects on protected speech. In addition, the application requirement may be regarded by the courts as an impermissible prior restraint on speech that has not yet occurred. Constitutional problems may also arise because the law provides no clear guidelines or standards for the granting or denying of permits. Finally, serious questions may arise from the fact that Section 7 treats charitable solicitors that can obtain \$2 million in insurance coverage differently from individuals who solicit or beg for themselves.

Expedited Transportation Improvement Fund Projects Around Cities

S.L. 2006-135 (H 1399), Section 3, enacts new G.S. 136-66.8, which authorizes the state Department of Transportation (DOT) to enter into agreements with local governments in order to expedite transportation projects. The projects must currently be included in the Transportation Improvement Plan (TIP), but scheduled more than two years after the date of the agreement. The agreement may authorize the local government to construct the project, using 100 percent local funding at current prices. In a future year when the project is funded from state and federal sources, the local government is to be reimbursed an appropriate share of the funds at the future programmed project funding amount, as identified and scheduled in the TIP. DOT was to report to the Joint Legislative Transportation Oversight Committee by December 1, 2006, on any agreements executed under G.S. 136-66.8.

Secondary Road Funding and Construction Changes

In 2005 the General Assembly changed the formula for allocating funds for secondary road construction in North Carolina’s counties (S.L. 2005-404, H 750, effective July 1, 2006). S.L. 2006-258 (H 1825) delays implementation of this act for one year, until July 1, 2007. S.L. 2006-258 also specifies that when the changes do take effect, paved as well as unpaved state-maintained secondary roads will be included in the calculation formula (paved roads are added). Also, beginning July 1, 2007, and continuing until 2009–10, DOT must set aside up to \$5 million to pay for the paving of any unpaved secondary road that had previously been determined to be ineligible for paving.

Other provisions of the act take effect on August 23, 2006. In particular, DOT is required “to make every effort to acquire right-of-way” in order to pave state secondary roads included in the annual secondary road program. In addition, the act authorizes the DOT Division Engineer to reduce the width of a right-of-way to less than 60 feet to pave secondary roads with funds allocated for that construction, as long as public safety is not compromised and the minimum accepted design practice is satisfied.

S.L. 2006-258 also requires the Joint Legislative Transportation Oversight Committee to study the cost of paving and maintenance of both paved and unpaved secondary roads in different geographic areas of North Carolina. The committee is to report by March 1, 2007.

Incorporation of Midway

The 2006 General Assembly incorporated one new municipality, the Town of Midway in Davidson County. The town is established by S.L. 2006-37 (S 1852), effective June 29, 2006. Midway operates under the mayor-council form of government, with a five-member council and a separately elected mayor. Council members will serve four-year staggered terms and the mayor will also serve a four-year term (the act sets up the staggering system beginning with the 2007 municipal election). Elections are to be conducted in accordance with the nonpartisan plurality system as provided in G.S. 163-292. The act appoints an interim mayor and council for the town. The council is to appoint a town attorney and a town clerk to serve at its pleasure.

S.L. 2006-37 places several restrictions on actions by the Midway council. First, it cannot “increase the ad valorem tax rate more than \$0.10 per \$100.00 valuation in each fiscal year” without the consent of the voters. Second, the town may not annex property in certain areas of Davidson County unless it does so pursuant to an annexation agreement with the City of Winston-Salem, and finally, the town may not annex property in Forsyth County at all.

Midway’s citizens and property are subject to municipal taxes levied for the year beginning July 1, 2006, payable at face value within ninety days of the town’s adoption of its 2006–07 budget ordinance. The council is allowed to adopt this ordinance without following the timetable in the Local Government Budget and Fiscal Control Act.

High Point Elections

In 1971 the General Assembly enacted legislation to standardize the procedures for city and town elections. One aspect of that legislation was to place all elections for city and town councils in the fall of odd-numbered years, and that rule has been followed statewide since the mid-1970s. This year, however, the General Assembly breached that long-time policy. S.L. 2006-171 (S 350) reschedules city council elections in High Point to the even-numbered years, beginning in 2008. The city will not hold elections in 2007; rather, the terms of existing council members are extended until the 2008 elections.

A. Fleming Bell, II

David M. Lawrence

Kara A. Millonzi

Aimee N. Wall