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## Land Use Regulation, Planning, Code Enforcement, and Transportation

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The 1999 General Assembly authorized several major new studies in the areas of planning and transportation. The Commission to Address Smart Growth, Growth Management, and Development Issues was created and funded. This commission will examine alternatives for local growth management, regional coordination of plans and programs, the state role in growth management, and funding alternatives for plan implementation. The Blue Ribbon Transportation Finance Study Commission will examine a number of important issues, including current revenue sources and their future adequacy. The General Assembly also adopted legislation to facilitate local government contracts with private firms to conduct building code inspections. While no major statewide modifications were made in the zoning, subdivision, or housing code statutes, a number of local modifications were approved.

### **Planning and Extraterritorial Jurisdiction**

#### **Smart Growth**

Urban growth and development can bring new jobs, better housing, and increased opportunities to communities. It can also bring urban sprawl, loss of open space, clogged highways, overcrowded schools, inadequate water supplies, degradation of water and air quality, and loss of the unique character of a community. The question of how best to manage urban growth and

development to maximize its positive benefits and minimize its harm to communities has become a potent political issue around the country. As a high-growth state, North Carolina and its local governments are increasingly faced with balancing the opportunities and costs of development.

While North Carolina did not join the national trend in adopting growth management legislation, the 1999 General Assembly did take steps in that direction. H 1468, the Growth Management Act of 1999, was introduced by Representatives Joe Hackney and Verla Insko. This bill, which was not adopted, proposed a number of new alternatives for local government planning and growth management. The following were among its provisions.

1. Encourage local governments to voluntarily engage in long-term planning and boards of county commissioners to coordinate growth management efforts within each county.
2. Require each county that elects to participate to develop a growth plan that identifies growth boundaries for each of its municipalities as well as planned growth areas and rural areas. Municipalities would propose urban growth boundaries for high-density growth projected over the next twenty years. Counties would designate growth areas outside existing municipalities. Rural areas would include territory outside of urban and planned growth areas to be preserved over the next twenty years as agricultural, forest, recreational, or wildlife management areas or for uses other than industrial or residential development.
3. Require each participating county to adopt a final growth plan that provides a unified physical design for development of the local community, encourages development in existing urban areas or planned growth areas, and establishes adequate public services. Land use, transportation, public infrastructure, housing, public education, and economic development would be addressed by the plan. Unresolved municipal objections to the plan would be subject to consideration and dispute resolution by the Local Government Commission. After the plan is approved, all land-use planning decisions by the county and municipalities within the county must be consistent with the plan.
4. Require each participating county to establish a joint economic development board to foster communication on economic and community development among governmental entities, industry, and private citizens.
5. Authorize counties that have adopted final growth plans to levy a tax on the impact of land development within the county. Such taxes will be used for new, expanded, or improved school capital facilities necessitated by growth within the county.
6. Allow counties and cities to acquire interests in real property for the purpose of land conservation, including acceptance of transfer of development rights.
7. Authorize use value taxation of land that is managed for protection of environmental, historical, or cultural resources for the public benefit.

In addition to this substantive proposal, bills to study growth management issues were introduced in the Senate by Senators Beverly Perdue (S 896) and Howard Lee (S 1123).

The General Assembly chose to further study the issue before taking action. Section 16.7 of the 1999 Appropriations Act, S.L. 1999-237 (H 168), creates a thirty-seven member Commission to Address Smart Growth, Growth Management, and Development Issues. Significantly the General Assembly appropriated \$200,000 to fund the work of this commission.

The Lieutenant Governor and the Secretaries of Transportation, Commerce, and Environment and Natural Resources serve as *ex officio* members of the commission. The act specifies the requisite backgrounds of the remaining thirty-seven commission members, including representation of local government, environmental, planning, development, financing, business, agriculture, health, real estate, and economic development interests. The commission also includes eight legislative members. Of these members to be appointed, thirteen are appointed by the President Pro Tem of the Senate, thirteen by the Speaker of the House, and eleven by the Governor. Co-chairs are designated by the President Pro Tem of the Senate, and the Speaker of the House. Senator Howard Lee and Representative Joe Hackney have been appointed co-chairs.

The commission is to study growth, growth management, and development issues and recommend initiatives to promote comprehensive and coordinated local, regional, and state planning and growth management to:

1. preserve natural and cultural resources,
2. promote smarter infrastructure and transportation planning,
3. foster more balanced economic development in rural and urban areas,
4. foster compatible land-use patterns,
5. preserve and improve air quality,
6. protect housing affordability and assure consumer choice, and
7. enhance the quality of life for citizens.

The commission is also to address additional issues deemed necessary to implement coordinated planning and growth. Among the specific items to be studied are:

1. the growth management proposals in H 1468 (described above) and legislation in other states, specifically to include Maryland, Tennessee, New Jersey, and Washington, regarding smart growth and growth management;
2. the present and projected effects of population growth and urban development on the capacity of the state's infrastructure, environment, and economy, particularly those resulting from land use and transportation in high-growth and metropolitan regions;
3. options for long-term, strategic planning for the efficient growth of urban, rural, retirement, and resort areas of the state, including land-use management and the transfer of development rights;
4. incentives to encourage local governments to develop and implement sound land-use management practices;
5. planning and growth management goals and processes, including planning directed at existing infrastructure, regionally significant infrastructure, and environmentally sensitive lands;
6. the relationship and consistency between local and regional land use, infrastructure, farmland preservation, and natural resource/open space plans ensured by a process in which local, state, and regional representatives reach consensus;
7. funding requirements to implement comprehensive planning and alternative means for meeting those requirements, including consideration of state, regional, and local responsibilities, to include procedures for directing state expenditures within the metropolitan regions for infrastructure to the region's locally designated and regionally conformed urban growth areas and targeting the expenditure of environmental protection funds to designated environmentally sensitive lands and significant rural lands;
8. development of recommendations for funding sources for regional infrastructure, land acquisition needs, and assistance to local government for implementing plans;
9. incentives to promote the continued use of farmlands for agriculture and the maintenance of the agricultural economy.

The commission is to issue an interim report to the 2000 regular session of the 1999 General Assembly and submit a final report by January 15, 2001. The report is to include recommendations to (i) enact and implement a program of comprehensive planning, supportive infrastructure development, and growth management and (ii) address the issue of continued oversight of growth and development in the state, including whether a permanent commission should be established. The commission is directed to include citizen participation in its work and is authorized to seek technical and expert assistance. The commission terminates upon filing its final report.

### **Transfer of Development Rights**

Transfer of development rights (TDR) is a process that assigns development rights to each property in an area, then allows transfer of development rights from areas where regulations allow less density to areas where more density is allowed. Property owners in the "receiving" area purchase the development rights from property owners in the "sending" area, thereby reducing the economic impacts of the regulations on those who are not allowed to develop their property as densely as others.

**Huntersville Pilot Program.** The Senate passed a bill (S 710) authorizing Huntersville to establish a TDR system, but the House of Representative did not act on that bill. In the closing days of the session, the Senate amended a bill that had passed the House (H 684, authorizing several municipalities to adopt tree protection ordinances) to incorporate the substance of the Huntersville TDR proposal. Since H 684 passed both chambers, albeit without the Huntersville TDR provisions in the House version, a conference committee was appointed to resolve the differences. The session adjourned before the conferees submitted a conference report.

TDR schemes are one of the topics to be studied by the Commission to Address Smart Growth, Growth Management, and Development Issues. Section 2.1(12(a) of the 1999 Studies Bill, S.L. 1999-395 (H 163), also authorizes study of the TDR concept.

### **Planning Jurisdiction**

The General Assembly continued its practice of making individual adjustments in municipal extraterritorial planning and land-use regulatory jurisdiction through adoption of local bills. Over the past twenty-five years, the General Assembly has made such adjustments approximately seventy-five times. In 1999 the following adjustments were authorized:

- Chocowinity—S.L. 1999-42 (H 837) authorizes extraterritorial jurisdiction for the Cypress Landing subdivision.
- Farmville—S.L. 1999-43 (H 846) authorizes a two-mile extraterritorial jurisdiction with county approval.
- Kings Mountain—S.L. 1999-259 (H 855) authorizes a two-mile extraterritorial jurisdiction with approval of Cleveland and Gaston counties.
- Matthews—S.L. 1999-69 (S 702) authorizes extraterritorial jurisdiction for specified property, provided it is no longer owned by Mecklenburg County.
- Pinebluff—S.L. 1999-35 (S 433) authorizes a two-mile extraterritorial jurisdiction (no county approval required).

Also S.L. 1999-154 (H 504) authorizes Carteret County to adopt and enforce planning, zoning, and subdivision ordinances under the general enabling statutes as well as under a 1959 local act. If the county elects to adopt ordinances under the general enabling statute, existing planning board members continue to serve until their terms expire or they resign.

### **Zoning**

The General Assembly made no changes in the statewide zoning enabling acts for cities or counties in 1999. However, a bill that started several years ago as a proposal to allow cities to impose special and conditional use permit requirements on establishments with high volume alcohol sales was enacted as a general standard in the state's Alcoholic Beverage Control (ABC) licensing laws. Several cities had raised concerns about convenience stores in economically depressed neighborhoods that sold large quantities of beer and wine. Some patrons then had a tendency to loiter and consume the alcohol on nearby properties, contributing to crime in the area and impairing neighborhood revitalization efforts. S.L. 1999-322 (S 812) creates G.S. 18B-309 to address these concerns. A food business or eating establishment located in a designated urban redevelopment area is not allowed to have alcohol sales in excess of 50 percent of its total annual sales. A city may request that the state Alcoholic Beverage Commission conduct an audit of any such business to determine whether this maximum percentage of alcohol sales is being exceeded, but it may do so only once per year for any individual business. If a business exceeds the maximum percentage, its ABC permits are to be revoked.

The General Assembly enacted several local bills regarding zoning authority. These local bills are summarized below.

**Referendum.** S.L. 1999-303 (S 532) authorizes the Buncombe County Board of Commissioners to call a countywide advisory referendum on the question of zoning the unincorporated area of the county. The referendum must be conducted on or before December 31, 1999.

**Agricultural Uses.** S.L. 1999-57 (H 471) precludes several small Guilford County municipalities from regulating agricultural land uses through zoning. The limitation applies to the cities of Stokesdale, Summerfield, Pleasant Garden, and Oak Ridge.

**Site Plans.** S.L. 1999-70 (S 719) authorizes Durham County and the city of Durham to consider the contents of site plans in making rezoning decisions. The site plans submitted may include limitations on the number, range, and types of uses, and elected officials are authorized to consider those limitations in their rezoning decisions. The act specifies that, if the proposed limitations are approved, they are binding as a part of the zoning of the property. The act further specifies that the governing board consideration of rezonings subject to a site plan are to be conducted as legislative hearings (like rezonings to general use districts).

**Enforcement.** S.L. 1999-55 (S 720) allows Durham County and the city of Durham additional options regarding service of notice of violations of zoning and subdivision ordinances. The notice of violation is to be served personally or by registered or certified mail. When service is made by registered or certified mail, the city may also send a notice by first-class mail. The service is deemed sufficient if the registered or certified notice is unclaimed or refused but the first-class notice is not returned by the post office in ten days. In these situations notice of violation must also be posted on the site.

## **Signs and Outdoor Advertising; Community Appearance**

### **Outdoor Advertising Control Act**

The North Carolina Outdoor Advertising Control Act (G.S. 136-126 to -140) dates from 1967. S.L. 1999-404 (S 254) rewrites this statute to update statutory references and definitions, to increase permit fees, to establish new enforcement remedies, and to clarify notification requirements. The new law increases initial permit fees for outdoor advertising structures from \$60 to \$120 and annual renewal fees from \$30 to \$60. Initial fees for directional signs are increased from \$20 to \$40 and annual renewal fees from \$15 to \$30. A newly added section, G.S. 136-18.7, establishes a fee of \$200 for a selective vegetation removal permit.

The legislation adds a new G.S. 136-134.2 to establish procedures for the North Carolina Department of Transportation (NCDOT) to follow in denying a sign permit application, in revoking a permit, or in issuing a violation notice. In such cases the department must deliver a written notice by certified mail, return receipt requested, to the permit applicant, permit holder, or sign owner. However, it must also include with the notice a copy of the act and all rules issued pursuant to it. If NCDOT fails to deliver a copy of the act and its rules, this failure tolls the beginning of the period during which the affected party may request a decision review hearing.

The amendments also provide new enforcement remedies and sanctions. The department may issue a stop-work order for outdoor advertising that is under construction but for which no permit has been issued. Remarkably enough, however, no such order is applicable if the advertising message has already been attached to the sign structure and displayed in its final position for viewing by the public. Violation of a stop-work order entitles NCDOT to remove the offending sign. The costs of doing so are assessed against the owner of the unpermitted outdoor advertising. (If the unpermitted sign has already been erected and the sign message displayed before NCDOT takes enforcement action, existing law allows the owner thirty days within which to comply. Failure to comply allows NCDOT to remove the sign once this period has expired. Costs of removal may be assessed against the owner.)

Additional changes redefine federal primary system highways (along which the act applies) to include those federal-aid primary highways on the system as it existed on June 1, 1991, and any highways not on that system that have since been added to the National Highway System.

### **Surry County Outdoor Advertising**

Legislation adopted in 1993 (S.L. 1993-559) prohibited new outdoor advertising displays from being erected along a portion of highway N.C. 752/U.S. 52 through the foothills of Surry County as it passes by Pilot Mountain State Park. S.L. 1999-218 (S 1140) amends the existing session law to extend the prohibition to the replacement of existing outdoor advertising structures along this corridor as well as the erection of new displays.

### **Outdoor Advertising along Interstate 40**

S.L. 1999-436 (S 829) establishes a moratorium on the erection of new outdoor advertising along Interstate 40 between the Orange–Alamance County line and the Wilmington city limits. The moratorium expires July 1, 2000. The Joint Legislative Transportation Oversight Committee is directed to study whether the erection of outdoor advertising should be prohibited permanently along this corridor. The act also directs the committee to study the advisability of NCDOT allowing billboard owners to enter onto highway rights-of-way to destroy vegetation that may obscure their signs. (This study apparently applies to all affected highways, not just the portion of Interstate 40 subject to the sign ban study.) The committee is directed to report to the 2000 session of the General Assembly.

### **Littering**

S.L. 1999-454 (H 222) strengthens the state’s statute governing littering on public or private property by increasing the applicable fines and requiring community service for more serious offenses. The act amends G.S. 14-399(c) (littering for other than commercial purposes in an amount not exceeding fifteen pounds) by increasing the minimum fine for such an offense from \$100 to \$250 and increasing the maximum fine from \$500 to \$1,000. In addition it increases the minimum fine for a second or subsequent offense from \$100 to \$500 and the maximum fine from \$1,000 to \$2,000. It also amends G.S. 14-399(d) (littering for other than commercial purposes in an amount exceeding 15 but not more than 500 pounds) by increasing the minimum fine from \$100 to \$500 and the maximum fine from \$1,000 to \$2,000. Finally, if the violator discards more than 500 pounds, discards hazardous waste, or litters for commercial purposes, the act provides that the court shall order (it used to say may order) the violator to provide restitution or perform community service to remove the litter or restore the polluted area. The act also clarifies litter “for commercial purposes” and directs the Division of Motor Vehicles to add at least one question on littering to the next driver’s license examination prepared by the Division.

### **Bills Eligible for Further Consideration**

H 529, which has passed the House, is directed at local zoning regulations governing signs and flags. It provides that no law may prohibit the display of any U.S. flag if the flag is flown with the consent of the owner or the person having control of the property and the flag is flown in accord with the patriotic customs that are set forth in the U.S. Code.

H 684 passed both chambers but was never reported out of a conference committee. The first portion of the bill would grant five municipalities (Apex, Garner, Kinston, Cary, and Morrisville) the power to regulate the removal and preservation of trees within the planning jurisdiction of each. The bill, however, excludes both property to be developed for single- or two-family residential purposes and property being forested under a forestry management plan. It is unclear whether express legislative authority is needed by cities to regulate trees at all. The second portion of the bill authorizes Huntersville to establish a pilot program allowing the voluntary transfer of development rights.

## Housing Code/Nuisance Abatement

### Housing Code

**Rental Heat.** One statewide law affecting local housing codes was adopted this session, but its applicability is quite restricted. It concerns the obligation of landlords to heat rental houses and apartments. S.L. 1999-14 (S 41) requires landlords to provide either a central heating system or a heating unit in at least one habitable room other than the kitchen and to maintain them in a good and safe working condition. Portable kerosene heaters do not qualify. The heating system must be capable of heating the one room to a minimum temperature of 68 degrees Fahrenheit when the outside temperature is 20 degrees. This legislation, however, applies only inside the corporate limits of cities with a population of at least 200,000. The cities to which the act applies are directed to adopt the appropriate ordinance language by Jan. 1, 2000. Charlotte and Durham had already adopted such requirements in their respective minimum housing codes before the act was passed. The only city currently covered by the legislation that will be required to act in order to comply with the new law is Raleigh.

**Bill Eligible for Further Consideration in 2000.** Differing versions of S 414 have been passed by the House and the Senate and await resolution in conference committee during the year 2000 session. S 414 would extend the application of G.S. 160A-443(5a) to all municipalities. This subsection currently allows cities of certain sizes to take action against property owners who have vacated and closed housing units rather than have them repaired. Subsection 5a applies when units are shown to have certain blighting influences on the neighborhood after remaining vacant and closed for a period of one year. In such instances the local governing board may adopt an ordinance ordering the owner to either repair or demolish the unit, or, in instances where the housing has undergone further deterioration, it may give the owner no choice other than to demolish the unit.

### Criminal Nuisances

S.L. 1999-371 (S 929) makes a variety of clarifying, elaborating, and technical changes to the state's criminal nuisance statutes and adds definitions. The statutes can be used to close premises used for prostitution, sale of controlled substances, or obscene activity. These statutes (G.S. 19-1 *et seq.*) authorize law enforcement officials to seize personal property used in connection with the illegal enterprise and provide for the possible forfeiture of real property used in this connection.

### Nuisance Abatement: Local Acts

S.L. 1999-62 (S 181) allows Dallas, Tabor City, and Whiteville to each enact a property maintenance ordinance dealing with trash, obnoxious weeds, overgrowth, solid wastes, and stagnant water. If affected owners fail to comply with the ordinance, the municipality may go on the property to perform any work necessary to bring it into compliance with the ordinance (a "self-help" remedy). The costs of such work may be charged against the property and become a lien on the property equivalent to a tax lien. A similar act, S.L. 1999-58 (H 776), also addresses the problem of overgrown vegetation on private property. However, this act provides Roanoke Rapids with a "self-help" remedy only if the owner is a *chronic violator* of the ordinance (defined as an owner whose property is subject to remedial action at least three times during the previous calendar year).

## Land Subdivision Regulation/Platting

### Filing of Right-of-Way Plans/Plats

One question that has arisen in counties across the state is whether land subdivision ordinances may require and county registers of deeds may accept plans and plat maps submitted in an electronic form. No bill has been filed concerning this question. However, S 328, which has passed the Senate and awaits further consideration next year, would allow the North Carolina Department of Transportation to file its right-of-way plans in an electronic form, if the county in which the plans are to be filed approves.

### Land Subdivision Regulation: Local Acts

S.L. 1999-125 (H 437) amends the statutory definition of “subdivision” in G.S. 153A-335 as it applies to Jones County. It expands the second statutory exception to exempt the division of land into parcels greater than five acres if no street right-of-way is involved. The state statute currently excepts only those divisions into parcels greater than ten acres.

## Building Code Enforcement

### Building Inspection Contracts

S.L. 1999-372 (S 966), an act strongly opposed by the North Carolina Building Inspectors’ Association, has generally been referred to as the act to “privatize” building code enforcement in North Carolina. Although this legislation provides new possibilities for local governments who wish to contract out building plan review and inspection services, that characterization is misleading since certain forms of “privatization” were possible before S 966 was ever adopted. Nonetheless the act does address new code enforcement arrangements involving private contractors.

**Contracts; Insurance.** This law amends G.S. 160A-411 and G.S. 153A-353 to permit an inspection department to contract with the *employer* of a certified code-enforcement official for the provision of inspection services. (Under prior law an inspection department could privatize inspection services and plan review, but if it did so it had to contract directly with a certified code-enforcement official.) If an inspection department does contract with the employer of the code-enforcement official, the company that is the employer must obtain insurance to cover the code official’s errors and omissions.

**Individual as Code-Enforcement Official.** Another change concerns the definition of “code enforcement” for purposes of qualifying under state law as a certified code-enforcement official. The act expands the definition of *code enforcement* to include individuals employed by a company contracting with a local government for inspection services. This is simply a conforming change to accomplish the changes described above. However, it is also important because it clarifies that only an individual may be a code-enforcement official or be certified as such. The company or firm employing the inspector may not hold a code-enforcement certificate. (Compare this with current law regarding a general contractor’s license. Under this arrangement a company may hold a general contractor’s license because it employs someone who has passed the necessary exams. It is thus relatively easy for a general contracting firm to retain its license even as its employees turn over.)

**Conflict of Interest Generally.** Perhaps the most controversial features of the act are the provisions dealing with conflict of interest. In the past a code-enforcement official who contracts with a local government has been subject to the same conflict of interest requirements as a governmental employee. Under the new law, G.S. 160A-415 and G.S. 153A-355 declare a conflict of interest if the individual is financially interested or is employed by a business that is financially

interested in certain work within the regulatory jurisdiction of the unit of government. A special exception is made for firefighters whose primary duties are fire suppression and rescue but whose secondary duties include fire inspection activities.

**Defining a Conflict.** S.L. 1999-372 liberalizes the conflict of interest provisions both for a contracting individual and for a company that may employ a code-enforcement official. The act finds a conflict of interest in three instances. First, a conflict exists if the individual, the company, or the company employee has worked within the last two years for the owner, developer, contractor, or project manager of the project to be inspected. Second, a conflict exists if the individual, the company, or the company employee is “closely related” to the owner, developer, contractor, or project manager of the project to be inspected. Finally, a conflict exists if the individual, company, or employee has a financial or business interest in the project to be inspected. These three instances are the only circumstances in which a conflict of interest is found. The statute provides no apparent remedy or sanction for violation of its conflict of interest provisions. Although the new law provides that a local government “must find a conflict of interest” in certain defined situations, no enforcement mechanism is provided for circumstances where a conflict of interest exists.

**Specifically Designated Projects.** The only limitation on the widespread use by local governments of building inspection contracts is a stipulation in G.S. 160A-413 and G.S. 153A-353 that provides that such contracts may be entered into only for “specifically designated projects.” It is unclear whether this provision refers to a list of individual building projects for which code services are to be provided or whether it refers to categories of designated projects (for example, review of all plans for Level III nonresidential projects).

### **General Contractors’ Licensing**

S.L. 1999-427 (S 1058) makes some modest changes to legislation governing the licensing of general contractors. The act amends G.S. 87-10(b) so that the general contractor’s examination, administered by the State Licensing Board for General Contractors, includes material testing the applicant’s knowledge of “relevant matters contained in the North Carolina State Building Code.” No mention is made of what weight or portion of the exam may be devoted to code matters. Previously an applicant familiar with the law of construction contracts, cost estimation, and liens could pass the exam without any knowledge of code standards. The act also amends G.S. 87-11(a) to strengthen the disciplinary powers of the Licensing Board to suspend, restrict, or refuse to renew the license of a general contractor. These remedies may be used as alternatives to simply revoking the license. In addition the bill clarifies that the board may take the same kind of action against someone who acts as the “qualifying party” for a license held by a partnership, corporation, or other organization.

### **Home Inspectors**

S.L. 1999-149 (H 259) makes several changes to the legislation providing for the licensing of home inspectors. The changes include rather technical requirements concerning lapsed licenses and the supervision of licensed associate home inspectors. However, the topic of the most interest in the act is the authorization it provides for the Home Inspector Licensure Board to establish and administer a continuing education program for all license holders. The number of continuing education hours that licensees must complete each year is to be determined by the board, but the number of required hours cannot exceed twelve.

### **Building Inspection on Tribal Lands**

S.L. 1999-78 (S 674) allows federally recognized Indian tribes to adopt the North Carolina State Building Code and to enforce it on tribal lands. The act also provides for the certification by the North Carolina Code Officials Qualification Board of those who perform inspections on tribal

lands. Legislation adopted last year to allow Indian tribes in several far western North Carolina counties (i.e., the Cherokees) to perform building inspections under the North Carolina State Building Code on tribal lands is repealed.

### **Fire Mains Comply with Building Code**

S.L. 1999-12 (H 1076) is a brief act that requires public utilities contractors constructing fire service mains intended for connection to fire sprinkler systems to terminate inside the building one foot above the finished floor. It also requires all fire service mains to meet Volume V requirements of the State Building Code.

### **Compliance of Old Nonbusiness Occupancies with State Building Code**

S.L. 1999-456 (H 162), the 1999 "technical corrections" act, includes an obscure provision (section 40) that affects buildings with nonbusiness occupancies built prior to the adoption of the 1953 Building Code. It adds a new G.S. 143-138(j1) to provide that if such a building is not currently in compliance with either Section 402.1.3.5 of Volume IX of the Building Code or Section 3407.2.2 of Volume I of the Building Code, it must come into compliance with the applicable sections by December 31, 2006. Section 3407.2.2 of the General Construction Code concerns the circumstances under which single exitways are allowed in buildings with stories intended to accommodate fewer than 100 occupants. Section 402.1.3.5 of the Existing Building Code provides that if certain buildings fail to comply with exitway and egress standards, work was to have been initiated by January 1, 1999, to bring the building into compliance. The practical effect of this new law is to give property owners more time to comply with egress standards and to cause the North Carolina Building Code Council to amend the Code to conform it to the legislation.

### **Bills Eligible for Consideration in 2000**

Two important bills may be considered in next year's session of the General Assembly because they passed the chamber in which they were introduced. The first, H 1149, loosens the requirements for those who erect modular buildings by allowing a licensed manufactured home set-up contractor to erect certain types of modular units. The second, S 1152, began as an attempt by the League of Municipalities to expand the factors to be considered and to elaborate the remedies that a city may use when it condemns an unsafe building under G.S. 160A-426 to -432. However, the bill that emerged from committee would weaken existing law. As a result, the bill's future is uncertain.

Two other bills failed to advance but are eligible for further consideration because they have financial implications. H 1256 was introduced by Rep. Beverly Earle of Charlotte. Certain features of the bill (for example, mandated attorney fee awards to homeowners who sue builders, correction of code violations after the closing under the direction of code officials, the imposition of civil penalties and fines on negligent builders, and the lengthening of the period during which a builder may be sued) were opposed by developers and deleted from the original version of the bill. The bill now calls for reducing the project cost threshold that triggers the requirement for a licensed general contractor, strengthening the authority of the licensing board to discipline contractors, changing the homeowners' recovery fund, and requiring contractors to purchase commercial general liability insurance. A second bill, H 312, would authorize the Code Officials Qualification Board to adopt a continuing education program for code-enforcement officials. It includes a \$100,000 appropriation from North Carolina Department of Insurance funds to help develop and implement the program. Despite the hopes of its sponsors, its provisions were not incorporated into the 1999 appropriations bill.

## Transportation

### Studies

Relatively few legislative changes were adopted regarding transportation, but several topics will be the subjects of studies during the next two years.

The most important news in this regard is the establishment of the Blue Ribbon Transportation Finance Study Commission, a fifteen-member commission directed to study a number of important issues affecting the state's transportation future and NCDOT. The commission is established in section 27.2 of the Appropriations Act, S.L. 1999-237 (H 168). First, the commission is directed to evaluate the Highway Trust Fund Act, which was adopted ten years ago to earmark specific revenues to fund certain major new highway construction projects, including a series of urban loop projects in the metropolitan areas of the state. Similarly, the commission is directed to study NCDOT's current revenue sources and their adequacy for the projected needs of the state during the next twenty-five years. Third, the commission will study the problem of funding transportation system maintenance. Fourth, the commission will evaluate the possibility of funding public transportation with dedicated sources of funding and recommend specific funding sources and amounts. Fifth, the commission will consider the transfer of Highway Fund moneys to state agencies other than NCDOT, "including whether or not those funds would more appropriately come from the General Fund." Finally, the commission will look at several new ideas. One is the concept of establishing separate funding allocations for roads that impact large-scale economic development projects. Another is developing separate funding allocations for major highways that impact more than several regions of the state. The Blue Ribbon Transportation Finance Study Commission is to submit an interim report to the Joint Legislative Transportation Oversight Committee by June 2000 and a final report by March 2001.

A second study reveals a prime concern among legislators about the state's transportation progress. Section 27.5 of the Appropriations Act directs NCDOT to study the reasons why road construction is delayed in North Carolina. It directs the department to study and make recommendations on (a) its inability to obtain environmental and historic preservation permits in a timely or expedited manner, (b) cooperation between NCDOT and other agencies involved in permitting, (c) problems in obtaining needed rights-of-way, and (d) delays that are related to public hearings and participation in the planning and design process. The department's recommendations to the Joint Legislative Oversight Committee and to the Joint Legislative Commission on Governmental Operations were due by November 1999.

A third study reflects concern about demands placed on NCDOT in maintaining a state secondary road network. Section 27.8 of the Appropriations Act directs NCDOT to study its policies for accepting and maintaining subdivision roads. The study is to consider both roads and streets that meet the current subdivision street standards adopted by the NCDOT and those that do not. NCDOT is directed to submit an interim report to the 2000 session of the General Assembly and a final report to the 2001 session.

S.L. 1999-395 authorizes the Legislative Research Commission (LRC) to study municipal participation in road financing. After the session the LRC referred this matter to the Blue Ribbon Transportation Finance Study Commission for inclusion in the broader study noted above.

### Public Transportation

Several legislative changes will affect public transportation.

The first will allow the NCDOT and the state's municipalities to designate "transitways." S.L. 1999-350 (H 1085) amends G.S. 20-146.2 to allow NCDOT to designate one or more travel lanes on a state highway as a transitway and allows cities to do so on city streets. Transitways are generally reserved for public transportation vehicles, but if they are appropriately marked with signs or other markers, they may also be reserved for privately operated vehicles.

The second affects regional transportation authorities, first established by the General Assembly in 1997. Although the criteria for establishing such an authority do not expressly limit them to the region of the Piedmont Triad, that is the only region of the state that has qualified so far. S.L. 1999-445 (H 937) makes a variety of changes in existing law. The most important change concerns the 5 percent gross receipts tax on vehicle rentals and \$5 motor vehicle license tax that a regional transportation authority may levy. Existing law requires all counties within the authority to approve such a tax before it is levied. The new act permits such an authority to create a special district that consists of the entire area of one or more counties within the authority's territorial jurisdiction. If the board of county commissioners of each county within this district consents, then a gross receipts tax and/or motor vehicle license tax may be levied in just those counties. The tax rate within the special district, however, when combined with any tax levied throughout the jurisdiction of the regional transportation authority may not exceed 5 percent (gross receipts tax) or \$5 (vehicle license tax). The act also makes a change concerning the geographic jurisdiction of the authority. The authority includes all those areas within the metropolitan planning organizations (MPOs) of the region but may be expanded to include areas outside the MPOs if the affected board of county commissioners consents. S.L. 1999-445 provides that the authority may expand its territorial jurisdiction to include the entire area of such a county if the Board of Trustees is expanded so that the county is represented on the Board. In addition the act adds to the Board the chair of the airport authority or commission for each of the authority's two most populous counties (in the case of the Piedmont Triad region, Guilford and Forsyth).

### **Other**

S.L. 1999-224 (H 755) authorizes certain municipalities to create a municipal service district to finance lighting at interstate highway interchanges. The act, which adds a new G.S. 160A-536(3b), applies only to towns that have a population of between 2,000 and 2,500 at the time the district is created and that are located within a county whose land area exceeds 946 square miles according to the 1990 federal census.

One notable bill that did not pass was H 1288. The bill would have reorganized the state's MPOs and consolidated them. However, the bill attracted opposition from representatives from some of the smaller MPOs (most notably from the Chapel Hill–Durham MPO) and stalled. The bill, however, is eligible for further consideration in the year 2000 session of the General Assembly.

## **Local Government Generally and Other Topics**

The General Assembly adopted several bills affecting land use that are discussed in other chapters. In the environmental area, legislation was enacted to extend the moratorium on new, large swine operations [S.L. 1999-329 (H 1160)], to allow land-use restrictions as part of the cleanup strategy for contaminated sites [S.L. 1999-198 (S 1159)], and to improve air quality by strengthening controls on motor vehicle emissions [S.L. 1999-328 (S 953)]. These bills are discussed in Chapter 10 (Environment, Natural Resources, and Solid Waste). In the economic development area, the General Assembly adopted several amendments to the Bill Lee Act, addressing among other things an affordable housing tax credit [S.L. 1999-360 (S 1115)]. These amendments are discussed in Chapter 5 (Community Development and Housing). Finally, the General Assembly tightened the standards for incorporations of new cities [S.L. 1999-148 (H 964)]. This law is discussed in Chapter 15 (Local Government and Local Finance).

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