



2011 and 2012 North Carolina Planning and Development–Related Legislation

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The 2011 and 2012 sessions of the North Carolina General Assembly enacted a number of provisions affecting the planning community. Among the more notable are new exemptions from municipal development regulations for agricultural uses located within municipal extra-territorial planning areas, limits on use of development moratoria when applied to residential land uses, and new standards for when inspections can be made of residential properties. There were major changes to state policy on municipal annexation that now require support of residents of areas proposed to be annexed. Other laws set new standards for political signs in public rights of way; cover selective removal of vegetation in rights of way to improve billboard visibility; address recovery of natural gas from deep shale formations; and are directed at restructuring of state agencies and programs dealing with environmental protection.

Zoning and Development Regulation

Agriculture and Local Government Planning

Bona Fide Farms and Local Planning Jurisdiction

For many years farms and agricultural activities have enjoyed special treatment under various North Carolina environmental and land use regulatory programs. One of the more well-known examples involves county zoning. A “bona fide farm” has been entirely exempt from such zoning, although nonfarm uses of farm properties are still subject to county zoning.

S.L. 2011-363 (H 168) advances the cause of agriculture by amending Section 153A-340 of the North Carolina General Statutes (hereinafter G.S.) to list specific items of proof that a landowner may provide to demonstrate that certain property functions as a farm. These include (1) a farm sales tax exemption certificate; (2) a copy of the property tax listing showing that the farm qualifies for the present-use-value property taxation that applies to agricultural, horticultural,

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and forestry uses; (3) a copy of the farm operator's federal income tax form that demonstrates farm activity; (4) a forestry management plan; or (5) a farm identification number issued by the U.S. Department of Agriculture.

S.L. 2011-363 also adds a new G.S. 160A-360(k) to provide that land being used for bona fide farm purposes is exempt from a municipality's exercise of its powers in its extraterritorial planning jurisdiction (ETPJ). This new municipal ETPJ exemption applies not only to municipal zoning, but also to municipal subdivision control, building and housing code enforcement, soil erosion and sedimentation control, flood hazard protection regulations, stormwater control, community development authority, acquisition of open space, and other powers that a municipality may exercise in its ETPJ. Land used for farm purposes can be included within the geographic area of a city's extraterritorial boundary. That land is then exempt from city jurisdiction while in active farm use but becomes subject to city jurisdiction upon the cessation of that use.

Finally, S.L. 2011-363 goes on to amend the annexation statutes (specifically, G.S. 160A-58.54(c)) to provide that land used for farming purposes may not be made subject to any form of municipal-initiated annexation without the consent of the owners if the land was used for farm purposes on the date the municipal resolution of intent to consider annexation was adopted.

A related local act (S.L. 2011-34 (S 263)) became law (April 12, 2011) before S.L. 2011-363 (which became effective June 27, 2011). S.L. 2011-34 purports to allow each of the twelve municipalities in Wake County to exempt accessory buildings on bona fide farms from the "building code" to the same extent as the buildings would be exempt from county zoning if it applied. Exactly what this means may be academic, however, because S.L. 2011-363 prohibits all municipalities from enforcing the State Building Code (SBC) or any other planning and development-related regulation in their respective extraterritorial planning jurisdictions.

County Large-Lot Zoning

Section 5 of S.L. 2011-384 (H 806) was adopted in order to reverse the effect of a particular North Carolina Court of Appeals case.

In *Tonter Investments, Inc. v. Pasquotank County*, 199 N.C. App. 579, 681 S.E.2d 536 (2007), *review denied*, 363 N.C. 663, 687 S.E.2d 296 (2009), the court of appeals upheld the ability of a county to establish development standards in zoning districts that include large lots (over 10 acres) that were exempt from land subdivision regulations. The county ordinance that was upheld prohibited all residential uses in one of its agricultural zoning districts (A-2). It also prohibited *any* building or structure from being located on a lot unless (1) the lot included a minimum of 25 feet of frontage on a state road or a private road approved in accordance with the county subdivision ordinance and (2) the lot was located within 1,000 feet of a public water supply. The county offered the following rationales for the prohibitions: (a) the lack of improved roads in areas zoned A-2; (b) the potential strain on the county's ability to provide essential public services in these areas; (c) the fact that only five residences currently existed in the district; and (d) the aerial application of pesticides within a large part of the district. As a result, the court found that the ordinance provisions were based on concern for public safety and that the landowners were still allowed to make other uses of the land, as allowed by the county.

In reaction to this ruling, the General Assembly enacted S.L. 2011-384 to amend G.S. 153A-340 to provide that a county may not in its zoning ordinance prohibit the single-family residential use of lots exceeding 10 acres in various circumstances. First, such a prohibition is impermissible in districts where more than half of the land is used for agricultural or silvicultural (forestry) purposes. Certain commercial and industrial districts are excepted. Second, such a prohibition may

not be adopted because the lot lacks frontage on a public or approved private road. Finally, the prohibition may not be adopted because the lot is not served by public water or sewer lines.

Section 6 of S.L. 2011-384 does, however, direct the Legislative Research Commission (LRC), in consultation with the North Carolina Homebuilders Association and the North Carolina Association of County Commissioners, to study “the extent to which counties shall be able to require that lots exempt from county subdivision regulations must be accessible to emergency service providers.” The LRC is to report to the General Assembly by January 15, 2013.

Voluntary Agricultural Districts

S.L. 2011-219 (H 406) makes several changes to North Carolina’s voluntary agricultural district legislation. It amends G.S. 106-737 to remove one of the primary requirements for participation in the program, the requirement that the farm property be enrolled in the state’s present-use-value property taxation program or at least be eligible to so participate. Instead, the property must simply be put to agricultural use. In addition, S.L. 2011-219 amends G.S. 121-41 to provide that a conservation agreement entered into for the purpose of enrolling property in a voluntary agricultural district need not be recorded unless the agreement is irrevocable as provided by G.S. 106-743.2.

A related act, S.L. 2011-251 (S 499), clarifies that Agricultural Development and Farmland Preservation programs are to be administered and supervised by the North Carolina Department of Agriculture and Consumer Services.

Limits on Development Moratoria

The use of development moratoria has been controversial in several communities in the state. In 2005 the General Assembly adopted G.S. 153A-340(h) and 160A-381(e) to establish the framework for county and city adoption of temporary moratoria on development approvals. In 2009 the Senate approved a bill that would have prohibited use of any moratorium adopted “for the purpose of developing and adopting new or amended ordinances.” That bill was not, however, taken up by the House of Representatives.

In 2011 a somewhat narrower limitation on the use of moratoria was adopted. S.L. 2011-286 (H 332) amends the two statutes mentioned above to provide that moratoria as to residential uses may not be applied for the purpose of developing or adopting plans or ordinances. Moratoria can still be adopted for commercial, industrial, and other non-residential uses and may still be applied to residential uses if the purpose of adoption is other than to allow time for plans or ordinances to be prepared and adopted.

Statute of Limitations

The General Assembly in 1981 added to the zoning enabling statutes an explicit nine-month statute of limitations for challenges of legislative zoning decisions. This time period was shortened to two months in 1996. In 2011 the legislature extended the time period for bringing judicial challenges to the validity of some zoning ordinance amendments, adoptions, or repeals.

S.L. 2011-384 (H 806) extends the time period to challenge legislative decisions to one year in many instances and as much as three years in others, but it retains the two-month limit for zoning map amendments. The new statute of limitations has three components:

1. *Zoning map amendments.* G.S. 1-54.1 sets a two-month statute of limitations for legislative zoning decisions that involve adopting or amending a zoning map

- or approving a request for a rezoning to a special or conditional use district or a conditional district, with such action accruing upon adoption of the ordinance or amendment. So for zoning map amendments, the law is essentially unchanged.
2. *Zoning text amendments.* G.S. 1-54(10) sets the general rule of a one-year statute of limitations to contest the validity of a zoning or unified development ordinance other than the map amendments noted above. In addition to lengthening the time period, the law also now provides that in these instances the action accrues when the party bringing the action first has standing, so the one-year clock does not start to run until a person acquires standing to challenge the ordinance. There is a limit on this, however, as a challenge based on alleged defects in the adoption process must be brought within three years of the challenged adoption.
 3. *Zoning enforcement actions.* G.S. 153A-348(c) and 160A-364.1(c) restate these statutes of limitation and provide that they do not prohibit a party in a zoning enforcement action and persons appealing a notice of violation from raising the invalidity of the ordinance as a defense. Apparently a challenge to the validity of an ordinance can be raised whenever the enforcement action is brought, regardless of how long the ordinance has been in effect. As with challenges to text amendments, the law does provide that a challenge based on alleged defects in the adoption process must be brought within three years of the challenged adoption.

Local Bills

In 2009 the General Assembly authorized expedited notice of violations for chronic violators of municipal over-grown lot and both city and county public nuisance ordinances. G.S. 160A-200 and -220.1; 153A-140.2. In 2011 the legislature adopted a comparable provision for chronic violators of the Winston-Salem and Forsyth County zoning ordinances. S.L. 2011-142 (H 558) applies to violations by chronic zoning violators, defined as persons who own property whereupon the city or county took remedial action under the zoning ordinance at least three times in the previous eighteen months. The law allows the city or county to notify chronic violators that if their property is found to be in violation during the calendar year in which this notice is provided, the government shall without further notice take action to remedy the violation, and the expense of that action shall become a lien on the property. The notice must be made by registered or certified mail, as well as by regular mail and by posting the property. If the regular mail is not returned in ten days and the registered or certified mail is refused or unclaimed, the regular mail notice is deemed sufficient.

Bills Not Adopted

Design Standards

While many communities rely on public and private investments and voluntary compliance to address aesthetic issues, local governments increasingly apply regulatory design standards on commercial developments and in particular areas such as historic districts, important entry corridors, particular residential neighborhoods, and downtown areas.

A number of communities have reformed their development regulations to focus on physical design features—particularly the dimensions and locations of buildings and streets—rather than on land uses, as is done with traditional zoning. Davidson, for example, has adopted a variation of a form-based code and other jurisdictions have actively considered incorporating some aspects of this approach (including Raleigh and Chapel Hill). These “form-based” codes

typically address the form and mass of buildings and the scale and types of streets and blocks. Building heights, building placement, the design of building fronts, and the relation of buildings to streets, sidewalks, and public open spaces become the focus of the regulation, as opposed to the focus on the use of land and buildings that is typical of traditional zoning regulation. It is common for some elements of a form-based code to be incorporated within a more traditional use-based zoning code.

Most aspects of form-based codes are within the expressly authorized portions of delegated local government regulatory authority. The zoning enabling statute specifically authorizes regulation of the height and size of buildings, the location of buildings and structures, and the size of open spaces. The foundation of these codes is generally a regulating plan that is based on community preferences for the physical form in which development will take place. The codes are often developed for a discrete geographic area, such as a downtown or a particular neighborhood. They frequently include standards for the form of buildings on a particular parcel or block as well as street design standards. Some include more detailed architectural standards to regulate building styles, features, details, and building materials. The use of graphics and architectural design guidelines is another common feature of form-based codes.

This increased attention on design features has created some apprehension, particularly for residential builders. These concerns have led to legislative consideration of limitations on the use of design standards in local development regulations. A proposal to add “design” to the list of explicitly authorized zoning tools was discussed during the 2005 comprehensive revisions to the zoning statute. Concerns from homebuilders about defining the scope of such authority led the bill sponsors to drop consideration of that idea. In 2011 the concern about use of design standards resulted in consideration of Senate Bill 731, which was approved by the Senate but not by the House of Representatives. The original version of the bill would have precluded application of design standards to any residential building with four or fewer units except in historic districts or where the standard(s) related to fire and life safety issues. After much discussion, the version of the bill that passed in the Senate made the limits on design standards applicable only for single-family residential structures in zoning districts with densities of five or fewer units per acre. In addition to historic districts and landmarks, the bill also allowed design standards imposed as conditions related to density bonuses, open space modifications, or modifications of buffers, setbacks, lot size, or screening requirements. Manufactured home design standards were also exempted. In the early days of the 2012 session, there was additional discussion about this bill and potential compromises. Those discussions did not result in a consensus, however, and thus no action was taken on the bill in 2012.

Family Health Facilities

A recurring issue in some communities has been the location of temporary housing for health care providers on lots that already have principal dwellings. House Bill 887, which passed in the House of Representatives in 2011 but not in the Senate, would have mandated that both city and county zoning allow these uses. The bill would have required that a temporary residence for a relative providing care for a mentally or physically impaired person be allowed as a permitted accessory use in any single-family zoning district. Special or conditional use permits could not be required. The bill limited the temporary structure in several ways. It would have had to have been a transportable unit primarily assembled off-site, be no more than 300 square feet in size, be limited to occupancy by one person, not be placed on a permanent foundation, meet all

setbacks and any maximum floor area ratios applicable to the primary dwelling, and be removed within sixty days after care-giving ceases. The Senate did not take up the bill in 2012.

Nonconforming Shooting Ranges

Senate Bill 560, approved by the Senate in 2011 but not by the House of Representatives, would have provided some degree of protection for nonconforming sport shooting ranges. It would have amended G.S. 14-409.46 to provide that if a sport shooting range relocates due to “condemnation, rezoning, annexation, road construction, or development” to a location in the same county, it must be considered a pre-existing range for the purpose of civil liability, ordinance violation, or nuisance suits as related to noise. If the range relocates to a different county, it must comply with ordinances in effect at the time the property for the new range is purchased. The bill was not considered in 2012.

Video Sweepstakes

Faced with several trial court rulings that “video sweepstakes” games were not covered by the state’s 2006 ban on video poker, there was an expansion of these gaming operations across the state. In 2010 the General Assembly created G.S. 14-306.4 to prohibit use of electronic machines and devices (any “entertainment display”) for playing sweepstake games (defined as any game you enter and thereby become eligible to receive a prize). Legislation was introduced in 2011 to further clarify the ban on video gaming (H 226, S 3), as was legislation to allow and tax this activity. No action was taken to adopt either. In the spring of 2012 the North Carolina Court of Appeals held G.S. 14-306.4 unconstitutional (*see Hest Technologies, Inc. v. State*, 725 S.E.2d 10 (N.C. Ct. App. (2012))). Soon thereafter legislation was introduced to tax these machines (H 1180), but no action was taken.

Electronic Notice of Hearings

Two bills were introduced to allow electronic publication of notices of public hearings in lieu of newspaper publication (H 472, S 773). No action was taken on either.

Community Appearance and Historic Preservation

Campaign Signs

Every election year the proliferation of campaign signs in public street and highway rights-of-way prompts controversy. Although many municipalities have detailed regulations concerning such signs, our state statutes and North Carolina Department of Transportation (NCDOT) rules have been largely silent on the topic of political and election signs.

S.L. 2011-408 (S 315) amends G.S. 136-32 to establish standards for “political” signs in the rights-of-way of both state (the use of “state” in this context, here and throughout this bulletin, refers to roads that are part of the NCDOT highway system) highways and municipal streets, although the regulations clearly seem intended to apply to campaign signs rather than the full range of political signs. A municipality may adopt and enforce its own ordinance prohibiting or regulating the placement of these campaign signs on city streets and those state highways inside city limits that are maintained by the city. If it fails to do so, then the state standards apply inside city limits. In any event, the standards always apply to state roads and highways in all unincorporated areas of North Carolina.

Several standards are particularly notable. Signs may only be displayed from the thirtieth day before the beginning of “one-stop” early voting until the tenth day after the primary or election day. In addition, the new law requires the party erecting the sign to obtain the permission of the owner of any residence, business, or religious property that fronts the right-of-way where the sign is erected. Finally, S.L. 2011-408 makes stealing, defacing, or removing a lawfully placed sign a criminal misdemeanor.

S.L. 2011-408 became effective October 1, 2011, and applies to any primary or general election held on or after that date.

Billboard Visibility and Vegetation Removal

Outdoor advertising displays (billboards) erected in this state along Interstate and federal primary highways have long been subject to a dual set of regulations, one administered by the NCDOT and one administered by local governments that have adopted zoning. As a general rule, local governments may apply more demanding standards to new signs, but state statutes and rules typically govern existing nonconforming signs.

S.L. 2011-397 (S 183) was first introduced as a bill by the outdoor advertising industry both to allow the industry to expand opportunities for the location of “automatic changeable facing signs” (digital signs) and to allow sign owners to clear vegetation from public right-of-ways to allow signs to be better seen by the traveling public. Early versions of S 183 would have allowed digital signs to be reconstructed or erected anywhere that a billboard was located that was nonconforming under a local ordinance, effectively overriding local regulatory authority with respect to digital signs. Local government, planning, and environmental interests reacted strongly to this attempt to preempt local authority, and this language was removed from the bill.

Another concern of the outdoor advertising industry has been whether lawfully erected signs may be seen by the traveling public if vegetation within the highway right-of-way obscures the vista to the sign beyond the edge of the right-of-way. Along certain federal primary highways, the new legislation lets billboard owners cut down trees up to 380 feet from the sign; under prior rules vegetation removal, but not wholesale clear-cutting, was allowed up to 250 feet from the sign. Stricter standards will apply to billboards located inside city boundaries.

S.L. 2011-397 provides that if an outdoor advertising display is to be illuminated and requires an electrical permit (provided by a local government), the electrical permit must be issued if NCDOT has issued a sign permit for the structure. Normally the electrical permit would not be issued until both a local government zoning authority had issued a zoning permit and NCDOT had issued a sign permit. The provision may simply make it more difficult for local governments to enforce zoning regulations applicable to signs by coordinating zoning and building permits. However, it could lead to a claim that local zoning of billboards along federal highways is intended to be preempted entirely.

Historic Preservation

Section 21.2 of S.L. 2011-145 (H 200), the Current Operations and Capital Improvements Appropriations Act of 2011, generally is designed to make the Roanoke Island Commission financially independent. But it also amends G.S. 143B-131.2(b)(1) to provide that the local government that has historic preservation jurisdiction over the Roanoke Island corridor (Manteo), rather than the Roanoke Island Commission, is authorized to require certificates of appropriateness for exterior changes to properties within the corridor and to enforce those certificates. Section 18.1 of S.L. 2012-142 (H 950), the 2012 amendments to the 2011 appropriations act, directs the Roanoke

Island Commission to report quarterly to the chairs of the House Appropriations Subcommittee on General Government and the chairs of the Senate Appropriations Committee on General Government and Information Technology concerning the promotion and development of the Elizabeth II State Historic Site and Visitor Center.

Section 18.2 of S.L. 2012-142 amends G.S. 121-7.7 (the State Historic Sites Special Fund) to make the state history museums and the Maritime Museum subject to the terms of the special fund. Section 18.3 of the same act directs the Department of Cultural Resources to develop comprehensive five-year plans for the Tryon Palace Historic Sites and Gardens and the North Carolina Transportation Plan.

S.L. 2011-367 (H 403) amends G.S. 160A-400.15 to allow a very small class of cities to apply demolition-by-neglect provisions to contributing structures located outside local historic districts. Such a city must (1) have a population of at least 100,000; (2) have designated portions of its central business district and adjacent historic district as an Urban Progress Zone; (3) be a “certified local government” for historic preservation purposes; and (4) be located in a county that has not received such certification.

Boundary Adjustments and Jurisdiction

Annexation

North Carolina cities have since 1959 had the authority to annex adjacent land when those areas became “urban.” Residents of some of these areas have long objected to being annexed into cities against their will. Others have praised the North Carolina laws on annexation as a critical factor in minimizing governmental fragmentation in metropolitan areas and allowing healthy city growth. The debate regarding reform of the annexation statutes has been heated in recent legislative sessions, prompting calls for annexation moratoria, mandatory referenda on annexation, and other modifications of the system.

In 2011 the General Assembly adopted S.L. 2011-396 (H 845) to substantially revise key features of state annexation law. The process (now in G.S. 160A-58.55) and standards for areas to qualify for annexation (now in G.S. 160A-58.54) are largely unchanged. G.S. 160A-58.63 now sets the standard for the degree of precision required for population, land area, and degree of land subdivision. The law no longer has different standards for annexation for small and large cities.

The most significant policy shift in the 2011 legislation was to provide that a proposed annexation is terminated if the owners of 60 percent of the parcels in the proposed annexation area sign petitions to deny the annexation. After the city completes its process and adopts an annexation ordinance, the county board of elections was to send a petition for opposition to the annexation to each property owner (as identified by the county tax assessor) in the affected area. Property owners were allowed 130 days after the adoption of the annexation ordinance to file their petition of opposition. S.L. 2011-173 (S 27) and S.L. 2011-177 (H 56) applied the provisions on involuntary annexations to nine specified recent annexations. The affected municipalities were Asheville, Fayetteville, Goldsboro, Kinston, Lexington, Marvin, Rocky Mount, Southport, and Wilmington.

Cities subject to the retroactive de-annexations challenged the 2011 legislation in court. The trial court held the petition procedure to be invalid as it allowed participation in objecting to an annexation by landowners but not by voters. Rather than waiting for this case to go through the

appellate process, the legislature in 2012 quickly amended the law to replace the petition to veto an annexation with a referendum approval prior to municipal action.

S.L. 2012-11 (H 925) created G.S. 160A-58.64, effective July 1, 2012, to require a referendum of all registered voters in a proposed involuntary annexation area. The referendum is held at the next municipal election that is more than forty-five days after the city adopts a resolution of intent to annex. If the referendum fails, the city may not adopt the annexation ordinance. The city is also then prohibited from beginning a separate annexation process for that area for thirty-six months after the referendum.

The fate of the nine individual municipal annexations that had been subjected to petition review in 2011 (Asheville, Fayetteville, Goldsboro, Kinston, Lexington, Marvin, Rocky Mount, Southport, and Wilmington) was even more severe. S.L. 2012-3 (H 5) legislatively de-annexed all of these territories from their respective cities and prohibits any new involuntary annexation proposals for all of these areas for the next twelve years. S.L. 2012-124 (H 1169) allows reapplication of pre-existing county zoning to the nine areas affected by these de-annexations without the necessity of county hearings on the zoning amendments.

The new annexation law (G.S. 160A-58.56) requires that those cities that provide water and sewer services must extend water and sewer lines to properties within annexed areas within three and a half years if so requested by a majority of the owners. The city must do this at no cost to the property owners. No owner in the annexed area may be charged for initial installation of water or sewer connection lines.

Finally, the law adds provisions to require annexation of high poverty areas in certain circumstances. G.S. 160A-31 requires a city to annex contiguous property if petitioned to do so by the owners of 75 percent of the parcels in a high poverty area. There is a limited exception allowing cities to decline to annex these areas if the debt service to cover the cost of water and sewer extensions exceeds 5 percent of the city's annual water and sewer revenues. Such an annexation can also be requested by two-thirds of the residents of such an area, but annexation in that instance is not mandatory.

In other action regarding annexation, S.L. 2011-57 (H 171) prohibits municipal petitions for voluntary annexation of property it does not own, including street right-of-way easements.

Extraterritorial Jurisdiction

The statute on municipal extraterritorial jurisdiction (ETJ) for planning and development regulation has undergone a number of amendments since its enactment in 1959. The original authorization exempted bona fide farms from municipal zoning coverage because this exemption existed for county zoning. The farm exemption in the extraterritorial area of cities was deleted in 1971 but reinserted into the statutes in 2011.

S.L. 2011-363 (H 168) created G.S. 160A-360(k) to provide that property being actively used for bona fide farm purposes is exempt from a municipality's ETJ for planning and all development regulations. Land used for farm purposes can be included within the geographic area of a city's extraterritorial boundary. That land is then exempt from city jurisdiction while in active farm use but becomes subject to city jurisdiction upon the cessation of that use. This law also provides that property in active farm use may not be annexed into a city without the written consent of the property owner. This law is discussed in more detail above.

In 2012 there was a good deal of discussion, and attendant proposals, about further limiting or even eliminating municipal extraterritorial planning jurisdiction. Among the ideas discussed were abolishing ETJ altogether, prohibiting use of ETJ in counties with countywide zoning or in

areas that are subject to county zoning (H 1043), and explicitly tying ETJ to future annexation or provision of urban services. Notions of allowing ETJ residents to vote in city elections or run for city office were also raised. The proposal that got the most attention involved creating a special legislative study committee to review the related issues of annexation, extraterritorial planning jurisdiction, and provision of urban services (H 281, S 231). These proposals passed in the House of Representatives, but the Senate did not agree, and thus no action was taken. A local bill to strip Boone's ETJ authority (S 949) passed the Senate but not the House of Representatives.

Local Bills

Several local bills made specific changes to jurisdictional boundaries.

In 2011 specified areas were de-annexed from Roanoke Rapids by S.L. 2011-158 (H 367), from Tryon by S.L. 2011-159 (H 486), and from Cape Carteret by S.L. 2011-167 (S 289). S.L. 2011-124 (H 352) delayed a Kannapolis annexation. S.L. 2011-151 (H 358) required Chatham County approval prior to Apex or Cary annexations into the county. Boundary modifications for Morehead City–Beaufort were made by S.L. 2011-179 (H 565) and for Raleigh–Wake Forest by S.L. 2011-162 (H 573). Specifying the Alamance-Orange County boundary line was addressed by S.L. 2011-87 (S 200) and S.L. 2011-88 (S 201).

In 2012 there were seventeen local bills affecting local jurisdiction. The following jurisdictions had territory legislatively annexed to the city: Apex (S.L. 2012-109 H. 1106), Marion (S.L. 2012-97, H 945), and Wilmington (S.L. 2012-138, H 180). The following jurisdictions had territory legislatively de-annexed: Asheville (S.L. 2012-121, H 552); Burgaw (S.L. 2012-124, H 1169), Columbia (S.L. 2012-98, H 963), Elizabethtown (S.L. 2012-103, H 1050, H 1051), Mooresville (S.L. 2012-137, S 876), Morganton, (S.L. 2012-61, H 1032), Roanoke Rapids (S.L. 2012-116, H 1202), and Surf City (S.L. 2012-95, S 900). The following jurisdictions had boundary adjustments made legislatively: Archdale–High Point (S.L. 2012-102, H 1041), Asheville-Woodfin (S.L. 2012-119, H 1217), Butner (S.L. 2012-117, H 1206), Matthews-Stallings (S.L. 2012-110, H 1110), and Orange-Alamance Counties (S.L. 2012-108, H 1090). In other local bills that were adopted, any annexation into Davidson County by a city primarily outside the county now must first be approved by the county board of commissioners (S.L. 2012-54, H 943) and satellite annexation restrictions were relaxed for Ocean Isle Beach (S.L. 2012-96, S 901) and Wallace (S.L. 2012-118, H 1216).

Three new municipalities were authorized in 2011. S.L. 2011-110 (S 431) created the Town of Fontana Dam in Graham County. Two additional towns were authorized subject to the approval by referenda in November 2011 by the qualified voters in the affected areas. These were the Towns of Castle Hayne in New Hanover County (S.L. 2011-166, S 237) and Rougemont in Durham County (S.L. 2011-114, H 292). Voters subsequently rejected both incorporation proposals, by a narrow margin in Rougemont (168 against, 158 in favor) and overwhelmingly in Castle Hayne (620 against, 203 in favor).

Building and Housing Code Enforcement

Inspections of Dwelling Units

S.L. 2011-281 (S 683) stems from an effort on the part of residential landlords to curtail what they have perceived to be overly zealous regulation of residential properties, particularly involving periodic inspections. The law does not apply to inspections of construction work in progress, perhaps the most common kind of inspection that local governments will make. Furthermore,

it specifically does not apply to those periodic inspections (such as fire code inspections) that are specifically required under existing state law. Minimum housing inspections and residential rental licensing/registration systems seem to be the most likely targets.

S.L. 2011-281 allows traditional periodic inspections if certain requirements are met. First, the governing board must designate a target area. Second, no discrimination by housing type is allowed. Third, a public hearing on the inspection program must be held. Finally, a plan must be developed that addresses the ability of low-income property owners to comply with minimum housing standards.

S.L. 2011-281 also allows what might be called “reasonable cause” inspections. In order to conduct such an inspection, the law sets up an elaborate set of factors for determining whether an inspector has such cause. These include the prevalence of prior code violations, whether there is a complaint about or a request that the property be inspected, whether the department has actual knowledge of unsafe conditions, and whether violations are visible from outside the property. The statutes providing for administrative inspection warrants, to be used when a property owner refuses to consent to an inspection, remain unchanged.

Finally, S.L. 2011-281 places various restrictions on residential rental property licensing/registration programs that have been adopted by a small number of cities and on the fees that may be charged for properties that must be enrolled in such a program.

Homeowner’s Exemption from General Contractor License

For some years G.S. 87-1 has provided that a licensed general contractor must superintend and manage a construction project costing more than \$30,000, with one exception: A licensed general contractor is not required if the owner intends to superintend the project him, her, or itself (“itself” applying to firms and corporations) and occupy the building after completion. Proof that such an owner is exempt is necessary to qualify for a building permit. Because this exception has been subject to some abuse, homebuilders and others have pressed for more accountability. S.L. 2011-376 (H 648) formalizes the process for qualifying for the owner exemption. An applicant for a building permit must execute a verified affidavit. First, the applicant must attest that the applicant is the property owner or, in the case of a firm or corporation, is legally authorized to act on behalf of such. Second, the applicant must attest that the owner will superintend and manage all aspects of the construction work and that this job will not be delegated to anyone else. The third attestation adds a new requirement: that the owner will be present for all inspections required under the State Building Code (SBC), unless plans for the building were drawn and sealed by a licensed architect.

The inspection department is directed to transmit a copy of the affidavit to the Licensing Board for General Contractors. If the Board determines that the applicant was not entitled to claim the exemption, then it must notify the inspection department. The inspection department is then directed to revoke the building permit.

Building Code Effective Dates

S.L. 2011-269 (S 708) is designed to ensure that both the 2012 North Carolina Energy Conservation Code and the 2012 North Carolina Residential Code take effect as planned. Both were adopted by the North Carolina Building Code Council on December 14, 2010, and were approved by the Rules Review Commission within several months thereafter. Both became effective January 1, 2012, with a mandatory compliance date of March 1, 2012. In addition, several other changes to the State Building Code (SBC) were approved by the Building Code Council on April

21, 2011, effective January 1, 2012. These changes include certain appendices to the 2012 North Carolina Fire Code and seven changes to the 2012 North Carolina Residential Code.

Exemptions from the State Building Code

According to G.S. 143-138(b4)(1), the “building regulations” of the North Carolina State Building Code (SBC) do not apply to “farm buildings” located in a county’s building code enforcement jurisdiction. Several acts adopted in 2011 and 2012 expanded this exemption.

In 2009 G.S. 143-138(b4)(1) was amended to clarify that building regulations do not apply to structures associated with the care, management, boarding, or training of horses and the instruction and training of riders. However, the 2009 law also provided that a farm building associated with horses was not exempt if it were to be used for a spectator event at which more than ten members of the public were to be present.

Action by the 2011 General Assembly served to expand that exemption. S.L. 2011-364 (H 329) removed the requirement that regulations apply to buildings used for equine spectator events at which more than ten members of the public are present. Thus house arenas now are generally not subject to the building regulations. The 2011 law, however, does provide that all such buildings are subject to an annual safety inspection by city or county inspectors of any grandstands, bleachers, or other spectator-seating structures in the building. The spectator-seating structures must comply with any building regulations that are in effect at the time of the construction of the spectator-seating.

The exemption was expanded still further in 2012. S.L. 2012-187 (S 810) amended G.S. 143-138(b4) to include structures used for the display and sale of farm produce. In order to qualify, a structure may not include floor area greater than 1,000 square feet, must be open to the public no more than 180 days per year, and must be certified by the state to be a roadside farm market.

A different exemption concerns industrial machinery. Since 2007 the SBC has been inapplicable to design, construction, location, installation, or operation of “industrial machinery,” defined as “equipment or machinery used in a system of operations for the explicit purpose of producing a product.” That term does not include “equipment that is permanently attached to or a component part of a building and related to general building services such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and general electrical transmission.” S.L. 2012-34 (H 813) expands the exemption to include equipment and machinery acquired by a state-supported center providing testing, research, and development services to manufacturing clients.

Other Building Code Issues

S.L. 2012-90 (S 798), the omnibus emergency management act, established a permanent Joint Legislative Emergency Management Oversight Committee. Among the topics that this committee is authorized to study is “whether the State building code sufficiently addresses issues related to commercial and residential construction in hurricane and flood prone areas.”

Related Issues

The State Building Code (SBC) requires that certain kinds of smoke alarms be installed in single-family and multi-family residential dwelling units whenever new construction, new occupancy types, or the rehabilitation of existing units occurs. However, smoke alarm requirements also apply to existing rental units for which no construction work is involved. S.L. 2012-92 (S 77), as amended by section 50 of S.L. 2012-194 (S 847), amends the state’s landlord-tenant

laws (G.S. 42-42 to -44) to upgrade the requirements for alarms in existing residential rental units, effective December 31, 2012. S.L. 2012-92 generally requires a landlord subject to those laws to install a tamper-resistant ten-year lithium battery smoke alarm whenever a landlord is otherwise obligated by law to install or replace a smoke alarm.

Building Code Review Involving State Buildings

In 2009 the General Assembly transferred the responsibility for reviewing state building plans for compliance with the State Building Code (SBC) from the Department of Insurance (NCDOI) to the Department of Administration (NCDOA). It also transferred four building code review positions from NCDOI to NCDOA. They were to be funded from the Insurance Regulatory Fund through fiscal 2011–2012 and from the State Property Fire Insurance Fund thereafter. Section 20.3 of S.L. 2012-142 (H 950) makes the funding of these positions from the Insurance Regulatory Fund permanent.

Inspection Departments Must Handle Lien Information

In order to ensure that they are properly paid, general contractors and subcontractors may perfect liens against real property owners for the work that the contractors and subcontractors perform. Although these liens may be established and recorded in the chain of title, the existence, amount, and timing of them sometimes lead to confusion. S.L. 2012-158 (S 42) is designed to make information about liens more available. It establishes “lien agents”—title insurance companies registered by NCDOI—that are to be selected by property owners to serve as intermediaries and contacts for contractors, subcontractors, owners, and others.

The new law affects Building Code officials and inspection departments in several ways. First, the new law amends G.S. 160A-417, G.S. 153A-357, and G.S. 87-14 to provide that any applicant for a building permit for improvements for which a lien agent is required must include the contact information for the lien agent in the permit application. This contact information for the lien agent must be “conspicuously set forth in the permit or in an attachment thereto.” Furthermore, the inspection department must maintain this lien agent information “in the same manner and in the same location in which it maintains its record of building permits issued.” Just to ensure that this lien agent contact information is available, the new law directs that any building permit issued under the law be “conspicuously and continuously posted on the property for which the permit is issued until the completion of all construction.”

S.L. 2012-158 (S 42) does not become effective until April 1, 2013, so inspection departments have plenty of time to prepare for its implementation.

Transportation

Board of Transportation Reforms

The Joint Legislative Transportation Oversight Committee recommended a package of bills for the 2012 session. Several of these were consolidated into S.L. 2012-84 (S 890). The law codifies several reforms previously mandated by gubernatorial executive order. It amends G.S. 143B-350 to move decision making on approval of highway construction plans and projects and construction contracts from the Board of Transportation to the Secretary of Transportation. It also amends G.S. 136-18 to require the North Carolina Department of Transportation (NCDOT) to use “professional standards” in selecting transportation projects. The process must

be a “systematic, data-driven process that includes a combination of quantitative, qualitative input, and multimodal characteristics, and should include local input.” In addition, NCDOT is directed to develop a process for standardizing or approving local methodologies used by Metropolitan Transportation Planning Organizations (MPOs) and Regional Transportation Planning Organizations (RPOs) in setting priorities. Finally, the law amends G.S. 143B-350 to strengthen the ethics requirements for members of the Board of Transportation. At each meeting, each Board member must sign a sworn statement saying that he or she has no financial, professional, or other interest in any project being considered. If a member has a conflict of interest, then S.L. 2012-84 requires the Board chair and the member to take “all appropriate steps to ensure that the interest is properly evaluated and addressed in accordance with (the) law and that the member is not permitted to act on any matter in which the member has a qualifying conflict of interest.” A related provision in the 2012 amendments to the 2011 appropriations act, section 24.16 of S.L. 2012-142 (H 850), makes members of MPOs and RPOs subject to the State Ethics Act, effective January 1, 2013.

Transportation Project Programming

Several provisions of the Current Operations and Capital Improvements Appropriations Act of 2011 (S.L. 2011-145, H 200) remove limitations that apply to NCDOT road projects and enhance the role of the private sector in Department projects. Section 28.3 of S.L. 2011-145 removes the limitations on pilot projects for public-private partnerships for litter control and for providing traveler information at NCDOT rest stops. Section 28.4 removes the cap on the number of design-build transportation projects that the state may build. Section 28.9 directs NCDOT to increase the privatization of design and engineering work in highway projects.

Several changes affect the state’s Urban Loop Program and the Mobility Fund. Section 28.31A of S.L. 2011-145 reallocates \$25 million from the Highway Trust Fund to urban loop projects. A companion subsection, 28.34(a), amends G.S. 136-180 to remove the detailed descriptions of urban loops eligible for state funding from the statutes and allows NCDOT to designate and prioritize the projects. Finally, section 28.7 amends a law adopted in 2010 that provides for Mobility Fund projects. It deletes the requirement that project selection criteria be reviewed by various state and local organizations before NCDOT submitted its preliminary selection criteria report, which was due by October 1, 2011.

Section 28.10 of S.L. 2011-145 delays from October to January the state disbursement to eligible municipalities of one-half of their respective allocations of state Powell-bill funds (these funds, which come from gas tax revenues, are available for road and sidewalk improvements on municipality-maintained streets).

S.L. 2012-184 (H 1077) elaborates the terms under which NCDOT may enter into a pilot toll road project involving a public-private partnership. This law allows NCDOT to fix and collect tolls to the same extent as the North Carolina Turnpike Authority may and to act as the conduit issuer of private activity bonds for such a project.

In 2011 the General Assembly mandated that 50 percent of the funds associated with preliminary engineering projects in the NCDOT annual work plan be allocated toward outsourcing in 2011–2012 and 2012–2013. Section 24.3 of S.L. 2012-142 (H 950) increases that proportion to 60 percent for 2013–2014.

G.S. 136-44.2 provides that the Director of the Budget may allocate credit reserve balances in the State Highway Fund for “urgent needs.” Unallocated funds must be credited to a maintenance reserve. Section 24.6 of S.L. 2012-142 amends this statute to establish a procedure

whereby NCDOT must first submit a report on the expenditure request to the House and Senate committees on transportation, providing detailed information about the proposed use of such money, before the request is submitted to the Director of the Budget. The Director of the Budget must allocate up to \$5 million in funds for urgent needs. No more than \$5 million from the reserve may be spent on a single project.

Section 24.7 of S.L. 2012-142 reverts to the Highway Trust Fund those monies appropriated to the North Carolina Turnpike Authority for the Mid-Currituck Bridge project that remained unencumbered at the end of fiscal 2011–2012. It also does the same for the funds appropriated for fiscal 2012–2013 for the Mid-Currituck Bridge and Garden Parkway projects. Both projects have been criticized as being inadequately justified.

In 2010 Governor Perdue initiated legislation (G.S. 136-187 *et seq.*) to create the North Carolina Mobility Fund, a special transportation fund designed to support certain transportation projects of statewide and regional significance that would also relieve congestion and enhance mobility. Amendments to that legislation (affecting G.S. 136-188) adopted in 2011 directed NCDOT to establish project selection criteria and report to the Joint Legislative Transportation Oversight Committee. NCDOT did so, and the criteria are largely incorporated into an amended G.S. 136-188, as rewritten by section 24.8(a) of S.L. 2012-142. In order to be eligible for funding from the Mobility Fund, a project must (1) be on statewide or regional tier facilities; (2) be suitable for funding within five years; (3) be consistent with MPO/RPO “transportation planning efforts”; (4) be included in an adopted transportation plan; (5) be consistent with local land-use plans, if available; and (6) be part of a conforming transportation plan, if the project is in a non-attainment or maintenance area for air pollution purposes. There is no minimum project capital cost that applies to Mobility Fund projects, but only capital costs, including right-of-way acquisition and construction, may be funded. Projects eligible for Mobility Fund selection must be scored and ranked, and selections made accordingly. Eighty percent (80%) of the ranking score is based on the estimated travel time savings in vehicle hours that the project will provide over thirty years, divided by the cost of the project. The other twenty percent (20%) is based on whether the project provides an improvement to more than one mode of transportation and what types of other modes of transportation are involved in the project, as determined by a system of assigning points to be developed by NCDOT. However, notwithstanding these criteria, S.L. 2012-142 specifies that the initial project to be funded by the Mobility Fund will be the widening and improvement of Interstate 85 north of the Yadkin River Bridge.

Projects on the state’s secondary road systems were also made subject to changes in the way they are selected. Section 24.15 of S.L. 2012-142 directs NCDOT to develop a statewide system for selecting unpaved secondary roads for paving. Projects with the highest rankings statewide are to be selected, notwithstanding the formula for distributing funds regionally established by G.S. 136-17.2A.

The lingering issue of imposing tolls on traffic using Interstate 95 was also the subject of certain 2012 amendments to the 2011 appropriations act. Section 24.21 of S.L. 2012-142 directed NCDOT to conduct a comprehensive study of the transportation corridor containing Interstate 95. Skepticism about the wisdom of initiating I-95 tolls is reflected in several of the topics that the department is required to study. These include the “economic impact of tolling the present road on the residents and businesses along the Interstate 95 corridor” and the “(o)ptions for funding to make critical repairs and lane mile expansions to Interstate 95 without the use of tolls.” The report results are to be delivered to the 2013 General Assembly by March 1, 2013. In

addition, the department is specifically directed to refrain from establishing or collecting tolls on Interstate 95 before July 1, 2014.

Transportation Corridor Official Maps

The Roadway Corridor Official Map Act was adopted almost twenty-five years ago to enable transportation planners to prevent land development from occurring in corridors that appear to be most suitable for future transportation projects. Adoption of a transportation corridor official map results in significant restrictions on the use of land included within the mapped corridor. Once the official map is filed with the register of deeds, no building permit may be issued for construction within the corridor, nor may land be subdivided for a period of up to three years after the appropriate application is submitted. To mitigate the harsh impacts of this delay, the legislation has provided certain property tax benefits to the owner of property within a protected corridor. In particular, corridor property has been taxed at 20 percent of the general tax rate that would otherwise apply, but only if no building or structures were located on the property.

S.L. 2011-30 (S 107) makes several changes. It amends G.S. 105-277.9 to provide that undeveloped or vacant land within a designated corridor is to be taxed at 20 percent of its appraised value rather than at 20 percent of the general tax rate. More important, the law also adds a new G.S. 105-277.9A to provide that if the property is improved with buildings or other structures, then the property is taxed at 50 percent of its appraised value, but only if the property has not been subdivided since it was originally included in the corridor. These tax arrangements are effective for taxes imposed for tax years beginning on or after July 1, 2011. However, these arrangements for taxing improved property within corridors expire with respect to tax years beginning on or after July 1, 2021.

Since the corridor official map statutes prevent a building permit from being issued or a subdivision plat from being approved for up to three years after an application is filed, an official map can serve to restrict and encumber property for long periods of time. S.L. 2011-242 (S 214) provides another alternative for the property owner. It allows a property owner to submit to the local government with land-use regulatory jurisdiction a request for a "corridor map determination." If the three-year delay period has already run, then the request for a map determination to the local government forces the entity that adopted the transportation corridor official map (i.e., the Board of Transportation, the Turnpike Authority, a city, a county, or a transportation authority) to make a choice. The map-adopting entity must then either (1) authorize the local permitting jurisdiction to issue the appropriate permit, or (2) initiate proceedings to acquire the property for which the determination is sought. If it does neither, then the applicant's property is treated as being unencumbered and free from official map restrictions. It is very important to note, however, that this new legislation did not become effective until December 1, 2011. It only applies to corridor official maps filed on or after that date.

Triangle Expressway Location

The toll road projects to be undertaken by the North Carolina Turnpike Authority are specifically set forth in a statute (G.S. 136-89.183(a)(2)). One of these toll projects is known as the Triangle Expressway, the long-planned circumferential highway in Wake County, some portions of which are already in use. The locations of some of the southern and southeastern portions of the expressway (the Triangle Expressway Southeast Extension) were protected in the 1990s by

NCDOT through the adoption of roadway corridor official maps. However, a decade and a half later, not all of the segment locations have been chosen.

One corridor protected in 1995 (or thereabout), involving a segment known as the Triangle Expressway Southeast Extension, mentioned above, turned out to involve some new transportation planning and environmental problems. In order to consider two alternative routes for this portion of the expressway segment, highway planners developed a route alternative more to the north (the “red route”) that would cut through a relatively developed, populated area of southern Garner. Presentation of this “red route” to the public resulted in significant local opposition, and the General Assembly this spring intervened to ensure that this alternative would no longer be considered.

S.L. 2011-7 (S 165) amends G.S. 136-89.183(a)(2)a. to prohibit the Turnpike Authority from selecting any east-west corridor for the Southeast Extension that is located north of the 1995 protected corridor, except near its interchange with Interstate 40.

Transportation and Fuels

One major initiative concerns the use of transportation fuels by the state. Part I of S.L. 2012-186 (H 177) directs the State Energy Office (in the Department of Commerce), in consultation with the Departments of Administration, Public Instruction, and Transportation, to create an inter-agency task force to study the feasibility and desirability of advancing the use of alternative fuels by all state agencies. The legislation directs the State Energy Office to make recommendations on the fuel mix and the types of alternative-fueled vehicles that would be appropriate for each agency, taking into account costs, geography, population densities, environmental impacts, and access to available infrastructure. The study must be conducted quickly. Results must be submitted to the Joint Legislative Commission on Energy Policy by December 1, 2012.

Part II of S.L. 2012-186 directs NCDOT to establish criteria for operating charging stations for electrical vehicles at state-owned highway rest stops in such a way as to recover certain costs associated with their use.

Public Transportation

Public transportation programs were the target of several legislative initiatives in both 2011 and 2012. Section 28.17 of the Current Operations and Capital Improvements Appropriations Act of 2011 (S.L. 2011-145, H 200) eliminated the Aeronautics Council, the Bicycle Committee, and the Rail Council, all within NCDOT. Section 28.12 of the same act repealed the authority of NCDOT to administer and fund public transportation programs, thereby giving the General Assembly direct authority to do so. A companion section, section 28.15 of the 2011 legislation, established a process by which the General Assembly may approve the acceptance of federal railroad funds by NCDOT.

Section 28.12A of the 2011 Appropriations Act directed the Program Evaluation Division of the General Assembly to conduct a comprehensive evaluation of the North Carolina Railroad Company and to report the results to several legislative committees by May 1, 2012. But section 24.20 of the 2012 amendments to the 2011 Appropriations Act (S.L. 2012-142, H 950) repealed this provision. A related section, section 28.13 of S.L. 2011-145, added new G.S. 136-44.39 to authorize NCDOT to provide financial assistance to short-line railroads.

Section 28.21 of the 2011 act directed the Public Transportation Division of NCDOT to study the feasibility and appropriateness of developing regional transit systems, including the consolidation of such systems. But in the 2012 session the only system that benefited seemed to be the

Charlotte area transit system. Section 24.19 of the 2012 amendments to the 2011 appropriations act totally eliminated the “Regional New Starts and Capital Program” within the Public Transportation Division of NCDOT and reassigned the unexpended fund balance to the Lynx Blue Line Extension project, part of Charlotte’s rail transit system. It also added G.S. 136-176(e), a provision that now allows Highway Trust Fund monies to be used to provide matching funds for “fixed guideway” projects. (Charlotte’s is the state’s only current example.)

The subject of tolls on the state ferry system turned out to be a political football. Section 31.29 of S.L. 2011-145 directed NCDOT to establish ferry tolls for all routes, except for the Ocracoke/Hatteras Ferry and the Knotts Island Ferry. Then the General Assembly came back in 2012 with section 24.18 of S.L. 2012-142. It assigned the authority for determining tolls to the Board of Transportation and directed NCDOT to disregard any executive order issued by the governor concerning the subject. It also prohibited tolls from being imposed on the Cher Branch/Minnesott Beach ferry during fiscal 2012–2013. However, section 6.2 of S.L. 2012-145 (S 187), passed late in the 2012 session, postponed the increases in the tolls to be charged to use state ferries until July 1, 2013. To fill the revenue breach that would be suffered by the Ferry Division of NCDOT for fiscal 2012–2013, S.L. 2012-145 reallocated to the division \$2 million from project studies related to the Mid-Currituck Bridge project and another \$2 million from the General Maintenance Reserve in the Highway Fund.

The North Carolina Motor Fuel Excise Tax

G.S. 105-449.80 provides a formula for establishing North Carolina’s motor fuel excise tax for six-month increments of time. The formula takes into consideration in part the retail price of motor fuels during certain preceding base periods. According to the formula, the North Carolina motor fuel excise tax that was 32.5 cents per gallon in the first six months of 2011 jumped to 38.9 cents per gallon during the first six months of 2012. This escalation in the tax apparently alarmed some in the 2012 General Assembly. Section 24.11 of S.L. 2012-142 (H 950) provided that for the period July 1, 2012, through June 30, 2013, the excise tax rate may not exceed 37½ cents per gallon. The change will likely reduce Powell bill fund distributions to municipalities in fiscal 2013–2014.

Converting Private Streets to City Streets

S.L. 2011-72 (S 281) tackled a problem that annexing cities often face—how to deal with private streets that need to be upgraded before they become city public streets. The law allows certain cities to establish municipal service districts under G.S. 160A-536 *et seq.* for the purpose of converting private residential streets into municipal public streets. It also allows these cities to accept street-related common elements from community associations that are proposing that their streets be converted to public streets. Unfortunately, the new law includes provisions that drastically limit the cities to which it applies. Raleigh and Durham appear to be the most notable beneficiaries of the law.

Relocation of Municipal Improvements in State Rights-of-Way

As a general rule of law, NCDOT may require cities (and certain other service providers) to remove or relocate their improvements that are located within a state road right-of-way when transportation needs demand it. Section 6.1 of S.L. 2012-145 (S 187) adds a new G.S. 136-27.3 governing the relocation of city utility lines under G.S. 136-18(10). It authorizes NCDOT to handle the engineering and utility construction and relocation work. The municipality is then

obligated to reimburse NCDOT once the work is completed within sixty days after the invoice date. Unpaid balances are subject to interest paid at a variable rate of the prime rate plus one percent (1%).

Environment

State Regulatory Procedures

S.L. 2011-398 (S 781) made substantial amendments to the state's Administrative Procedures Act for both state agency rule making and decision making on individual contested cases. Governor Perdue vetoed the bill on separation of powers grounds, contending it was an unconstitutional infringement on the executive branch of government by the legislature. Her veto was overridden.

The new law substantially restricts adoption or amendment of administrative rules by state agencies and commissions. G.S. 150B-19.1 was created to prohibit adoption of any rule not expressly authorized by state or federal law and to ensure that only rules reasonably necessary for the implementation of those laws are adopted. This section also provides general guidance that all rules are to minimize the burden on regulated parties and achieve their objectives in a cost-effective manner, be clear and unambiguous, not be redundant, and be based on sound, reasonably available scientific, technical, and economic information. Agencies are to conduct an annual review to identify and repeal rules that are unnecessary, unduly burdensome, or inconsistent with the principles noted above. Agencies are also to quantify the costs and benefits of proposed rules. G.S. 150B-21.4 is amended to require a fiscal note on any proposed rule that would have a substantial economic impact, which is defined as having an aggregate financial impact on all affected persons of at least \$500,000 (the impact figure in the previous law was \$3 million). The fiscal note must also include a description of at least two alternatives to the proposed rule and the reasons they were rejected.

S.L. 2011-398 also creates G.S. 150B-19.3 to specifically limit environmental rules. This law prohibits specified state agencies (Department of Environment and Natural Resources (DENR), Environmental Management Commission, Coastal Resources Commission, Marine Fisheries Commission, Wildlife Resources Commission, Commission for Public Health, Sedimentation Control Commission, Mining Commission, and Pesticide Board) from adopting any rule that is more restrictive than those imposed by federal law or rule unless (1) there is a serious and unforeseen threat to the public health, safety, or welfare or (2) the more restrictive provision has been expressly required by state or federal law, budget, or court order. Comparable restrictions on rule making were also included in Section 13.11B of the Current Operations and Capital Improvements Appropriations Act of 2011 (S.L. 2011-145, H 200), codified at G.S. 95-14.2, 106-22.6, and 143B-279.16. This trend to limit state regulation of topics that are subject to federal regulation continued in 2012. S.L. 2012-91 (H 952) limits state rules regulating toxic air pollutants. It amends G.S. 143-215.107(a) to exempt sources subject to federal regulation unless DENR determines that the source would present an unacceptable risk to human health.

S.L. 2011-398 also moves final decision-making authority in most individual contested cases from state agencies to administrative law judges. These judges previously conducted the hearing and recommended decisions.

Agency Reorganization

The General Assembly moved two large programs from the Department of Environment and Natural Resources (DENR) to the Department of Agriculture and Consumer Services. Section 13.22A of the Current Operations and Capital Improvements Appropriations Act of 2011 (S.L. 2011-145, H 200) transferred the Division of Soil and Water Conservation, including all of its staff and programs; Section 13.25 transferred the Division of Forest Resources, including all of its staff and programs. These sections also made conforming changes to the many state statutes that address soil and water and forestry programs. Among these adjustments are the transfer of the Soil and Water Conservation Commission and the Forestry Council, the agricultural cost share program related to preventing nonpoint source water pollution, and programs related to forest fires and open burning permits.

In 1989 the state embarked upon a merger of environmental health and environmental protection programs into a single agency with the movement of many environmental health programs into DENR. In 1997 many of those programs were returned to the Department of Health and Human Services (DHHS). A small number of programs were, however, left in DENR. In 2011 the General Assembly returned to the agency placement of those remaining programs. Section 13.3 of the 2011 Appropriations Act abolished the Division of Environmental Health in DENR. That Division's public water supply program was moved to the Division of Water Resources, the shellfish sanitation program moved to the Division of Marine Fisheries, the environmental health and on-site waste disposal programs were moved back to DHHS, and several other functions moved to the Department of Agriculture and Consumer Services or were abolished.

Energy Resources

Oil and Gas Development

North Carolina currently has no commercial oil or gas extraction in the state. Proposals to add that capacity through use of new technology for shale gas extraction or off-shore oil and gas development continue to be proposed. In 2011 and 2012 the legislature took steps to advance these proposals.

The development of technology to extract natural gas from deep shale deposits has changed substantially in the past decade. Active development of gas using hydraulic fracturing in other parts of the country and in Canada have prompted considerable interest in the possibilities of shale gas extraction in North Carolina. Current state law prohibits hydraulic fracturing. In 2011 the General Assembly, in S.L. 2011-276, mandated a study on the topic (this law also added G.S. 113-420 to -424 to the statutes to establish procedures and compensation for owners when oil and gas operators enter surface property they do not own for operations such as surveys and inspections). DENR released a report on the natural gas resource, potential impacts of resource recovery, and associated regulatory issues on April 30, 2012.

The DENR report concluded that about thirteen counties in North Carolina are home to a potential resource, but precise estimates of the nature and extent of the resource are unknown pending exploration (most of the projections are based on only two test wells in Lee County). The DENR study estimated a potential for some 360 to 370 wells in the state, producing some 300 drilling jobs over seven years. An individual well takes about ten days to drill, with rigs trucked from site to site, and uses something on the order of three to five million gallons of water (about 10 to 30 percent of which is recovered). The water is injected into the deep wells with a mixture of sand and chemicals under high pressure to fracture the shale and release

natural gas. Concerns raised about the process include potential groundwater contamination (either from migration of injected chemicals or leakage from well casings), adequacy of water supply, compatibility of drilling and production facility with surrounding uses, noise and air quality impacts from drilling, runoff and spills from drilling operations, and damage to roads from movement of drilling equipment and infrastructure for processing and distribution. The intergovernmental issue of state preemption of local regulations has also been an ongoing point of discussion. On the positive side, proponents note the economic benefits of additional fuel resources, the economic and environmental advantages of more natural gas to replace oil as a fuel, and the jobs resulting from exploration, drilling, production, and distribution.

In 2012 the legislative debate was essentially whether to (1) repeal the ban on hydraulic fracturing (“fracking”) now and order development of appropriate regulatory standards or (2) start work on a new regulatory framework and remove the ban when that is done. In some respects this debate was more symbolic than it was resulting in immediate practical effects. Given the small size of the projected North Carolina resource, current low prices of natural gas, a national lack of storage capacity, and the lack of a distribution network for collection and processing recovered gas, most experts expect there will be little demand for drilling in the state over the next five years. The legislative leadership favored the former approach, while the governor supported the latter. The legislative view prevailed, as a bill to proceed immediately with removing the fracking ban and setting up new regulatory provisions was enacted over the governor’s veto.

S.L. 2012-143 (S 820) removes the ban on hydraulic fracturing. It revises the state Mining Commission to create a new Mining and Energy Commission (G.S. 143B-293.2). The new commission is directed to develop a modern regulatory program for shale gas extraction (G.S. 113-391). The proposed rules are to be adopted by October 1, 2014. Permits for exploration and development may not be issued until the General Assembly takes action to allow issuance. The new commission is directed to work with the League of Municipalities and Association of County Commissioners to examine local regulation of oil and gas exploration and development, allowing reasonable regulations that do not have the effect of prohibiting exploration or development. The three groups are also directed to examine the costs to local governments from infrastructure impacts (roads and the like) and how those costs should be addressed.

Other Energy Issues

Development of off-shore oil and gas reserves has in recent decades proven to be an important source for global energy resources. In the United States, the Gulf of Mexico has been heavily developed, and there are important off-shore oil and gas developments off the California and Alaska coasts. There was active interest in exploration and potential development of oil or gas resources off the North Carolina coast in the 1980s, interest that periodically reemerges. Likewise, there has been increased international development of off-shore wind resources. High-profile commercial wind projects have been proposed for areas off the Massachusetts coast and along the mid and north Atlantic coast. Studies indicate the wind potential off the North Carolina coast could also potentially support wind projects. This potential prompted both legislative and gubernatorial studies of these issues in 2009 and 2010 and led to legislative action in 2011–2012.

In 2011 the General Assembly approved Senate Bill 709. This bill directed the governor to pursue an interstate compact with Virginia and South Carolina relative to exploration, development, and production of off-shore energy development. Governor Perdue vetoed the bill, and her veto was not overridden. The bill also included a directive to prepare a study on onshore shale

gas development, a requirement that was subsequently incorporated into the adopted legislation noted above.

In other action, S.L. 2011-150 (H 266) allowed specified additional local governments to expedite leases for renewable energy facilities.

Water Quality and Supply

S.L. 2011-394 (H 119) made a number of amendments to state statutes regarding water. It added provisions directing the Environmental Management Commission to develop model practices for stormwater capture and reuse, to encourage grey-water reuse, to exempt Type I solid waste composting facilities from water quality permitting, to require weather-based controllers for certain irrigation systems, to exempt some small dams from state permitting, to delay implementation of the Jordan Lake rules for two years, to grandfather existing lots from some aspects of the Neuse and Tar-Pamlico riparian buffer rules, and to add provisions allowing cisterns.

A number of additional laws adopted in 2011 affect specific water supply issues. S.L. 2011-374 (H 609) revised various statutes to promote state-local cooperation in developing future public water supplies, to allow creation of regional water supply planning organizations, and to allow funds from the Clean Water Management Trust Fund to be used to preserve lands for water supply reservoirs. S.L. 2011-218 (H 388) allows cross-connections between potable and reclaimed water with DNER approval. S.L. 2011-255 (S 676) clarified the rights of property owners regarding private drinking water wells.

In other water quality action, S.L. 2011-220 (H 492) removed certain “urbanized” unincorporated areas from stormwater program coverage if actual population growth in the county containing the unincorporated area occurred in an area consisting of less than 5 percent of the county’s land area. S.L. 2011-24 (H 62) disapproved French Broad River basin rules as adopted by the Environmental Management Commission. S.L. 2011-118 (S 501) allows modifications of existing swine houses.

In 2012 S.L. 2012-187 (S 810) made a variety of technical changes to environmental laws and laws affecting the administrative rule-making process. Among the changes with policy implications is an amendment to G.S. 143-213 to exclude any airborne contaminants from “discharges” subject to water quality regulations. S.L. 2012-200 (S 229) also revised a number of environmental laws. Several of these amendments affect land use and development. S.L. 2012-200 amends G.S. 143-214.5 to require local government water supply watershed regulations to allow an applicant to average density on two noncontiguous tracts under specified conditions. It amends G.S. 143-214.23 to prohibit local governments from treating privately owned land within riparian buffers as public land. It modifies the means of calculating encroachment into riparian buffers for single-family residences and septic systems within the Neuse and Tar-Pamlico basins. It delays implementation of Jordan Lake local stormwater management programs. It requires the Department of Health and Human Services to establish a variance procedure for setbacks from private drinking water wells. S.L. 2012-201 (H 953) likewise includes a number of amendments to environmental laws, including a delay in the implementation of the Jordan Lake rules.

Coastal

Sea Level Rise

A bill that would limit consideration of projections of increased sea level rise in state coastal planning and regulations generated national attention in the 2012 session. House Bill 819, as passed by the House of Representatives in 2011, addressed rules determining the oceanfront setback for repair and reconstruction of pre-2009 homes. A Senate committee in 2012 replaced

this bill with one that would have prohibited the state from using a recommendation from the Coastal Resources Commission’s scientific advisory committee regarding sea level rise projections. The advisory panel had reviewed the science on this issue and in March 2010 reported a consensus recommendation that a figure of 39 inches of sea level rise by 2100 be used for planning purposes. NC-20, a group of coastal economic development and local government advocates, contended that the science on this issue was too uncertain to use such a figure. At their urging, the Senate committee approved a restriction that only historical data since 1900 could be used and that data could only be projected linearly (which results in a projection of an 8 inch rise by 2100) and could not include scenarios of accelerated rates of sea level rise. As adopted, S.L. 2012-202 (H 819), which became law without the governor’s signature, prohibits the state from defining rates of sea level change for regulatory purposes prior to July 1, 2016. It directs the science panel to prepare and deliver its five-year update to its sea level rise assessment report by March 31, 2015. S.L. 2012-202 goes on to include the original provisions on setbacks for repair and reconstruction of existing residences and directs consideration of a new area of environmental concern for the mouth of the Cape Fear River, Caswell Beach, and Bald Head Island and consideration of eliminating the inlet hazard area of environmental concern.

Other Coastal Issues

The General Assembly took several actions regarding ocean erosion control efforts. In the 1980s North Carolina adopted nationally significant policies to prohibit “shoreline hardening” of ocean beaches. While measures such as beach nourishment are allowed, construction of bulkheads, seawalls, groins, jetties, and similar “hard” structures that attempt to stabilize the shoreline location were prohibited under Coastal Resources Commission regulations. This general policy was added to the statutes in 2003 with the adoption of G.S. 113A-115.1. S.L. 2011-387 (S 110) adds G.S. 113A-115.1(d) to allow for the permitting up to four “terminal groins” that are constructed in association with beach nourishment projects. The statute specifies the analysis and information required for permit applications for terminal groins and requires a plan to monitor, mitigate, and finance mitigation of any adverse impacts of groin projects. S.L. 2011-78 (H 415) addresses the littoral rights of oceanfront property owners in two jurisdictions that have undertaken beach nourishment projects. It provides that these owners’ prior littoral rights (including a right of direct access to the water) are not lost due to the presence of intervening public lands created by the beach fill projects. The law also provides that this shall not affect title to or public trust rights in the created lands along the ocean shoreline.

In other action, S.L. 2011-82 (H 506) authorizes Wrightsville Beach to remove abandoned vessels that pose a hazard to navigation or to other vessels.

Waste

For several decades the state has been engaged in efforts to address various issues related to hazardous wastes. This has included efforts to reduce wastes generated, to more carefully site and manage waste disposal sites, and to clean up various types of sites, including, particularly, leaking underground storage tanks and contaminated industrial sites. In recent years the legislature has moved to provide more flexibility in waste cleanup options.

S.L. 2011-186 (H 45) continues this trend. The Manufacturers and Chemical Industry Council has for years advocated a risk-based remediation program, and this law establishes it. Owners and responsible parties are given the option to present a risk-based remedy based on site-specific risk information. The proposed remedy can include a no-action alternative if a consultant

review reports that the contaminated site will not pose a major risk to health or the environment if the recommended remedial plan is followed.

In other action, S.L. 2011-394 (H 119) amended statutes regarding landfill disposal of beverage containers.

Conservation Lands

The state's trust funds for acquisition of conservation lands were casualties of state budget cuts for 2011. Section 13.26 of the Current Operations and Capital Improvements Appropriations Act of 2011 (S.L. 2011-145, H 200) repealed the statutory authority for a \$100 million per year appropriation (which was rarely actually fully funded), allocated up to \$1.5 million for a program of buffers around military installations and for air corridor protection, allocated \$3 million for operations and debt service, allocated \$6.25 million for wastewater and water projects, and prohibited use of most of these funds for any land acquisition other than conservation easements. Section 13.11C of the act allocated funds for the Parks and Recreation Trust Fund, including \$8 million for capital projects, \$4.223 million for local grants, and \$705,000 for the coastal access program.

In other 2011 actions affecting conservation lands, S.L. 2011-209 (S 309) created G.S. 139-7.1 to allow any soil and water conservation district to establish a special reserve fund for the maintenance of conservation easements. S.L. 2011-274 (H 350) amended G.S. 105-275 to clarify the property tax exemption for conservation lands held by nonprofit organizations. In a local act, S.L. 2011-133 (H 410) facilitates efforts by Pinebluff to preserve undeveloped land for park purposes.

Miscellaneous

In other action, S.L. 2011-394 (H 119) amended statutes regarding landfill disposal of beverage containers. S.L. 2011-372 (H 567) amended G.S. 153B-3 to stagger the terms on the Mountain Resources Commission.

Housing, Community Development, and Economic Development

Housing

Section 2.17 of S.L. 2012-79 (S 826) reorganizes the State Home Foreclosure Prevention Trust Fund legislation (G.S. 45-101 *et seq.*) to consolidate the program in the Housing Finance Agency (HFA), transferring functions which formerly were assigned to the commissioner of banks. In particular, the HFA will now collect fees from mortgage servicers, review the database to determine which home loans are appropriate for efforts to prevent foreclosure, and extend the allowable filing dates for certain foreclosure proceedings. S.L. 2012-79 also reassigns the responsibility for reporting on the foreclosure prevention program to the General Assembly from the banking commissioner to the HFA.

Other legislation, S.L. 2012-17 (H 493), makes various changes to the landlord-tenant laws. Most notable are changes to G.S. 42-51, which sets out those expenses that a landlord is authorized to deduct from a security deposit. Under the new law these deductions will now include unpaid late fees and fees paid to a real estate broker in order to re-rent the premises following the tenant's lease agreement breach.

Community Development

Section 13 of S.L. 2012-142 (H 950), the 2012 amendments to the Current Operations and Capital Improvements Appropriations Act of 2011, makes a number of minor changes in programs administered by the North Carolina Department of Commerce that suggest a more active role for the General Assembly. Section 13.1 of the law allocates appropriations from federal block grants for the Community Development Block Grant Fund (CDBG); these appropriations were reduced from \$45 million for 2011–2012 to \$42.5 million for 2012–2013. S.L. 2012-142 also directs the commerce department to consult with the Joint Legislative Commission on Governmental Operations before reallocating CDBG funds, except in cases of an imminent threat to public health or safety. Section 13.4 of the law directs the North Carolina Economic Development Board to evaluate annually the state’s economic performance based on the data and goals of the Comprehensive Strategic Economic Development Plan. It also amends G.S. 143B-435.1, directing the commerce department to report to four different legislative committees, as well as to the Fiscal Research Division, regarding the use of “clawbacks” (efforts to recover grant funds from recipients that fail to achieve certain standards in the grant agreement) in various economic development programs. Finally, the law adds a new G.S. 143B-437.08 requiring the department to submit a written report each year to three legislative committees and the Fiscal Research Division concerning tier rankings, including a map showing the tier ranking of each county.

Section 13.6 of S.L. 2012-142 makes various changes to the One North Carolina Fund. The law limits the dollar value of commitments endorsed by the governor in a single fiscal year to \$14 million. It also directs the commerce department to study the minimum level of funding necessary to make the One North Carolina program successful and to report the results to four legislative committees and the Fiscal Research Division. The department must also report annually to the Joint Legislative Oversight Committee and the Global Engagement Oversight Committee and include statistics and data spelled out in S.L. 2012-142.

Section 13.13A of S.L. 2012-142 amends section 14.16(a) of the 2011 Appropriations Act to reallocate funds for the North Carolina Rural Economic Development Center Infrastructure Program that were reduced from \$16.505 million to \$13.462 million for 2012–2013 and to do the same for funds for other Rural Center programs, which were reduced from \$3.58 million to \$2.92 million.

Finally, section 13.15 of S.L. 2012-142 authorizes the Legislative Research Commission to study the funding and alignment of the membership of each of the regional economic development commissions.

Economic Development

S.L. 2012-74 (H1015) includes a potpourri of changes designed to foster business and industrial development. Section 3 of the law provides a tax break to an unnamed airline by extending the period of time in which it may apply for a refund of certain sales tax paid on aviation fuel. Section 4 amends G.S. 143B-437.01(a) to allow funds from the state’s Industrial Development Fund to be used for projects involving otherwise eligible sewer improvements that are located in counties that adjoin the “county in which the building is located.” Section 5 of S.L. 2012-74 allows certain business developers to take advantage of a tax credit “carry-forward” if the taxpayer invests more than \$100 million in a development tier-one area. Section 6 makes technical changes to G.S. 143B-437.013(a), which defines eligible port enhancement zones. Finally, section 7 offers a one-year sales tax refund for purchases of specialized equipment used at state ports.

Miscellaneous

Urban Research Service Districts

Since 1973 counties have been authorized to adopt county research and production service districts that allow property owners to approve property tax levies for services to be provided either in addition to or to a greater extent than services or facilities that are provided in the rest of the county. This authorization was originally tailored for and still applies in the Research Triangle Park. S.L. 2012-73 (H 391) reworks and expands this law and provides for new “urban research service districts” that may be established within existing county research and production service districts.

Water and Sewer Extensions

A bill that garnered considerable attention in the waning days of the 2012 session, Senate Bill 382, would have applied statewide but was prompted by a controversial proposed development south of Durham (known as the “751 South” project). The large mixed-use project has to date been supported by the county and opposed by the city, which refused to annex it and extend city water and sewer services to it. The bill would have required a city that extends water and sewer lines to a “designated urban growth area” outside the city to extend services to all property in that area on the same policy basis as extensions within the city.

Attorney Fees

Successful litigants may not recover attorney fees as costs or damages unless doing so is expressly authorized by statute or if there has been a constitutional violation.

Statutory opportunities for attorney fees are quite limited. Among the situations where recovery of attorney fees is permitted under state statutes are the following: (1) where the court finds (a) that there was a complete absence of a justiciable issue of either law or fact raised by the losing party (a frivolous claim) or (b) that a state agency has acted without substantial justification; (2) in nuisance abatement actions; and (3) for enforcement of a handful of other specific laws (including the open meetings and public records laws, the State Fair Housing Act, and the Swine Farm Siting Act).

In 2011, in part motivated by recent litigation involving the imposition of impact fees, the General Assembly added a new category of cases in which attorney fees can be recovered that has implications for cities and counties engaged in development regulation. S.L. 2011-299 (H 687) adds G.S. 6-21.6 to provide that the court may award costs and reasonable attorney fees if a city or county has acted outside the scope of its legal authority. The court is directed to award attorney fees and costs if it also finds that the challenged action was an abuse of discretion.

Emergency Management

The 2012 General Assembly enacted a substantial update of the state’s emergency management statutes.

S.L. 2012-12 (H 843) consolidates and reorganizes these statutes, mostly placing these provisions into a new Article 1A of Chapter 166A of the statutes. The provisions deal with both state and local government declarations of emergencies and disasters. While most of the prior law is not substantially changed, the new law clarifies various aspects of local authority, for example, by allowing a declaration to affect a defined area and by stating that restrictions can be tailored

to the needs generated by an individual event and that localities can impose curfews and order both voluntary and mandatory evacuations.

Additional modest modifications in state emergency management provisions were made by S.L. 1012-90 (S 798), such as extending the potential expiration of disaster declarations.

Bills Not Adopted

Eminent Domain

For several years, there has been discussion about a constitutional amendment to prohibit use of eminent domain to acquire land for economic development purposes. That practice is not allowed by statute in North Carolina, but some feel it should be banned by the state constitution to prevent future legislatures from allowing it. The bill to call for a referendum on such a state constitutional amendment in November 2012 (H 8) passed the House in 2011 but not the Senate.

Simple Majority to Adopt Municipal Ordinance

The statute on adopting municipal ordinances, G.S. 160A-75, requires a two-thirds vote to adopt, amend, or repeal an ordinance if the vote is taken on the date it is first voted upon. If the action gets majority approval but not a supermajority, it is carried over to the next meeting for a final vote. The comparable county voting statute, G.S. 153A-45, requires a unanimous vote to adopt an ordinance at the meeting it is first voted upon but only requires a simple majority if a public hearing was required for the proposed ordinance. Since state law mandates a public hearing for all land development ordinances, this has the effect of going directly to a simple majority vote for county action on these ordinances. Senate Bill 413 would have applied this county process to municipal ordinances. It was adopted by the Senate in 2011 but not taken up by the House of Representatives.

Agenda 21

In recent years, a notion has gained currency in some circles that “sustainable development,” “smart growth,” “regional visioning” projects, and the like are part of a coordinated international effort to undermine private property rights, automobile ownership, and the American way of life. Several states and many local governments have adopted resolutions identifying “United Nations (UN) Agenda 21” as a key element of this alleged conspiracy. “Agenda 21” refers to a statement on the environment and sustainable development approved at a UN-sponsored conference in Rio de Janeiro in 1992. A bill circulated for the 2012 session of the General Assembly would prohibit the state and local governments from adopting or implementing any “creed, doctrine, principle, or tenet” of this UN statement. House Bill 983 was introduced to allow consideration of the Agenda 21–based prohibition in 2012. The bill was not brought up for committee discussion, and no action was taken on it.