

# 2021 LOCAL GOVERNMENT LEGISLATIVE UPDATE

Part Two



SCHOOL OF  
GOVERNMENT

# Agenda

11:10 Community and Economic Development

11:35 Elections

11:55 Emergency Management

12:25 Remote Meetings after the State of Emergency

1:00 Local Government Law and Finance Potpourri

1:35 Reporting Requirements for Cybersecurity Incidents

2:00 Conclude

# Materials

## Collected Legislative Summaries

- <https://lrs.sog.unc.edu/lrs/legsumms/2021>

## Coates' Canons Blog

- <https://canons.sog.unc.edu/>

# COVID vaccines for children & adolescents as of 12/8/21 (updated 12/9/21)

Kids HAVE A **SPOT** TO TAKE THEIR **SHOT.**

## Children 5+ can receive their COVID-19 vaccine in their arm or leg.

The COVID-19 vaccine dose for children between the ages of 5 and 11 is one-third of an adult dose. Kids can get their shot in their arm or leg, whichever works best for them!



Visit [MySpot.nc.gov](https://www.myspot.nc.gov) to locate a pediatric vaccine provider near you.



- The Pfizer product is the only COVID-19 vaccine that is authorized for use in minors. It is fully licensed for some populations/uses and under emergency use authorization (EUA) for other populations/uses. At this time children under 18 are not eligible for booster shots. On December 9, 2021, the FDA added booster shots for 16 & 17 year olds to Pfizer's EUA.
- Fully licensed: Minor with decisional capacity may consent
  - 16 & 17 year olds: Pfizer primary series (two shots)
- EUA: Written consent of a parent or guardian required
  - 16 & 17 year olds: Pfizer booster shots (6 months after completion of primary series)
  - Immunocompromised 16 & 17 year olds: Pfizer third shot
  - 12-15 year olds: Pfizer primary series (two shots)
  - 5-11 year olds: Pfizer pediatric primary series (two shots, smaller dose)

# Community and Economic Development

Tyler Mulligan



# CED and the NC Constitution

## Art. V Sec. 7

- Withdraw local government funds by law only

## Art. I Sec. 32

- No exclusive emoluments - no gifts or donations

## Art. V. Sec. 2(7)

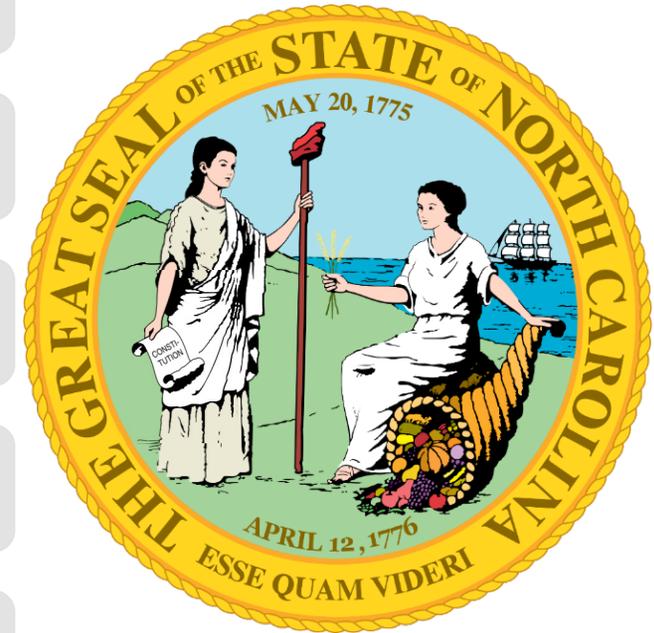
- Contracts authorized for “accomplishment of public purposes only”

## Art. VII Sec. 1

- Statutory authority required: “The General Assembly ... may give such powers and duties to counties, cities ... as it may deem advisable.”

## Art. XI Sec. 4

- “first duty” to provide for poor and unfortunate



# CED Powers Depend on Purpose

## Interstate Competition



**BROAD POWERS  
(ONLY IF "NECESSARY")**

## Low-Income Housing



## Other Biz & Real Estate



# Industrial Megasite Incentives

## Interstate Competition



- NC Constitution (*Maready* case and progeny)
  - Substantial jobs and tax base
  - “might otherwise be lost to other states”
  - Tax revenues “recoup” within seven years
- Toyota battery plant locating at Megasite (industrial park) in Randolph County
- *Interstate competition* business recruitment
  - Phase 1: \$1 billion capital investment and 1,750 jobs
  - Phase 2: Increase to \$3 billion and 3,875 jobs
- NC DOT to receive \$135 million for Phase 1
  - \$100 million for site work and wetland mitigation
  - \$35 million for roadwork and wetlands mitigation
- More if company agrees to Phase 2

# Low-Income Affordable Housing

## Low-Income Housing



- NC Constitution
  - No gifts or donations – not even to nonprofits (*Brumley v. Baxter*).
  - Any subsidy must go to “poor” or “unfortunate” (not developer): reasonably defined as 60% area median income (AMI) or below
  - Courts have approved housing financing (loans) for moderate-income persons (60-80% AMI) alongside low-income persons “with same purpose in mind,” where moderate-income persons also “cannot otherwise obtain such housing” because “private enterprise unable to meet the need” (*In re Denial of Approval*)
  - Statutes ensure constitutional grounding by requiring subsidized projects reserve 20% of units “exclusively” for low-income persons
- Example in budget: affordable housing funding
  - Rent subsidy for LMI persons (not developer) capitalized up front
  - Low-income units required by constitution and related statutes
  - Possible ARPA restrictions from OSBM (State Fiscal Recovery Reserve)

# No Subsidy for Other Businesses

## Public-Private Partnership (P3) Tools

- *Statewide uniform* tax treatment
- Development analysis
- Invest in *public-owned* infrastructure
- Convey property – fair market value
- Market participant – fair market value

See School of Government On-Demand Module:

**Morgan and Mulligan: *Economic Development Tools and Strategies***

## Other Biz & Real Estate



# P3 Tool: Statewide Tax Treatment

- Historic Rehabilitation Tax Credit

Rehabilitation Expenditures		Tax Credit Rate
Over	Up To	
\$0	\$10 million	15%
\$10 million	\$20 million	10%

- 5% bonus in Tier 1 or Tier 2 county
- New 5% bonus for educational use
- Mill Rehabilitation Tax Credit
  - Up to 40% of rehabilitation expenditures
- Residential housing held for sale – new construction exempt from property tax increase until sale



Need help with P3s? See School's DFI program.

# P3 Tools: Development Analysis

## NC Division of Emergency Management Disaster Relief and Mitigation Fund

- \$15 million
- Local governments and nonprofits eligible to apply
- For flood mitigation and development analysis “for small and underserved communities” to “identify and design shovel-ready projects related to disaster relief and flood mitigation.”



*DFI affordable housing site plan in Lumberton using disaster recovery funds*

# P3 Tools: Public-owned facilities

- NC Department of Commerce REDD Rural **Downtown Transformation Grants**
- \$50 million for local governments
- Construct *public-owned* facilities:
  - Sidewalks and walkways
  - Parks and playgrounds
  - Signage and lighting
  - Benches and planter boxes
  - Public restrooms
  - Public venues, public parking, and infrastructure
- Acquire and prepare development sites



# P3 Tools: Public-owned facilities

- State Capital and Infrastructure Fund  
“Town of \_\_\_\_ for....”
- Conference budget report
  - renovation of the community center
  - renovation of a parking facility
  - completion of boat ramps
  - repairs and renovations of town facilities
  - new pedestrian bridge
  - homeless center
  - renovation of the public library
- Constitution
  - Public-ownership only – no gifts to private owners



# P3 Tools: Loans

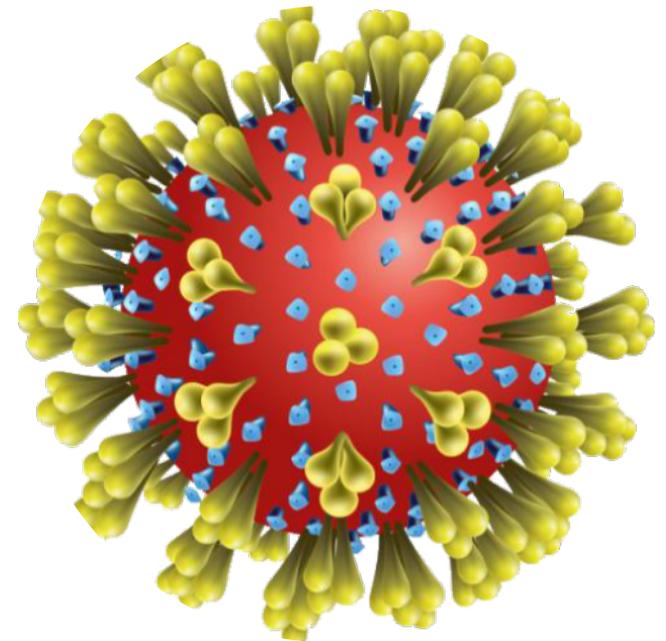
NC Rural Economic Development Center

- Shellfish Growers Loan Program
- Small Business Loan Program pursuant to federal State Small Business Credit Initiative (SSCBI)



# Statewide Disaster Relief for Businesses

- 1999 NC Attorney General Opinion
  - NC Constitution authorizes aid to the “poor” and “unfortunate”
  - Disaster low interest loan program “likely” permissible:
    - Business suffered “substantial damage”
    - Business “not otherwise fully compensated” for damage
- 2021 budget directs \$500M of federal funds to statewide relief program:
  - State has covered the field with statewide program
  - Partial compensation for losses
  - Test for whether prior aid received
  - Pro rata reduction if not enough funding for applicants
- *No special authority granted to local governments*



**Questions?**



# Elections

Bob Joyce



# Postponing Lots of City Elections

Cities with at-large elections vs. cities with true electoral\* districts

Only cities with true electoral districts affected—35\* or so

**Big problem:** census was delayed  
numbers needed to draw districts for 2021  
but numbers would not be ready

**What to do:** go ahead with old districts?

**Solution:** postpone elections till 2022  
long terms now; short terms beginning in 2022

# Drawing New Districts

What's the point?

One-person-one-vote

For cities with districts, city councils draw new districts

For counties with districts, county commissioners draw new districts

For boards of education with districts, the board of education draws them



# Drawing New Districts

For the NC House, the General Assembly draws the new districts

For the NC Senate, the General Assembly draws the new districts

For the US House, the General Assembly draws the new districts

# Drawing New Districts

Districts after 2010 census were struck down as racial gerrymanders

They were redrawn

The redrawn districts were struck down as partisan gerrymanders

They were redrawn

And then came the 2020 census

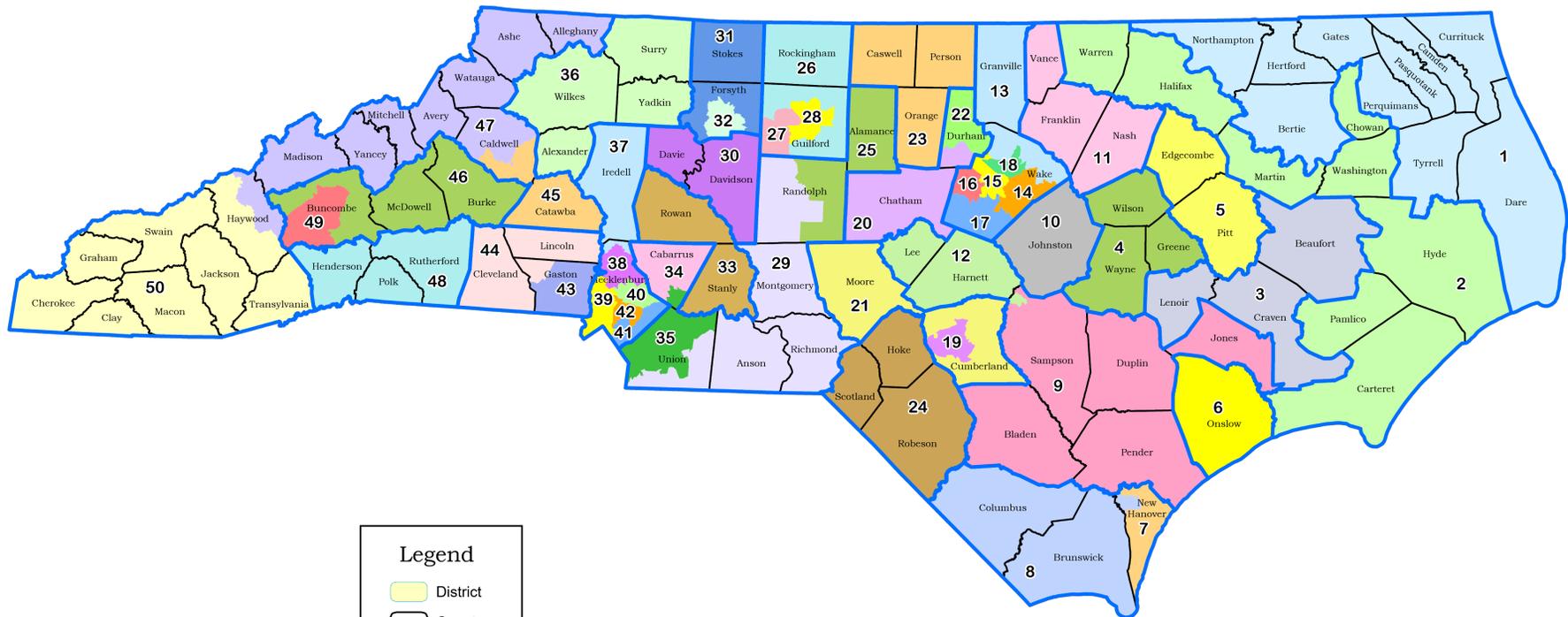
And now the districts are redrawn again

S.L. 2021-173 (S 739) NC Senate

S.L. 2021-174 (S 740) US House—with 14 districts!

S.L. 2021-175 (H 976) NC House

# NC Senate 2021 Map

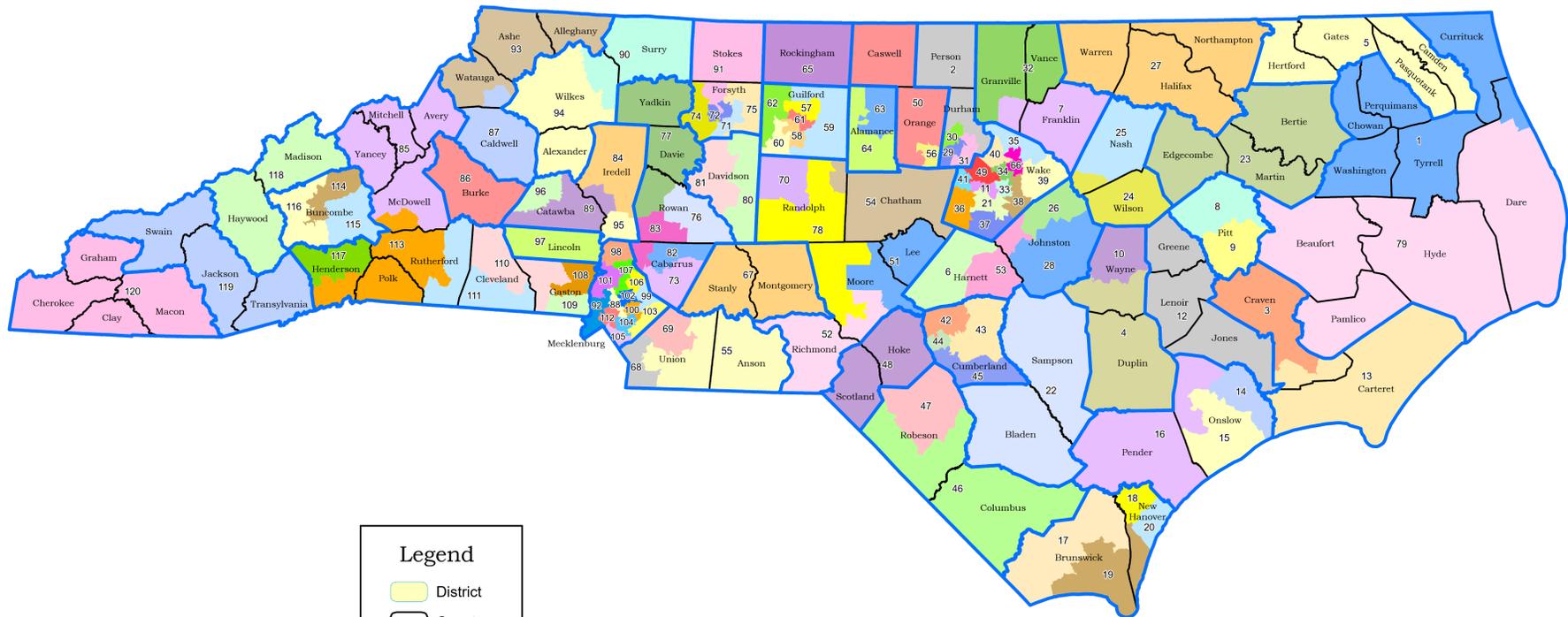


**Legend**

- District
- County
- Groupings



# NC House 2021 Map



**Legend**

- District
- County
- Groupings



# Challenges to the New Districts

Lawsuit challenges are abundant  
Who can say what will happen?

# Approving Lawsuit Settlements

“[A] proposed settlement agreement or other agreement that would dispose of the dispute, claim, or controversy shall be jointly approved by the Speaker of the House of Representatives and the President Pro Tempore of the Senate, or by and through counsel of their choice, before the agreement may be entered.”

S.L. 2021-180 (S 105), Sec. 18.7

# A Trend: Even-Year City Elections

This year:

Hildebran

Havelock

Bridgeton

Cove City

Dover

River  
Bend

Trent  
Woods

Mount  
Airy

# A Trend: Partisan Local Elections

This year:

Craven  
County Board  
of Education

Lincoln  
County Board  
of Education

# Absentee Ballot Deadline

A change in the absentee ballot deadline is hanging fire

Passed the General Assembly November 22

Vetoed by the Governor December 2

<b>Current law:</b>	Postmarked by election day Received within three days after
<b>Proposed law:</b>	Must be received by election day
<b>Resolution:</b>	?

**Questions?**



# Emergency Management

Kate Van Tol

Deputy Director of Procurement and  
Contracting

NC Office of Recovery and Resiliency  
(NCORR), NC Dept. of Public Safety



# Budget Considerations

- 2021-2022 Fiscal Year =\$25.9 Billion / 2022-2023 Fiscal Year =\$27 Billion
- \$1 Billion for Broadband Expansion
- Increase the Rainy Day Fund by \$4.25 Billion and allocate money for State Match on Federal Disasters
- Revises Emergency Management Act to require a vote of the Council of State to extend a statewide emergency beyond 30 days (effective Jan. 1, 2023)

# EM Allocations

- State Emergency Response and Disaster Relief Reserve
  - \$425,000,000 in nonrecurring funds for the 2021-2022 fiscal year,
  - \$375,000,000 for the 2022-2023 fiscal year

## SECTION 2.2.(i)

- Use of Funds. - The Governor may spend funds from the Fund for the following purposes:
  - To cover the start-up costs of State Emergency Response Team operations for an emergency that poses an imminent threat of a Type I, Type II, or Type III disaster.
  - To cover the cost of first responders to a Type I, Type II, or Type III disaster and any related supplies and equipment needed by first responders that are not provided for under subdivision (1) of this subsection.
  - To provide relief and assistance in accordance with G.S. 166A-19.41 from the effects of an emergency.

166A-19.42

# Residential Mitigation

SECTION 5.9.(q) Division of Emergency Management Contracting. –

- G.S. 166A-19.12 is amended by adding two new subdivisions to read:

(24) The Division may contract for services from vendors specializing in housing, rehabilitation, or **construction on private residential structures funded by State or federal funds** provided to the State as a result of a disaster declared by the President under the Stafford Act or a disaster declared by the Governor under G.S. 166A-19.21. Nothing in this subdivision is intended to exempt the Division from other requirements of Article 8 of Chapter 143 of the General Statutes.

(25) The Division may contract for services from vendors specializing in housing elevation, acquisition, demolition, and mitigation reconstruction on **private residential structures to implement the federal Hazard Mitigation Grant Program** on behalf of the State or political subdivisions. Nothing in this subdivision is intended to exempt the Division from other requirements of Article 8 of Chapter 143 of the General Statutes.

# Grants Available

- COMPETITIVE EMERGENCY MANAGEMENT GRANTS SECTION 19E.5.(a)
- PURPOSE - Grants shall be used to ensure local emergency management offices are adequately equipped, trained, and prepared for all hazards
  - Eligibility
    - County Emergency Management Agencies
    - County population of 210,000 or fewer

# Continued

- SECTION 30.2.(d) Emergency Reserve Grants. –
- PURPOSE - Equipment purchases, payment of highway use taxes on those purchases, costs of putting property acquired from the Department of Defense through the Firefighter Property (FFP) and federal Excess Property (FEPP) programs in service, or capital expenditures necessary to provide fire protection services.
  - Available
    - \$1,000,000 in each fiscal year of the 2021-2023
    - Individual grant not to exceed \$50,000
  - Eligibility
    - Fire Departments

# Act Revisions

- § 166A-19.20. Gubernatorial or legislative declaration of state of emergency.
  - Expiration of States of Emergency. – A state of emergency declared pursuant to this section shall expire as follows:
    - (1) If not a statewide emergency area, when it is rescinded by the authority that issued it.
    - (2) If a statewide emergency area, **30 calendar days after issuance without a concurrence of the Council of State**. A declaration of emergency may not be continued without the concurrence of the Council of State. If the Council of State concurs with the declaration of emergency, the declaration of emergency shall expire 60 calendar days after issuance, unless the General Assembly extends the declaration of emergency by enactment of a general law. If the General Assembly does not extend the declaration of emergency by enactment in accordance with this subdivision, the Governor shall not issue a substantially similar declaration of emergency arising from the same events that formed the basis to issue the initial declaration of emergency that was not extended.

# Continued

(c1) Effect of Failure of Concurrence of the Council of State. – If the concurrence of the Council of State fails with the issuance or continuation of a declaration of emergency under subdivision (c)(2) of this section, the Governor shall not issue the same or any other substantially similar declarations of emergency based on the same emergency.

(c2) Multiple Declarations to Avoid Concurrence of Council of State. – If the Governor declares more than one state of emergency based on the same emergency that would extend the application of the emergency area, when combined, to more than two-thirds of the counties in the State, the Governor shall obtain the concurrence of the Council of State in accordance with subdivision (c)(2) of this section for each declaration of emergency

# Questions?

Kate Van Tol  
984-218-3559  
[kathryn.vantol@ncdps.gov](mailto:kathryn.vantol@ncdps.gov)



# Remote Meetings after the State of Emergency

Kristina Wilson



# Rewind...

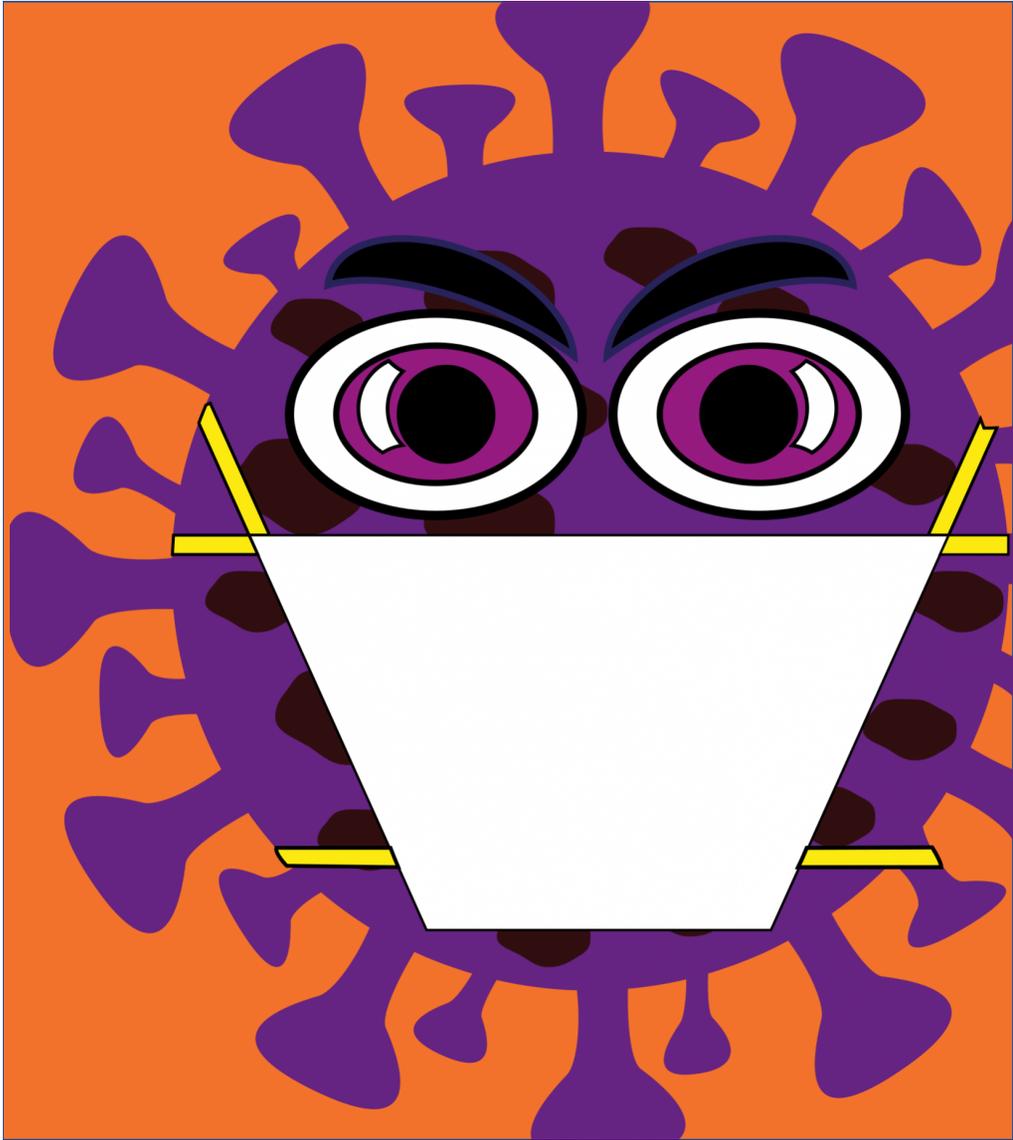
- Remote Meetings before COVID-19
  - No specific authorization
    - No right for board members to participate remotely
    - Local rules may permit
  - Quorum Questions
    - Can a local rule define presence for quorum purposes?
      - Unclear if this power is within boards' general authority to adopt procedural rules
      - 160A-74; 153A-43
        - Include remote presence in the definition of "present" for quorum purposes only in connection with G.S. 166A-19.24
      - 160A-75
        - Mentions physical presence
  - Open Meetings law
    - Definition of official meetings includes remote means
    - Section 143-318.13(a) discusses electronic meetings

# What about appointed boards?

- No statutory requirements
- Local governments may establish rules of procedure for these boards
- Free to establish rules for calculating quorum for these boards



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**COVID**



# G.S. 166A-19.24

- Authorized remote meetings during a state of emergency
- Remote meetings
  - Any meeting where even one member of the public body participates remotely
  - Present for quorum purposes as long remote connection is maintained
  - Additional notice requirements
    - Additional flexibility
  - Voting procedures
  - Public comment procedures
- Subsection (h)
  - Only applies during states of emergency and does not supersede any authority for remote meetings in the open meetings law

# The Post-COVID Era



# What can we continue to do?

- Livestream Meetings
  - Open meetings law recognizes that electronic meetings can occur. G.S. 143-318.13.
  - Authorizes video and/or audio recordings to be used as minutes for an official meeting. See G.S. 143-318.143(a), 143-318.10(c).
  - Also recognizes that meetings can be broadcast
  - Notice should state that the meeting will be streamed and should set out how the public can access the stream, as required under G.S. 143-318.13.
- Remote Comments
  - Can allow written comments to be submitted before or after a meeting *in addition to* allowing live comments
    - 160A-81.1; 153A-52.1

# What can we no longer do?

- Ban the public from in-person meetings
  - Open meetings law provides the right to attend
- Allow board members to participate remotely
  - No clear authority authorizing outside of a local rule
  - Still might be challenges to quorum even with a local rule
- Last-minute notice changes
  - Pre-COVID open meetings law notice requirements and county/city statutory notice requirements will apply
- Conduct quasi-judicial hearings remotely

# Lingering questions...

- Can we allow the public to attend remotely in addition to in-person attendance?
  - Why?
    - No clear prohibition
    - Authority to broadcast/record in open meetings law
    - Authority to allow comments from Zoom
  - Why not?
    - Practical issues
      - Cost, logistics
      - May cause ill will with board members

**What's the  
Bottom Line?**



**Questions?**



**Local  
Government  
Law and  
Finance  
Potpourri**

Kara Millonzi





# LG Law & Finance Potpourri

# SL 2021-23: Utilities

Local governments  
and public authorities  
still not regulated by  
State Utilities  
Commission

Amends GS 62-3 to explicitly state:

The term "public utility," except as otherwise expressly provided in this Chapter, **shall not include** the following:

- A municipality, county, or a city, town, or village.
- A special district, public authority, or unit of local government, as those terms are defined in G.S. 159-7(b) and that is subject to the provisions of Chapter 159, Subchapter III, Article 3 of the General Statutes.

# SL 2021-76: System Development Fees

## System Development Fee (SDF)

A local utility may assess a SDF on “new development to fund costs of capital improvements necessitated by and attributable to such new development, to recoup costs of existing facilities which serve such new development, or a combination of those costs...”

New development is defined as any of the following that occurs after the beginning of the fee adoption process, but no more than 1 year before the local unit adopts the fee:

- subdivision of land;
- construction, or any change to an existing structure, that causes an increase in the need for service; or
- any use or extension of the use of land which increases the need for service.

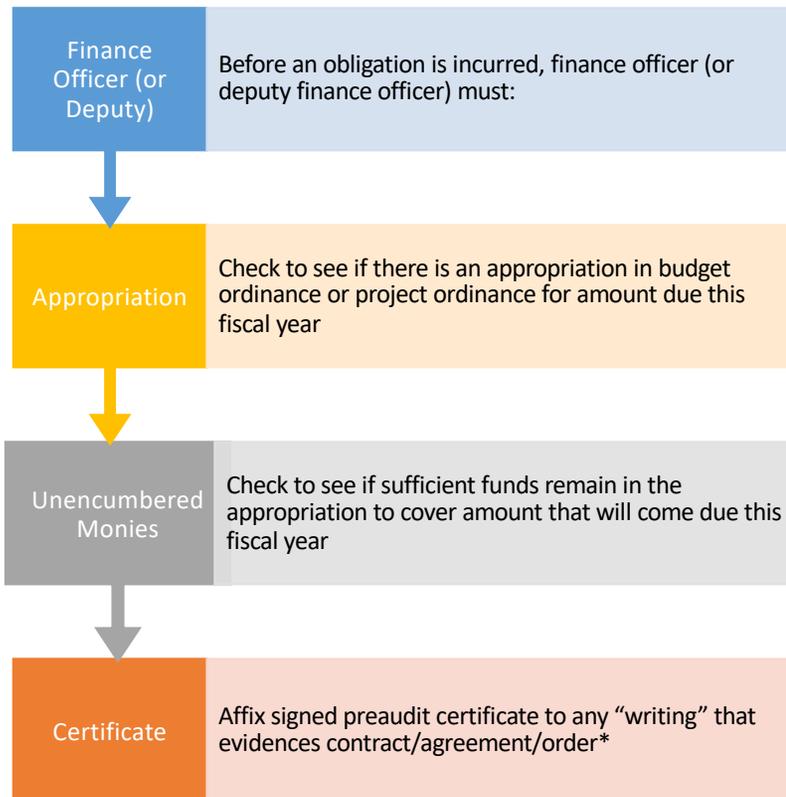
- Makes some clarifying definitional changes
- Specifies that SDF calculation must use the “gallons per day service unit that the local government applies to its water or sewer system engineering or planning purposes for water or sewer”

# SL 2021-124: Sales Tax Allocation Changes

A county board of commissioners chooses the allocation method for local sales and use taxes among the county and its municipalities. The choices are either the per capita method or ad valorem method.

- If a county changes the allocation method of local sales taxes from ad valorem to per capita or vice versa, the change will be delayed by a whole fiscal year.
- County makes change in April 2022; change takes effect for FY 2023-24 (not FY 2022-23 as before)

# SL 2021-58: Preaudit Process



(a3) Use of Automated System for Preaudit. – An automated financial computer system may be used to meet the requirements of subsection (a1) of this section if an annual certification is filed with the Secretary of the Commission pursuant to subsection (a4) of this section. The provisions of this subsection do not apply to transactions exempted by statute from the preaudit requirement. The automated computer system must have all of the following:

- (1) Embedded functionality that determines that there is an appropriation to the department, function code, or project in which the transaction appropriately falls.
- (2) Functionality ensuring that unencumbered funds remain in the appropriation to pay out any amounts that are expected to come due during the budgeted period.
- (3) Real-time visibility to budget compliance, alert threshold notifications, and rules-based compliance measures and enforcement.

(a4) Annual Certification of Automated Preaudit System. – When an automated financial computer system is used to meet the requirements of subsection (a1) of this section, the finance officer shall certify to the Secretary of the Commission no later than 30 days after the start of the unit's or public authority's fiscal year that the automated financial computer system meets all the requirements of subsection (a3) of this section. The Secretary may reject or revoke the finance officer's certification if the annual audit for the unit's or public authority's immediately preceding fiscal year includes a finding of budgetary noncompliance or if the Secretary determines that the automated financial computer system fails to meet the requirements of subsection (a3) of this section.

# SL 2021-58: LGC & P3

P3 Statute is a procurement process that allows for an exception to some normal bidding processes for combined public and private development project, where the private investment will be at least 50% of the total costs of the combined projects.

<https://canons.sog.unc.edu/new-construction-delivery-methods-public-private-partnerships-p3/>

## P3 Statute for Construction Contracts (143-128.1C):

If the development contract is entered into by a governmental entity that is a unit of local government as defined in G.S. 159-7, and the unit must finance all or part of its portion of the cost of the project, then the amount financed by the unit is subject to approval by the Local Government Commission as provided in Chapter 159 of the General Statutes. **Approval must be secured prior to the execution of the development contract.**

# SL 2021-58: LGC Enforcement

Changes to  
G.S. 159-181

Specifies that LGC may impound the books and records of any unit of local government or public authority and assume full control of all its financial affairs **when the General Assembly suspends the charter of a municipality**

Authorizes LGC to waive audit requirement for LG or public authority that LGC has assumed control of. If it does so, the LGC must consider making a recommendation to the General Assembly for revocation of the charter or dissolution of the LG or public authority.

# SL 2021-124: Financial Training Requirements

A city or county manager must participate in at least 6 hours of training on fiscal management and the Local Government Budget and Fiscal Control Act if:

- The LGC has assumed financial control of the LG
- The LG has received a unit letter from the LGC due to a deficiency in complying with the Local Government Budget and Fiscal Control Act
- The LG has an internal control material weakness or significant deficiency in the most recently completed financial audit
- The LG is included on the most recently published Unit Assistance List

Training may be provided by the LGC, SOG, NCLM, NCACC, Community Colleges, or other qualified providers, but must be approved by the LGC

Also clarifies who may provide required training for finance officers

# SL 2021-124: Unsustainable Municipalities

Review, Rehabilitation, and/or Dissolution of Unsustainable Municipalities

Establishes LGC-initiated and LG-initiated processes to do a thorough review of revenues and assets of a struggling municipality, formulate and implement an improvement plan (including partnering with other LGs), and, if it is not financially sustainable, a plan to dissolve the municipality

Also allows for citizens to petition for referendum on dissolution

# SL 2021-191: Audits

If LG or public authority is subject to investigative audit with findings by State Auditor, the LGC may require the LG or public authority to select the certified public accountant to conduct the audit from a list of 3 options provided by the LGC. The auditor must report directly to LGC. (The LGC may require this for up to 3 fiscal years after the investigative audit with findings.)

Applies to any unit that has been subject to investigative audit by State Auditor on or after July 1, 2018

# SL 2021-191: Garnishing Board Member Compensation

Directs finance officer of municipality or county to garnish compensation paid to chair or other board member to collect any unpaid monies due to the LG for LG services until such debt is paid in full using attachment and garnishment procedures. (10% limit does not apply)

# SL 2021-191: No Financial Benefit from Public Office

Effective January 1, 2022:

No elected officer of a political subdivision of this State shall solicit or receive personal financial gain from the political subdivision of this State for which that elected officer serves by means of intimidation, undue influence, or misuse of the employees of that political subdivision of this State.

This section shall not apply to financial gain received from a political subdivision of this State for acting in the elected official's official capacity or financial gain received with the approval of the governing board of the political subdivision of this State for which that elected officer serves.

Violation of this section shall be a Class H felony.

# SL 2021-191: Nonprofit Contracts

Effective January 1, 2022

## § 14-234.3. Local public officials participating in contracts benefiting nonprofits with which associated.

- (a) No public official shall knowingly participate in making or administering a contract, including the award of money in the form of a grant, loan, or other appropriation, with any nonprofit with which that public official is associated. The public official shall record his or her recusal with the clerk to the board, and once recorded, the political subdivision of this State may enter into or administer the contract.
- (b) Anyone knowingly violating this section shall be guilty of a Class 1 misdemeanor. The exceptions listed in G.S. 14-234(b) and (d1) through (d5) shall apply to this section.
- (c) A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when (i) an immediate termination would result in harm to the public health or welfare and (ii) the continuation is approved as provided in this subsection. A political subdivision of this State that is a party to the contract may request approval from the chair of the Local Government Commission to continue contracts under this subsection.
- (d) For purposes of this section, the following definitions shall apply:
- (1) Nonprofit with which that public official is associated. – A nonprofit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the public official is a director, officer, or governing board member, excluding any board, entity, or other organization created by this State or by any political subdivision of this State.
  - (2) Participate in making or administering a contract. – Any of the following actions by a public official:
    - Deliberating or voting on the contract.
    - Attempting to influence any other person who is deliberating or voting on the contract.
    - Soliciting or receiving any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the political subdivision of the State with the not-for-profit with which that public official is associated.
  - (3) Public official. – Any individual who is elected or appointed to serve on a governing board of a political subdivision of this State. The term shall not include an employee or independent contractor of that political subdivision of this State."

# 2021-180: State Budget

Lots of ARP Funding

## Weekly ARP Office Hours:

<https://unc.zoom.us/j/94011361206?pwd=MjlzWnlzOWxtNGtoUjNjaEV3ZWNPdz09>

Meeting ID: 940 1136 1206

Passcode: 522329

## Upcoming ARP Office Hours:

- Thursday, December 16, at 8:30am
- Wednesday, January 5, at 12:00pm
- Thursday, January 13, at 8:30am
- Friday, January 21, at 12:00pm
- Tuesday, January 25, at 8:30am

Videos & Materials  
from 6-day ARP/CLFRF  
course available for free  
– Register [Here](#)

## Coates' Canons: NC Local Government Law

[About this Blog](#) [About the Authors](#)

### » AMERICAN RESCUE PLAN ACT (ARPA) FUNDING

- » American Rescue Plan Act: Aid for Small Businesses and Nonprofits with ARP/CLFRF
- » American Rescue Plan Act of 2021 (ARP/CLFRF): Using ARP/CLFRF to Provide Premium Pay for Local Government Employees
- » American Rescue Plan Act of 2021 (ARP): Using ARP Funds to Pay Employee Vaccination Incentives
- » American Rescue Plan Act of 2021 (ARP): US Treasury's Reporting Requirements and Deadlines
- » American Rescue Plan Act of 2021 (ARP): Local Government Expenditures of ARP funds for General Government Purposes
- » American Rescue Plan Act of 2021 (ARP): Accepting Funds, Budgeting & Cash Management
- » American Rescue Plan: Local Government Funding for Affordable Housing Development
- » IRS Issues Guidance on COBRA Premium Assistance
- » American Rescue Plan Act of 2021: Funding Updates for NC Local Governments
- » American Rescue Plan Act of 2021: Local Government Authority to Expend their Allocations



**SCHOOL OF  
GOVERNMENT**

# State School Capital Funding

Public School Building Capital Fund: \$100,000,000

Revamped Needs-Based Public School Capital Fund: \$145,252,612

**Eligible County:** Adjusted market value of taxable real property of less than \$40B

**County Matching Requirement:** will vary from 0-35% depending on adjusted market value of taxable real property

**Granting Priorities:**

- Tier 1 Counties
- Counties with greater need and less ability to generate sale and property tax revenue
- Counties with high debt-to-tax ratio
- Project address critical deficiencies
- Projects with new construction or complete renovation of existing facilities
- Projects that will consolidate 2 or more schools
- Counties that have not received a grant in previous 3 years

**Use of Funds:**

- Construction of new school buildings and additions, repairs, and renovations
- Lease agreements (under certain circumstances)

**Grant Amounts:**

- Elementary school: up to \$30m
- Middle school (or combo): up to \$40m
- High school: up to \$50m

New Public School Repair & Renovation Fund: \$30,000,000

# Plan for Changes to LGC Monitoring Process

- DST and LGC directed to evaluate the State's current system for monitoring the financial operations of LGs and public authorities and approving debt issuances.
- New monitoring system must:
  - Use value added approach
  - Direct staffing resources to units in greatest need
  - Implement reporting schedule based on unit's financial health
  - Standardize training of LG officials and staff
  - Compel LGs to comply with LGC directives
  - Clearly defines "fiscal distress"
  - Expands criteria for monitoring fiscal health
- Final Report due by May 2022

# Expanded County Broadband Grant Authority

Terrestrially deployed internet access service with transmission speeds of at least 25 megabits per second (Mbps) download and at least 3 megabits per second upload (25:3)

Counties now may use property tax proceeds, other general fund revenues and state and local grant funds.

No "double-dipping"

26 **"§ 153A-459. Authorization to provide grants. County broadband acceleration.**  
27 A county may provide grants to unaffiliated ~~qualified private or nonprofit~~ providers of  
28 ~~high-speed Internet access service, broadband service,~~ as that term is defined in  
29 ~~G.S. 160A-340(~~ G.S. 143B-1373(a)(2) for the purpose of expanding broadband service in  
30 unserved areas ~~for economic development~~ in the county. The grants shall be awarded on a  
31 technology neutral basis, shall be open to ~~qualified applicants,~~ all private or nonprofit providers  
32 of broadband service, and may require matching funds by the private ~~provider or nonprofit~~  
33 providers. A county shall seek and consider requests for proposal from ~~qualified private~~ providers  
34 ~~within the county~~ prior to awarding a broadband grant and shall use reasonable means to ensure  
35 that potential applicants are made aware of the grant, ~~including, at a minimum, compliance with~~  
36 ~~the notice procedures set forth in G.S. 160A-340.6(e).~~ grant; provided, however, a county is not  
37 required to seek and consider requests for proposal when providing financial or other support in  
38 conjunction with the grant.  
39 G.S. 143B-1373(a)(2). The county may use general fund revenue as well as State or well as  
40 State or federal funds for the grants. provider  
41 of the  
42 grant proposal. For purposes of this section, the term "unserved area" has the same meaning as  
43 in G.S. 143B-1373(a)(14). For any grants awarded pursuant to this section after the date this  
44 section becomes effective, the term "unserved area" shall not include any location where a private  
45 provider has been designated to receive funds through State- or federally funded programs  
46 designed specifically for broadband service deployment if the recipient of the funding is in good  
47 standing with the grantor agency's requirements regarding construction build-out and time lines.  
48 Nothing in this section authorizes a county to provide high-speed Internet broadband service."

# State Broadband Programs

## Multiple Options for Broadband Expansion:

1. SL2021-180, Section 38.1, revises GS143B-1373 (GREAT program, as previously established for State funds)  
\*This program will not be offered in 2022, due to offering of #2.
2. SL2021-180, Section 38.4, revises GS143B-1373 (GREAT program leveraging Federal ARP/State and Local Recovery Funds for state match)  
\*This program will be offered in 2022 as the primary broadband effort for the state. Guidance forthcoming in early 2022.
3. SL2021-180, Section 38.6, establishes GS143B-1373.1, Completing Access to Broadband.  
\*New program offered by Broadband Infrastructure Office in the Department of Information Technology for unserved and underserved areas; priority given to projects not approved under Item #2 above. Guidance from forthcoming in 2022.

# Key Items to Consider

(based on current understanding of ARP rules)

- Unserved Areas: areas that lack access to a **wireline** connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload
- ARP Funds Only Used for Broadband Projects: Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:
  - (i) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or
  - (ii) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting the standards set forth in paragraph (e)(2)(i) of this section:
    - (A) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and
    - (B) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed (by 2026, per SL2021-108).

# Language in Federal Register

- In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources.
- Does this mean SpaceX/StarLink or other WISP provider areas are not included as “Served”?

# Potentially Conflicting Language

- Sections 38.1, 38.4, and 38.6 still limit use to unrestricted/nonrestricted general funds.
- GS 153A-459 states “For any grants awarded pursuant to this section after the date this section becomes effective, the term "unserved area" shall not include any location where a private provider has been designated to receive funds through State or federally funded programs designed specifically for broadband service deployment if the recipient of the funding is in good standing with the grantor agency's requirements regarding construction build-out and time lines.”
  - In effect, this makes it impossible for a County “going at it alone” with ARP funds for broadband projects to receive future state or federal funds for these efforts.

**Questions?**



# Reporting Requirements for Cybersecurity Incidents

Shannon Tufts



# Cybersecurity Incident Reporting Requirement

## G.S. 143B-1379(c), amended by SL2021-180

(c) County and municipal government agencies Local government entities, as defined in **G.S. 143-800(c)(1)**, shall report cybersecurity incidents to the Department. Information shared as part of this process will be protected from public disclosure under G.S. 132-6.1(c). Private sector entities are encouraged to report cybersecurity incidents to the Department.

**G.S. 143-800(c)(1):** Local government entity. – A local political subdivision of the State, including, but not limited to, a city, a county, a local school administrative unit as defined in G.S. 115C-5, or a community college.

# Methods of Contact to Report Cybersecurity Incident

- NCLGISA Strike Team: [itstriketeam@nclgisa.org](mailto:itstriketeam@nclgisa.org) or (919) 726-6508
- NC ISAAC: [ncisaac@ncsbi.gov](mailto:ncisaac@ncsbi.gov) or 919-716-1111
- NCDIT: <https://it.nc.gov/resources/cybersecurity-risk-management/statewide-cybersecurity-incident-report-form>
- FBI IC3: <https://www.ic3.gov/>
  - If you have a situation involving financial fraud, like business email compromise or direct deposit fraud, please contact the FBI first because there is a ~72 hour window for fund recovery before it is moved off-shore.

## Article 84, Various Technology Regulations. G.S. 143-800: State entities and ransomware payments.

- (a) No State agency or local government entity shall submit payment or otherwise communicate with an entity that has engaged in a cybersecurity incident on an information technology system by encrypting data and then subsequently offering to decrypt that data in exchange for a ransom payment.
- (b) Any State agency or local government entity experiencing a ransom request in connection with a cybersecurity incident shall consult with the Department of Information Technology in accordance with G.S. 143B-1379. **(Reporting requirement)**
- (c) The following definitions apply in this section:
- (1) Local government entity. – A local political subdivision of the State, including, but not limited to, a city, a county, a local school administrative unit as defined in G.S. 115C-5, or a community college.
  - (2) State agency. – Any agency, department, institution, board, commission, committee, division, bureau, officer, official, or other entity of the executive, judicial, or legislative branches of State government. The term includes The University of North Carolina and any other entity for which the State has oversight responsibility."

# New Cybersecurity Incident Language

- **G.S. 143B-1320(a)(14a)** Ransomware attack. – A cybersecurity incident where a malicious actor introduces software into an information system that encrypts data and renders the systems that rely on that data unusable, followed by a demand for a ransom payment in exchange for decryption of the affected data.
- **G.S. 143B-1379(c)** Local government entities, as defined in G.S. 143-800(c)(1), shall report cybersecurity incidents to the Department. Information shared as part of this process will be protected from public disclosure under G.S. 132-6.1(c). Private sector entities are encouraged to report cybersecurity incidents to the Department.
- **G.S. 143B-1322(c)** Administration. – The Department shall be managed under the administration of the State CIO. The State CIO shall have the following powers and duty to do all of the following: ...
  - (22) Coordinate with the Department of Public Safety to manage statewide response to cybersecurity incidents, significant cybersecurity incidents, and ransomware attacks as defined by G.S. 143B-1320.

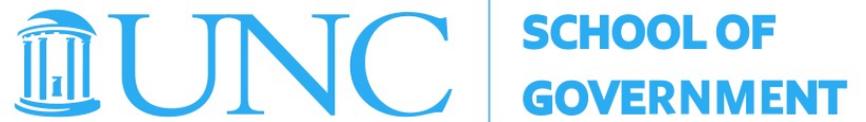
**Questions?**



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# 2021 LOCAL GOVERNMENT LEGISLATIVE UPDATE

Thank you!



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