# 2009 North Carolina Planning and Development-Related Legislation

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The 2009 session of the North Carolina General Assembly addressed a number of issues of interest to the planning community. While several substantial new laws were enacted, action on a number of others was deferred.

In many respects the economic impacts of the 2008-09 economic recession dominated discussion. The economic crisis resulted in a serious budget crunch for the state. Projected revenues for the 2009-10 fiscal year were on the order of $4.3 billion short of what would be needed to continue programs at the 2008-09 level – about a 20% shortfall. While the federal stimulus program provided just over $1 billion to fill this gap, disagreements about the appropriate mix of budget cuts and new revenue to make up the remaining $3 billion shortfall occupied a great deal of the legislative agenda for the year.

While the state budget was a principal focus, the impacts of the economic downturn affected many other areas of state law. Concern about the impacts of the recession on the development industry, for example, was the impetus behind enactment of legislation to extend previously issued development approvals.

The General Assembly also enacted significant legislation on transportation in 2009, establishing new grant programs and expanding local taxing authority for some transportation programs.

## Zoning and Development Regulation

### *Extension of Development Approvals.*

The lack of credit and dismal prospects for sales led many developers in 2008 and 2009 to postpone initiation of previously approved projects. This prompted concern in the development community that with the passage of time and no action on their part, development permits would soon begin to expire

The General Assembly addressed these concerns with enactment of a permit extension law, Session Law 2009-406 (S 831) (hereinafter S.L. 2009-xxx). The law is effective August 4, 2009.

The law is modeled after permit extension legislation adopted in New Jersey. That state first adopted a law very similar to this bill in 1992 during a prior economic downturn. The initial New Jersey law extended state and local development approvals for the January 1, 1989 to December 31, 1996 period. With the current recession, New Jersey in 2008 again extended development approvals, this time for the period from January 1, 2007 through July 1, 2010 (N.J. Stat. Ann. §§ 40:55D-136.1 to -136.6).

The new North Carolina law extends most state and local development approvals that were valid at any time between January 1, 2008 and December 31, 2010. It provides that the running of any time period for taking action is suspended throughout this three year period. The critical provision in this new law is as follows:

> For any development approval that is current and valid at any point during the period beginning January 1, 2008, and ending December 31, 2010, the running of the period of the development approval and any associated vested right under G.S. 153A-344.1 or G.S. 160A-385.1 is suspended during the period beginning January 1, 2008, and ending December 31, 2010.

There are several critical questions with the interpretation of this law. Some of the questions have clear answers, others do not.

1. *What "development approvals are included?* The law defines "development approvals." It lists a number of local government approvals that are explicitly covered, including sketch plans, preliminary plats, subdivision plats, site specific and phased development plans, development permits, development agreements, and building permits. The law as adopted had different slightly different lists of city and county "development approvals," but that was quickly fixed by S.L. 2009-572 (H 1490), effective August 28, 2009. This second law amended the definitions to include "development agreements" and "development permits" in both the city and county definitions.

While listing specific approvals, the law also says all of these types of development approvals are included, "regardless of the form of the approval." The 'development permit" item alone would cover most local development approvals given that the law has a very broad definition of "development." It defines the term to include land subdivision, site preparation (grading, excavation, filling, etc.), the "construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure or facility," and any use, change in use, or extension of use of land, a building, or a structure.

An interesting question is whether an adopted conventional or conditional rezoning is included. Normally a legislative decision, such as a rezoning, does not in and of itself create a potential for vested rights. The owner must secure a specific administrative or quasi-judicial project approval (rather than a legislative action) to obtain a common law or statutory vested right. With a conditional use district rezoning, the owner concurrently receives a conditional use permit and that permit would be extended by this new law. Some ordinances define a conditional rezoning with a site plan to be a "site specific development plan" under the vested rights provisions of the statutes. In these instances the site specific development would be extended by this new law. On the other hand, a conventional rezoning is not a "development approval" within the definition of this law and is thus not affected by the permit extension provisions. The difficulty arises with a a purely legislative conditional rezone. In these situtations there is nothing adopted that is similar to the permits listed within the law as local "development approvals." There is often a site plan or other site specific conditions incorporated into a conditional rezoning rather than being a separate and distinct approval. In practice this is very similar to a "development permit" but it may not be the same thing from a legal standpoint. A conditional use district rezoning with an associated conditional use permit or one that is defined as a site specific development plan is clearly covered by this law. How a purely legislative conditional

zoning decision without a permit or statutory vested right would be treated is uncertain, but it may well not be covered.

Among the state government approvals covered are EIS's, erosion and sedimentation control permits, CAMA permits, water and wastewater permits, nondischarge permits, water quality certifications, and air quality permits.

Federal permits are not affected. Also, if a permit term or duration is "specified or determined" by federal law, the law does not affect it.

2. *Are permits that expired after January 1, 2008 but prior to the effective date of the law revived by this law?* Yes. The law is not particularly precise on this point.--, However, the law says if an approval was valid "at any time" during this period, it is covered and the time periods within the approval did not run at any time during the period. Certainly the amendment noted below regarding utility allocations makes the assumption that the law indeed revives previously expired approvals.

3. *Does the law extend only the expiration of approvals to end of 2010 or does a permittee get more time after January 1, 2011?* In all likelihood, the maximum amount of time left on an approval at any time during the three year period only starts to run on January 1, 2011.

The law says "the running of the period of the development approval" is suspended during the three year period. This could be read to mean the "running out" of the approval is suspended, which would just move the expiration date back. Another interpretation could be that the law only restores the time left on the approval as of the effective date of the law. However, since the law uses the phrases "running of the period" and that the running is "suspended" during the specified period, it is likely that the law stops the clock during the entire period — that is, the period is tolled and resumes running on January 1, 2011. For example, consider a development approval issued on July 1, 2007 that had a requirement that construction start within 12 months. There was still six months left prior to the required initiation of construction on January 1, 2008 when the three year period specified in the law started to run. Under this interpretation, the six months of remaining time to initiate construction that existed on January 1, 2008 will still exist on January 1, 2011 and construction will not have to be initiated prior to June 30, 2011.

4. *What is included in the "development approvals" that are extended by the law?* A key question here is whether extension of the development approval also applies to nonregulatory aspects of the development, particularly regarding utility allocations. Apparently it extends these as well.

The quick amendment to the law by S.L. 2009-572 (H 1490) added a provision regarding utility capacity allocation that addresses this question in a backhand way. Clearly the assumption made by the amendment is that the reach of the "approvals" associated with "development approvals" picked up by the extension includes associated utility allocations. The amendment provides that the law does not reactivate any utility allocation associated with development approvals that expired between January 1, 2008 and August 5, 2009 *if* the water or sewer capacity was reallocated to other development projects based on the expiration of the prior allocation and there is insufficient supply to accommodate both projects. The unstated implication is that if those two conditions are not present, the utility allocation is revived. If a person's development approval is revived but their water or sewer allocation is not, the law provides that this person must be given first priority when new supply or capacity becomes

available. Section 5.2 of S.L. 2009-550 (H 274) had amended the law to deal with this allocation issue, but that amendment was superseded by S.L. 2009-572. The law includes a slightly different process for dealing with utility allocations that is applicable only to Union County.

One of the issues that is not addressed by the bill is the impact of revival of expired approvals on public facilities other than water and sewer allocations. It is not uncommon for decisions on various land use approvals to consider the availability of public services, such as roads, schools, police, fire, and emergency medical services, parks, and the like. Occasionally the availability of these services is a key factor in the approval or denial of the application or the requirement of mitigation measures to deal with the impacts of the permitted development on service availability. The revival of approvals that had previously expired can in some instances have a significant impact on the calculation of needed mitigation or even upon whether the project may be approved. Since this law makes no provision for consideration of this factor for other than water and sewer allocations, prudent local governments will need to carefully recalibrate their analyses of these factors to include revived projects in their analysis.

5. *Does the law extend internal deadlines within an approval?* In all likelihood, yes. Simple development approvals usually have only an effective date and an expiration date. But more complex development approvals may have other deadlines. For example, a plat approval may require installation of utilities or roads by a specific date; a conditional use permit may require traffic improvements or landscaping installation by a specific date; a development agreement will often include a detailed schedule for actions required of both the landowner and unit of government. If this law prevents the expiration of the basic development approval, what about these other deadlines?

While the law does not address this, the implication is that if the clock is not running with respect to permit expiration, it also is not running with respect to other ancillary time requirements associated with a covered development approval.

The law, however, would not affect a condition based not on time but upon a specified sequence of events. For example, if a condition required installation of a vegetative buffer prior to occupancy of a permitted building, those requirements are not affected by this law and would have to be met prior to occupancy of the building, whenever that takes place. Also, the law would not affect definitions of uses within the ordinance that have a time element. For example, the ordinance may define a "temporary use" or "temporary sign" as one that is in place for no more than thirty days and those limits would still apply, no matter when the use is initiated. Or the ordinance may limit yard sales to those lasting no more than one day and held no more frequently than four times in a calendar year. Such a time-based regulation is not affected by this law since those provisions define the use rather than impose requirements upon its initiation.

6. *If an approval is extended, are the obligations of the permittee also extended?* In all likelihood, yes. A typical example of this question arises with some plat approvals. For example, a final plat approval may be made prior to construction of all of the infrastructure, but with a condition that the infrastructure be completed within two years and that a performance bond or other performance guarantee be maintained for two years or until the infrastructure is accepted by the government.

The maintenance of the performance guarantee is a condition of approval and must be maintained for the life of the approval in order to avoid noncompliance with a permit condition.

It would be prudent to explicitly address this issue in any development approvals made between now and the end of 2010 that contain such obligations.

One indicator that the legislature intended that the obligations of a development agreement as well as the rights under it are revived comes with another amendment to the law that was made shortly after its adoption. Section 5.1 of S.L. 2009-484 (S 838) amended the law to allow a development permit to be returned. Government entities are authorized to accept the voluntary relinquishment of a development approval by a permit holder who no longer wants the permit (or its obligations). This addressed a concern raised by the City of Raleigh, among others, about the impact of the revival of an erosion and sedimentation control permit on a permit holder who wished to abandon a project and leave the site undisturbed). The permit holder may voluntarily relinquish the permit in these situations to avoid a continuing long-term obligation to implement erosion control measures.

7. *Are local governments prohibited from revoking or modifying approvals during this period*? No. the protection provided to permittees only relates to expirations related to the running of time. The law specifically says that an approval can be revoked or modified "pursuant to law." So, if a misrepresentation was made in an application or a mistake was made in issuing an approval, those matters can be addressed as before and are not affected by this law.

## *Notice of Hearings for Third Party Rezonings.*

S.L. 2009-178 (S 1027), effective June 16, 2009, amended the city and county zoning statutes (G.S. 160A-384 and 153A-343) to require that actual notice of the hearing be given to the property owner of land subject to a rezoning petition if that person did not initiate the rezoning petition. The requirement for actual notice does not apply if the rezoning petition was initiated by the city or county.

The property owner that must be notified is the owner as shown on the county tax listings.

The burden for providing this actual notice is on the third party requesting the rezoning. The statute requires that when a petition for the rezoning is made by a person other than the land owner or the local government, the petition must include a certification that the land owner has received actual notice of the application and notice of the public hearing. This requirement imposes a logistical challenge for local governments, as a third party filing a petition cannot certify at the time of application that a hearing notice has been served on the owner because the hearing date is not set until after the application is accepted. Therefore cities and counties will need to establish a process that verifies that the petitioner delivers the hearing notice between the time the hearing date is set and the hearing is held.

The statute defines "actual notice" using the state's Rules of Civil Procedure, which are applicable to court actions. Rule 4(j) sets out detailed standards on how the notice is to be provided. The general rule is that the notice must be personally delivered or sent registered, certified, or delivery-receipt mail. Rule 4(j)(1) says that service on a person may be made:

> a. By delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee.

Rule 4(j) goes on to set out similar specific requirements applicable for service on persons with a disability, the State, a State agency, local governments, corporations, partnerships, unincorporated associations, and other states and their agencies.

If after due diligence notice cannot be made by personal service or return receipt mail, notice may be made by published notice. However, this published notice requires more lead time than the standard published notices for all zoning amendments because this published notice must be placed in the newspaper once a week for three successive weeks (Rule 4(j1).

## *Judicial Review of Quasi-judicial Decisions.*

For the third consecutive legislative session, the General Assembly considered a bill to codify various aspects of the procedures for judicial review of local government quasi-judicial land use approvals and some plats. This year a slightly modified version of this bill was adopted.

S.L.2009-421 (S 44) creates G.S. 160A-393 to establish the framework for judicial appeals of quasi-judicial decisions with development regulation ordinances. The law is effective on January 1, 2010, and applies to appeals of quasi-judicial decisions made on or after that date.

The law codifies the basic definition of “quasi-judicial” land use decisions that has been employed by the North Carolina courts for several decades. These are decisions that involve the finding of facts and application of standards that require application of judgment and discretion. For zoning, this would include appeals of decisions on special and conditional use permits, variances, and determinations involving interpretation and enforcement of the zoning ordinance. Site plan approvals are included only if the standards for approval by a decision-making board include discretionary standards as well as objective ones. The same is true for subdivision plat decisions – they are covered only if the standards for approval include those requiring discretion (such as not having a significant adverse impact on neighboring property values or being compatible or harmonious with the surrounding neighborhood).

While it is unlikely that this law affects appeals of local government decisions made under ordinances that are not development regulations (those adopted under Article 19 of Chapter 160A for cities and Article 18 of Chapter 153A for counties), that is not precisely spelled out in the law. The fact that the new G.S. 160A-393(a) states that the new law is applicable to appeals of quasi-judicial decisions when that appeal is in “the nature of certiorari as

required by this *Article*" implies that its coverage is limited to decisions made pursuant only to development ordinances authorized by these two specific Articles.

Several other factors support that interpretation. First, the law is codified within the city and county zoning enabling statutes and expressly applies to appeals of all quasi-judicial zoning decisions. The statute specifically mentions variances, special and conditional use permits, appeals of administrative determinations regarding the zoning ordinance (all of which have long been codified in the statutory section on boards of adjustment), and site plan approvals that include discretionary standards. Second, the law also adds specific reference to appeals of several non-zoning decisions and inclusion of these specific additions may imply that others are excluded. It adds G.S. 160A-377 and 153A-336 to apply this framework to appeals of any city and county quasi-judicial decisions made under land subdivision ordinances if those ordinances include standards that involve judgment and discretion (which is relatively rare in North Carolina). Inclusion of these specific provisions regarding subdivision regulations, which are within the development regulation Articles, raises a substantial question of the applicability of the law to the other non-zoning and non-subdivision Parts of these Articles such as appeals of unsafe building orders under G.S. 160A-430 and 153A-370 or housing code enforcement orders under G.S. 160A-443, especially since those statutes have detailed, specific procedures set forth for appeals that were not amended by this law. The law also expressly covers appeals of several specific other non-zoning decisions. It adds a provision to the airport zoning act (G.S. 63-34) to include judicial review of some decisions under those ordinances. It also adds a provision to G.S. 162A-93(b) to apply this framework to judicial review of appeals of city decisions to extend water or sewer to certain areas with county water and sewer districts. There are certainly ordinances adopted under other statutory authorizations that are quasi-judicial in nature. For example, there may be standards that involve discretion included within ordinances adopted under the general police powers (such as a junk car ordinance adopted pursuant to G.S. 153A-132.2 that requires findings about the negative aesthetic impacts outweighing the burdens placed on the owner). None of those are expressly covered by this law. The language of this law, its placement in the statutes, and the inclusion of several other non-zoning decisions that are expressly brought within the law, all strongly imply that this law does not apply to those r decisions that are not expressly referenced..

The law specifies that the petition for judicial review (a petition for writ of certiorari) must contain the basic facts that establish standing, the grounds of the alleged error, the facts that support any alleged conflict of interest, and the relief the person seeks from the court. The proposed writ must include a direction to the responding local government to prepare and certify to the court by a specified date the record of the board's proceedings on the matter. The petition is filed with the clerk of superior court in the county in which the matter arose. The clerk then issues the writ ordering the city or county to prepare and certify to the court the record. The petitioner must serve the writ upon all the respondents, following the same rules for service of a complaint in a civil suit. No summons is to be issued.

The law specifies three categories of entities with standing to bring these judicial appeals. The first category is those who applied for approval or who have a property interest in the project or property. Prior law was not entirely clear as to how far this extended beyond the owner of the fee interest in the property. The law clarifies that this includes the applicant for the approval being appealed and all persons with a legally defined interest in the property, including not only an ownership interest but also a leasehold interest, an option to purchase the property, or an

interest created by an easement, restriction or covenant. The second category is the local government whose board made the decision being appealed. The third category includes other persons who will suffer "special damages" as a result of the decision. Included are both individuals (such as a neighbor who contends the decision will adversely affect the value of his or her property) and qualifying associations. A long line of North Carolina cases detail what constitutes "special damages" in this context, and the law does not change those rules. At one point in the legislative process the bill also included an objective standard for third party standing – anyone owning or leasing property within 200 feet of the boundary of the property subject to the decision being appealed. That provision was deleted prior to enactment.

The law reconciles conflicting case law on which associations have standing to bring these legal challenges. This was one of the few actively debated portions of the bill in its legislative consideration. Planning, historic preservation, and environmental advocates urged that associations be given standing whenever one of its members had standing. The development community was very concerned about the possibility of interest groups, particularly statewide organizations or groups formed to fight a particular project, filing suit in order to delay approved projects. The resolution was to allow some, but not all groups, to have standing. Neighborhood associations and associations organized to protect and foster the interests of the neighborhood or local area are granted standing, provided at least one of the members of the association would have individual standing and the association was not created in response to the particular development that is the subject of the appeal.

Intervention is governed by the Rules of Civil Procedure, provided that a person with an ownership interest in the property as described above can intervene as a matter of right. Others must demonstrate that they would have had standing to initiate the action.

The respondent in these matters is to be the local government, not the individual board making the decision (e.g., Fife v. Town of Mayberry). An exception occurs when the local government itself is seeking judicial review, in which case the board making the decision is the respondent (e.g., Town of Mayberry v. Mayberry Board of Adjustment). If a third party is making the appeal, the applicant must also be named as a respondent. The person making the appeal may also include any other person with an ownership interest in the property as a respondent. A respondent is not required to file an answer unless it contends the petitioner lacks standing, in which case an answer on that contention must be served on all petitioners at least thirty days prior to the hearing.

The superior court hears the appeal based on the record established by the board hearing the quasi-judicial matter. The law defines this record to include all documents and exhibits submitted to that board and the minutes of the meetings at which the matter was heard. Any party may request that the record include an audiotape or videotape of the meeting if that is available. Any party may also include a verbatim transcript of the meeting, with the cost of preparation of the transcript being the responsibility of the party choosing to include it. The record must be bound, paginated, and served on all petitioners by the local government within three days of filing it with the court. The court may allow the record to be supplemented with affidavits or testimony regarding standing, alleged impermissible conflicts of interest, and the legal issues of constitutionality or statutory authority for the decision (these legal issues are beyond the scope of issues that could have been addressed by the original decision-making board).

The law codifies the scope of review to be used by the courts. For the most part this confirms the long-standing case law on the grounds for review of a quasi-judicial decision. The courts may consider whether the board's decision was:

1. In violation of constitutional provisions;
2. In excess of statutory authority;
3. Inconsistent with procedures set by statutes or the ordinance involved;
4. Affected by error of law;
5. Unsupported by substantial, competent evidence in the record; or
6. Arbitrary or capricious.

The law also reconciles conflicting case law on several dimensions of these reviews.

First, there is the question of deference to an interpretation of the ordinance made by the local decision-making board. Prior case law was clear that the trial court conducts a de novo review. However, some cases held the decision-making board's original interpretation was only to be overturned if it was arbitrary or capricious. Other cases indicated the board's interpretation was entitled to great deference, particularly where an interpretation was well considered and consistently applied. Still other cases held the board's interpretation was entitled to no deference at all. This was one of the other points of active debate in the legislative consideration of the bill, with the planning community arguing for substantial deference and the development community arguing for no deference. The law resolves this with a middle-ground position. It provides that the court is to consider the interpretation of the decision-making board, but is not bound by that interpretation and "may freely substitute its judgment as appropriate." It is likely that the degree to which the board's interpretation was in fact well considered and consistently applied will be a factor in determining when it is "appropriate" to use that as an aid in ascertaining the intent of the adopting board if the ordinance language is ambiguous.

Second, there is the question of the use of hearsay evidence and opinion testimony by lay witnesses. In determining whether there was sufficient competent evidence, the law provides that decision-making board is allowed to consider evidence that would not be admissible under the rules of evidence in a court proceeding, but only if there was no objection to its presentation or the evidence is "sufficiently trustworthy" and it was admitted under circumstances that reliance on it was reasonable. However, several specific instances of opinion testimony by non-expert witnesses are explicitly deemed not to be competent evidence. These include testimony about how the proposed use would affect the value of neighboring properties, whether vehicular traffic would pose a danger to public safety, and any other matter upon which only expert testimony would generally be admissible under the rules of evidence.

Finally, the law addresses the remedies available for consideration by the court. It provides that the court may affirm or reverse the original decision made by the local government board or may remand it with either instructions or a direction for further proceedings. A remand can be made to correct a procedural record or to make findings of fact based on the existing record. If the court finds the board's decision is not supported by substantial competent evidence in the record or has an error of law, the remand may include an order to issue the approval (subject to reasonable and appropriate conditions) or to revoke the approval. The relief can also include appropriate injunctive orders.

The law makes one additional clarifying amendment to the state's zoning enabling statutes. When the statutes were amended in 2005 to codify the conflict of interest standard for quasi-judicial decisions, that language was added to the sections of the statutes on boards of adjustment because this section contains the provisions for most quasi-judicial zoning decisions. This law amends G.S. 160A-388(e1) and G.S.153A-345(e1) to confirm that it is the quasi-judicial nature of decisions, not the identity of the board making the decision, that mandate these due process conflict-of- interest standards. Thus any board making a quasi-judicial land use regulatory decision--be it the board of adjustment, governing board, planning board, technical review board, historic preservation commission, or the like—is subject to the same rules on impartiality.

## *Energy Efficiency.*

In 2007 and 2008 fifteen local governments received permission to provide zoning incentives for new development that is energy efficient. S.L. 2009-95 (S 52), effective June 3, 2009, amends G.S. 160A-383.4 to allow all cities and counties to provide density bonuses and other incentives in land use regulations for those who achieve significant energy conservation in new development or reconstruction projects.

In 2007 G.S. 160A-201 and 153A-144 were adopted to limit city and county ordinance restrictions on solar collectors on single family residences. S.L. 2009-553 (H 1387) broadens those laws so that they now apply to all residential properties.

## *Affordable Housing Discrimination.*

Proponents of affordable housing projects across the nation have long been concerned that neighborhood opposition can lead to land use regulatory decisions limiting the siting of these projects. The result has been the exclusion of housing opportunities for low-income persons in these communities. In some states there is considerable case law or statutory provisions that address this exclusionary zoning issue. But prior to 2009 there was little legislative attention to this issue in North Carolina.

S.L. 2009-533 (S 810) addresses this issue by creating G.S. 41A-4(f) to make it unlawful housing discrimination if a land use decision is based on the fact that a development includes affordable housing. It provides that a decision limiting high concentrations of affordable housing is not unlawful discrimination.

Complaints about alleged housing discrimination are made to the state Human Relations Commission and, if not resolved to the complainant's satisfaction, may thereafter be taken to court upon issuance of a right-to-sue letter by the Commission. If an action goes to court, the court has the authority under G.S. 41-7 to order injunctive relief and may award a successful plaintiff actual and punitive damages, as well as court costs and reasonable attorney fees. These are powerful remedies that allow a plaintiff with limited resources the means to challenge unlawful discrimination.

A prudent local government would be well advised to carefully and explicitly address this concern about unlawful exclusion of affordable housing in its land use decision-making. It is not unlawful discrimination if a citizen makes a discriminatory comment in a public hearing on a project with affordable housing. Still, especially in cases where such animosity is expressed or

strongly implied, the staff reports and board discussion need to clearly establish a legitimate, nondiscriminatory land use basis for the decision.

### *ABC Store Locations.*

S.L. 2009-36 (H 186) gives local governments a greater role in the location of ABC stores. This act amends G.S.18B-801 to add a provision prohibiting a local ABC board from locating an ABC store within a city over the objection of the city's governing board. The law does allow the local board to seek an override of this prohibition by the state ABC board.. This law became effective on October 1, 2009.

A local bill on this topic, S.L. 2009-295 (S 68), allows the ABC board to limit the location of ABC stores within 1,000 feet of a school or church in Guilford County.

### *Limits on Development Moratoria (Eligible in 2010).*

Amendments to the zoning statutes in 2005 established a detailed process for the adoption of moratoria. In the last days of the 2008 legislative session a Senate committee added a limitation on moratoria to an unrelated pending bill on DOT access permits. The proposed limit would have prohibited the adoption of any moratorium if "the sole purpose" of the moratorium was to update or amend a local plan or ordinance. This provision was ultimately withdrawn, but the concept returned in 2009. S 117 would prohibit use of any moratorium adopted "for the purpose of developing and adopting new or amended ordinances." This bill passed the Senate but did not come up for a committee hearing in the House of Representatives. It is eligible for further consideration in 2010.

### *Protest Petitions (Local Act)*

S.L. 2009-4 (H 64) restored the protest petition option in Greensboro for those upset with a proposed rezoning. The General Assembly in 1971 had removed the protest petition option in Greensboro.

## Land Subdivision Control, Development Fees, and Growth Management

### *Electronic Notice for Fees Associated with Subdivisions*

S.L. 2009-436 (S 698) requires a city, county, water and sewer authority, or a sanitary district to provide notice on its website (if there is one) whenever certain development-related fees or charges are proposed to be imposed or increased. Peculiarly enough, the fees or charges involved are those "applicable solely to the construction of development subject to the provisions of Part 2 of (G.S. Chapter 160A, article 19 or G.S. Chapter 153A, article 18)." These statutory citations refer to the city and county land subdivision control enabling statutes. The fees or charges involved appear to include administrative fees associated with the review and approval of subdivision plats, or fees paid in lieu of dedicating recreation areas or constructing road improvements. However, water and sewer authorities and sanitary districts lack authority to regulate the subdivision of land. Therefore, it seems likely that the new law is intended to apply

also to fees that public enterprises and utility service providers charge in association with capital expansion (impact fees), installation of improvements, extension of service, or providing service connections, if the fees are somehow linked solely to "subdivisions."

The required notice must be placed on the website at least seven days before the meeting at which the fee increase is on the agenda of the affected governing board. The governing board must then offer a public comment period at a public meeting on the proposed fee changes prior to adoption. S.L. 2009-436 (S 698) does not apply, however, if the proposed fee changes are included in a manager's proposed budget for the year, filed and advertised pursuant to G.S. 159-12 (part of the budget and fiscal control legislation).

The act became effective September 1, 2009.

### *Study of the Transfer of Development Rights*

Section 2.42 of the Studies Act of 2009, S.L. 2009 -574 (H 945), authorizes the Legislative Research Commission to study the transfer of development rights into the developed areas of counties, including Currituck and Chatham Counties, in association with the use of conservation easements.

### *Subdivision Road Improvements (Eligible for 2010 )*

S 761 is designed to limit a subdivider's responsibility under a city or county subdivision ordinance for providing road-related improvements to the amount necessary to serve projected traffic generated by the proposed development as a percentage of traffic served by the total required improvements. The required cost apportionment, however, does not apply to the cost of improvements required to preserve the safe operations of the road, nor does it apply to improvements required by the North Carolina Department of Transportation.

The bill has passed the Senate and is eligible for consideration in the 2010 session.

### *Land Subdivision Regulation ( Local Act)*

One local act adopted this year serves to expand the scope of local government authority to regulate land subdivision. S.L. 2009-33 (S 385) amends G.S. 153A-335 as it applies to Macon County. It exempts "family subdivisions" in which the grantee of a lot is within four degrees of kinship of the grantor.

## Historic Preservation

### *Condemnation of Historic Preservation Easement*

A new law that may be viewed as an environmental measure to protect land conservation easements also affects properties subject to historic preservation easements. A number of properties in North Carolina are encumbered by covenants or easements held by the Preservation Fund of North Carolina or other historic preservation nonprofit organizations. S.L. 2009-439 (S 600) prevents any public entity that intends to acquire a property by eminent domain that is subject to a historic preservation easement from doing so so unless the entity can demonstrate to

a court that it lacks any prudent and feasible alternative. The act does not apply to condemnation for utilities, stormwater or drainage improvements, or trails associated with greenways. It is also important to note that neither the North Carolina Department of Transportation nor the North Carolina Turnpike Authority are subject to the new requirement if a project review is conducted pursuant to federal or state environmental impact review requirements and the mitigation measures to minimize the impact are identified in the review process.

# Community Appearance/Public Nuisances

## *Notice to Chronic Violators of Overgrown Lot Ordinances*

S.L. 2009-19 (S 452) is intended to improve the enforcement of municipal overgrown-lot ordinances. It amends G.S. 160A-200, which was applicable to 26 cities, to make that statute applicable to to all cities. The new law defines a chronic violator of such an ordinance to be an owner of property with respect to which a local government has taken remedial action at least three times during the previous calendar year. S.L. 2009-19 then allows a municipality without further notice to take summary action to remedy the violation and makes the expense of the action a lien against the property so that it may be collected as unpaid taxes. The new law requires the requisite notices to be sent by registered or certified mail.

The act repeals prior local legislation of the same sort, effective October 1, 2009, but preserves all ordinances that are consistent with the new statewide legislation. The act also provides that any new ordinance adopted under this authority may not become effective until October 1, 2009.

## *Notice to Chronic Violators of Public Nuisance Ordinances*

S.L. 2009-287 (S 564) is very similar to the overgrown-lot legislation above. However, since it applies to all public nuisances ordinances, it is broader in scope. It also applies to both cities and counties by adding two new statutes, G.S. 160A-220.1 and G.S. 153A-140.2. They define a chronic violator of such an ordinance to be an owner of property with respect to which a local government has sent at least three violation notices during a calendar year. The law then allows a city or county without further notice to take summary action to remedy the violation and makes the expense of the action a lien against the property such that it may be collected as unpaid taxes. The new law requires the requisite notices to be sent by certified mail.

The act repeals prior local legislation, effective October 1, 2009, but preserves all ordinances that are consistent with the new statewide legislation. The act also provides that any new ordinance adopted under this authority may not become effective until October 1, 2009.

S.L. 2009-287 and S.L. 2009-19 (described above) are both examples of new general local government enabling authority that has grown out of the success of local legislation on the same subject.

## *Regulation of Junked Motor Vehicles*

G.S. 160A-303(b2) and G.S. 160A-303.2(a) both define junked motor vehicles for purpose of municipal regulation and towing. One element of the definition in both statutes has

been the requirement that such vehicles be worth less than $100. A number of local governments have secured local legislation to increase the value threshold for defining a "junked motor vehicle." S.L. 2009-97 (H 867) uses the standards in these local bills to amend both G.S. 160A-303(b2) and G.S. 160A-303.2(a) and to raise the ceiling on the value of a junked vehicle from $100 to $500. No changes were made in the corresponding county statutes. Ordinances that take advantage of the new law may become effective no earlier than October 1, 2009.

### *Community Appearance/Public Nuisance ( Eligible in 2010)*

H 1353 would invalidate provisions in local ordinances that ban clotheslines used on residential property. However, the bill would allow cities and counties to adopt regulations affecting the location and screening of clotheslines. In particular a local government may prohibit the location of clotheslines that are visible by a person on the ground and that face areas open to common or public access. The bill has passed the House and is eligible for further consideration in the Senate.

### *Vegetation Removal and Billboards (No action)*

Thestate's outdoor advertising control program regulates signs along certain federal and state highways. H 1583 would have allowed the clearing of trees and other vegetation from the right-of-way for the express purpose of allowing outdoor adverting displays and buildings housing commercial establishments beyond the right-of-way to be more visible from the highway. The bill apparently died in a House committee.

## Community Development, Housing, and Economic Development

### *Housing Authorities in Certain University Towns*

S.L. 2009-218 (H 1093) amends G.S. 157–9.1 to allow housing authorities in municipalities with a population of less than 20,000 and that are home to a constituent institution of The University of North Carolina and that have a student enrollment of more than 10,000 students to provide for those with moderate incomes. Similarly, county housing authorities in counties with a population of less than 80,000 that serve such an institution of higher education may do so as well.

### *Violation of Fair Housing Act to Discriminate Against Affordable Housing Projects*

The important act (S.L. 2009-533 (S 810)) that makes it a violation of North Carolina's Fair Housing Act to discriminate against affordable housing projects in land-use or development-permitting decisions is described in the Zoning section above.

### *State Residential Lead-Based Paint Hazard Reduction Program Established*

Legislation to become effective on January 1, 2010, is designed to establish a lead-based paint reduction program that will allow North Carolina to take over the administration of such

program from the U.S. Environmental Protection Agency, as provided under federal legislation. S.L. 2009-488 (H 1151) establishes requirements for the certification of persons performing lead-based paint renovation work in certain forms of pre-1978 residential housing and child-occupied facilities.

## *Housing for Public Employees (Local Acts)*

Two local acts reflect the interest of several local governments in taking an active role in providing housing for their public employees. S.L. 2009-154 (H 206) authorizes the City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education to develop and provide affordable housing for employees on land owned and leased by a local unit. S.L. 2009-161 (S 498) provides similar authority for Edgecombe County Board of Education to provide affordable rental housing for teachers and other school system employees.

## *Eminent Domain to Provide Housing for Those with Low or Moderate Incomes (Local Act)*

S.L. 2009-34 (H 227) applies to the cities of Winston-Salem and Rocky Mount. It authorizes them to use eminent domain to acquire certain substandard residential property to provide housing for persons with low or moderate incomes.

## *Municipal Service Districts for Urban Revitalization*

Under prior law any municipality with a population of over 150,000 could establish an urban service district for a downtown revitalization project. S.L. 2009-385 (S 618) removes the population restriction. Now any municipality may create such a service district to support urban revitalization in central business districts, in business districts outside the downtown, in major transportation corridors, and in areas that are centered near "a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities."

## *Main Street Grant Funds*

Section 14.10 of the budget act, S.L. 2009-451 (S 202), makes certain changes to the popular Main Street Financial Incentive Fund, rewriting G.S. 143B-472.35. It changes the name of the fund to "Main Street Solutions." Under prior law the money was available only for cities affiliated with the North Carolina Main Street Center Program. Now the funds are available to "micropolitan" cities (cities with a population of between 10,000 and 50,000) that are located in counties designated as development-tier two or development–tier three. The act loosens some of the restrictions on the distribution of funds. However, it does provide that funding application must include a copy of the "consensus local development plan" developed by the applicant city in conjunction with the Department of Commerce's Main Street Program and the city's regional economic development commission or its local council of government or both.

## *Small Business Assistance*

Section 14.3 of the budget act, S.L. 2009-451 (S 202), makes changes to the One North Carolina Small Business Program, adding a new G.S. 143B-437.89. It establishes a Small-

Business Jobs Preservation and Emergency Assistance Fund in the North Carolina Department of Commerce that is designed to provide financial assistance in the form of loans to businesses whose annual receipts do not exceed $1 million and who employ fewer than 100 full-time employees. No small business may receive monies that total more than $35,000. The act also requires loan recipients to file annual reports documenting the use of the money and the impact that the investment has had.

# Transportation

## *Congestion Relief and Intermodal Transportation 21st Century Fund*

In the fall of 2007, then-Governor Easley, Senate President Pro-Tem Basnight, and House Speaker Hackney jointly established the 21st Century Transportation Committee. Its charge was to review the state's transportation and transportation finance policies and report back to the General Assembly with interim recommendations for the 2008 short session and final recommendations for the 2009 session. The Committee issued interim recommendations in May 2008, including public transportation proposals included in H 2363 (Congestion Relief/Intermodal Transport Fund), introduced in the short session. That bill did not pass, but an expanded bill was introduced in early 2009 (H 148) that was eventually enacted as S.L. 2009-527. The new act establishes a structure to guide states investment in freight and passenger rail and public transportation. It is particularly significant for local governments and transportation authorities because it authorizes new sources of funding for public transportation programs throughout the state.

### State Grants to Various Entities

The law adds G.S. 136-252 to authorize the Secretary of Transportation, after consulting with the Board of Transportation, to make grant funds available for a variety of purposes and to a variety of entities. First, grants may be made to local governments and transportation authorities for public transportation. In order to qualify, the application must be approved by the metropolitan (transportation) planning organization with jurisdiction, and the application must have adopted a wide-ranging transit plan that addresses traffic congestion, land use, housing needs, energy consumption, and access to service for those with lower incomes. In addition, a separate housing needs assessment must be prepared, with special emphasis on the problems associated with those with lower incomes being displaced because of new development around transit stations. Project grants may not exceed 25% of the project cost.

Second, grants may be made to short-line railroads to assist in economic development and developing access to ports and military installations. Grants may not exceed 50% of the project cost and total grants are limited to $5 million/year.

Third, grants may be made to railroads for the construction or restoration of rail improvements and intermodal or multimodal facilities. Funds may be used to serve ports, military installations, or inland ports, or, alternatively, to improve rail infrastructure so as to mitigate truck traffic on highways. Grants may not exceed 50% of the project costs, and total grants are limited to $10 million/year.

Fourth, grants may be made (i) to State ports for terminal railroad facilities and operations; (ii) for improvements for access to military installations; and (iii) for the North Carolina International Terminal. Grants may not exceed 50% of project cost, and total grants are limited to $10 million/year.

Fifth, grants may be made for the expansion of intercity passenger rail service.

This authority, however, was not accompanied with money. The General Assembly appropriated no funds in the 2009 legislative session for any of these purposes.

### Local Taxing Authority

Perhaps the most important feature of S.L. 2009-527 (H 148) is its authorization for counties to levy sales taxes to support public transportation, including bicycle and pedestrian infrastructure that supports public transportation. Certain counties may impose a half-cent sales tax to support public transportation through a special tax district that may include more than one county. The Triangle Transit Authority may propose such a district to include one or more Triangle counties (specifically Wake, Orange, and/or Durham). The Piedmont Authority for Regional Transportation (PART) may propose such a district in one or more Triad counties (specifically Forsyth and/or Guilford). The tax may be adopted only if it is approved by district voters in a referendum. Before such a referendum is held, the board of county commissioners in each affected county must approve the staging of the proposed referendum after holding a public hearing on the matter. If a referendum is held, the proposed tax must be approved by a majority of the voters in the entire district. However, if a particular county's voters do not approve the proposal but district voters as a whole do, the county is removed from the district. Prior to the levy of the tax, the relevant transportation authority must propose a financial plan based on the use of the proceeds from the tax. The plan must be approved by each affected county and by each regional (transportation) planning organization (MPO) represented in the district.

The act also allows the remaining members of PART (Alamance, Davidson, Davie, Randolph, Rockingham, Surry, Stokes, and Yadkin counties) and all counties other than Guilford, Forsyth, Wake, Orange, Durham, and Mecklenburg to adopt a quarter-cent sales tax for public transportation, if approved by voters in a referendum in the individual counties. In order to qualify, either the county or at least one municipality in the county must operate a public transportation system. Funds are allocated between the county and the city according to the same formula as used to allocate the proceeds of a vehicle registration tax (see below).

The act also adds a new G.S. 105-557 to provide for another possible source of revenue, a county vehicle registration tax. Any county may institute such a tax (not to exceed $7.00 per vehicle) and use it for public transportation, so long as either the county or at least one municipality in the county operates a public transportation system. Within the levying county, the tax must be shared by the county and the municipalities, with the county receiving funds based on the population in the unincorporated area and the municipalities based on their respective municipal populations. If a county or a municipality does not sponsor a transit system, it share of the funds is reallocated to those entities that do.

In addition, the law also authorizes an increase in county vehicle registration taxes for those counties within the jurisdiction of the Triangle Transit Authority and the Piedmont Authority for Regional Transportation. S.L. 2009-557 increases the allowable maximum fee

from the present $5.00 to a maximum of $7.00, effective immediately, and to $8.00, effective July 1, 2010.

One final authorization provided by the act concerns a supplemental property tax in the Research Triangle Park (RTP) special tax district. Under existing law the district may already levy up to 10 cents on each $100 value of property for various county purposes. This new legislation authorizes an additional 10 cents /$100 of assessed valuation to be used for public transportation within the RTP or to provide public transportation from RTP to other public transportation systems or to the Raleigh-Durham International Airport. That levy must be approved each year by a special tax district advisory board and the board of county commissioners of both Wake County and Durham County.

## *Transportation Corridor Mapping; Sale of Road Maintenance Materials*

S.L. 2009-332 (H 881) accomplishes several things. First, it makes technical and clarifying changes to G.S. 136-44.50 (the Transportation Corridor Official Map Act) to provide that the governing board of a county may adopt a transportation corridor official map. In addition, the Triangle Transit Authority and the Piedmont Authority for Regional Transportation are now authorized to adopt corridor official maps not only for public transportation purposes, but also for portions of existing or proposed state highways. Finally, it permits the North Carolina Department of Transportation to furnish road maintenance materials to cities, at prices established by the department. The act became effective August 1, 2009.

## *NCDOT Partnerships with Private Developers*

State partnerships with private developers to build roads date from as far back as 1987. In that year G.S. 136-28.6 was adopted to authorize NCDOT to "participate" in the costs of certain private engineering and construction contracts for work on State highways. S.L. 2009-235 (S 648), a department bill adopted this year, adds a variation on this theme by adding a new G.S. 136-28.6A, a law that expires on December 31, 2011. In contrast to existing law, which allows NCDOT participation only on roads included in the Transportation Improvement Plan or in a mutually adopted State-local transportation plan, the new law allows participation in any project performed on or abutting a state highway or a facility proposed to be added to the system. The new law is intended to allow NCDOT participation for the limited purpose of completing "incidental work" on state highway projects and limits NCDOT's participation to 10% of the engineering and construction contract amounts, or $250,000, whichever is less. (Existing law allows NCDOT to participate in up to 50% of the engineering and construction contract costs.)

## *Highway Statutes Now Focus on All Transportation Modes*

S.L. 2009-266 (S 828) primarily concerns the letting of bids by NCDOT for certain construction, maintenance, and repair contracts and the award of contracts to certain minority contractors. However, the most remarkable feature of the act is that it amends G.S. Chapter 136 some 66 times to change certain statutory references from "streets," "roads," and "highways" to "transportation projects or transportation infrastructure."

## *U.S. Marine Corps Highways Established*

S.L. 2009-198 (H 1021) designates portions of U.S. Highway 17 and U.S. Highway 70 in eastern North Carolina as "The U.S. Marine Corps Highway: Home of the Carolina-Based Marines since 1941."

## *Speed Limits on Newly-Annexed Streets and Highways*

Before S.L. 2009-234 (S 649) became effective on June 30, 2009, the speed limit on State highways (other than Interstates and controlled-access highways) automatically became 35 miles per hour when the highway was annexed to the city. Now, because of the new act, the NCDOT speed limit posted on the road at the time it is annexed remains in effect until both NCDOT and the city pass concurrent ordinances to change the speed limit. The act became effective June 30, 2009.

## *State Participation in Non-Federal Fixed-Rail Projects*

In 2000 G.S. 136-44.20(b1) was added to give the Department of Transportation the authority to participate in (pay a portion of) the costs of fixed-rail projects sponsored by a Regional Public Transportation Authority (i.e., the Triangle Transit Authority), a Regional Transportation Authority (i.e., the Piedmont Authority for Regional Transportation), or a unit of local government, but only if the project was federally approved and funded. S.L. 2009-409 (H 1005) amends this subsection to expressly authorize state funds to be used to fund projects such as these (or a project developed by NCDOT) even though they are not approved or funded by the federal government. The act also allows state funds to be used for administrative costs incurred by NCDOT while participating in these fixed guideway projects.

## *North Carolina Turnpike Authority Transferred to North Carolina Department of Transportation*

When the North Carolina Turnpike Authority was established in 2002, it was authorized to exercise its powers independently of NCDOT. However, in the interest of conserving the Turnpike Authority's spending and improving its efficiency, S.L. 2009-343 (H 1617) amends G.S. 136-182 in two respects. It first makes the Authority "subject to and under the direct supervision of the Secretary of Transportation." Second, it allows members of the North Carolina Board of Transportation to serve as members of the Turnpike Authority Board. (Before, no more than two NCDOT members were allowed to serve as Turnpike Authority Board members.)

## *Traffic-Calming Devices on State Streets in Residential Subdivisions*

Tension between homeowners associations and NCDOT over speed limits on state streets in residential subdivisions in unincorporated areas has resulted in a compromise represented by S.L. 2009-310 (H 182). The new law adds a new G.S. 136-102.8 to allow the department to establish policies for installing traffic tables or traffic-calming devices if certain requirements are met. The installation and utilization must be based on a traffic engineering study. The subdivision either must have a homeowners association, or the neighbors by agreement must have assumed responsibility for the devices that are installed. The association or the neighbors

by agreement must pay for and maintain the devices and post a bond to fund their maintenance and removal for a period of at least three years after the installation date.

The act became effective October 1, 2009, and applies to traffic tables and traffic-calming devices installed on or after that date.

### *Permeable Pavement for Bikeways and Sidewalks*

Section 25.6 of the budget act, S.L. 2009-451 (S 202), amends G.S. 136-18(41) to direct the North Carolina Department of Transportation to determine, prior to the beginning of construction, whether sidewalks and other facilities intended for pedestrians and bicycles that are located within the right-of-way of NCDOT highway or street must be constructed with permeable pavement.

### *Transportation Studies*

Several important transportation studies were authorized by S.L. 2009-574 (H 945), the "Studies Act of 2009." Section 4.4 of the act authorizes the Joint Legislative Transportation Oversight Committee to study the state's method of distributing transportation funds. Section 4.5 allows the committee to study ways to reduce highway construction expenses by considering life-cycle costs, durability, environmental impact, sustainability, longevity, and maintenance costs when selecting project pavement types. Sections 36.1 and 36.2 permit the North Carolina Department of Transportation to study the feasibility of "tolling" all Interstate highways entering the state, with the cooperation of each surrounding state. Sections 37.1 and 37.2 allow the department to study and consider locating Richmond-Raleigh high-speed southeast passenger rail improvements along the planned U.S.158 four-lane freeway corridor between Roanoke Rapids and Henderson.

### *Transportation Bills (Eligible for 2010)*

H 116 concerns management and protection of railroad corridors, as recommended by the House Select Committee on a Comprehensive Rail Service Plan for North Carolina. It would reverse the presumption that a railroad has abandoned its right-of-way if it removes the tracks and makes no use of right-of-way for seven years. H 116 provides that abandonment may be accomplished only if the railroad first records a certificate of abandonment in the office of the register of deeds. It would also provide for drastic restrictions on development within railroad corridors for which official railroad corridor maps have been recorded. It has passed the House and is eligible for further action in the 2010 legislative session.

S 222 would authorize the City of Wilmington to levy a one-half cent local sales and use tax to be used to mitigate auto congestion, if such a measure is passed by voters. It has passed the Senate and is eligible for further action in the 2010 legislative session.

## Hazards and Emergency Preparedness

Legislation enacted in 2008 mandated a study of ways to increase the capacity of cities and counties to plan for, respond to, and manage disasters. This study resulted in a number of recommendations, most of which were enacted in 2009.

Several of the acts clarify local government authority and responsibility in hazard situations and build local capacity to address these issues. S.L. 2009-192 (H 377) creates a new section of the statutes (G.S. 166A-54 to -57) to authorize the establishment of a voluntary certification program for emergency management personnel. The program is to be established by the Division of Emergency Management (DEM) in the Department of Crime Control and Public Safety. The law allows DEM to set standards for certification and training programs, provides for an advisory board, and for issuance of certification and reciprocity with other states. S.L. 2009-146 (S 256) amends G.S. 14-288.12 to clarify local authority to order mandatory evacuations, to set evacuation routes, and to control reentry into disaster areas. S.L. 2009-194 (H 379) amends G.S. 166A-10 to clarify that the state government can enter into mutual aid agreements with local governments. S.L. 2009-196 (H 380) strengthens local emergency management capabilities by amending G.S. 166A-5 to allow state standards for local emergency management plans and programs. It also amends G.S. 166A-7 to allow counties and cities to form joint emergency management agencies and ties funding to meeting state requirements.

At the state level, S.L. 2009-225 (S 258) authorizes the DEM to create a voluntary model medical registry of frail persons who will need special assistance in natural disasters. The law also adds a provision to G.S. 166A-7(d) to allow cities and counties to coordinate creation of local voluntary registries. S.L. 2009-193 (H 381) specifies that the DEM is the lead state agency for hazard risk management. S.L. 2009-397 (H 378) adds explicit mention of the Division of Emergency Management to the organizational provisions of the Department of Crime Control and Public Safety.

# ENVIRONMENT

## *Water Quality*

The quality of water in Jordan Lake was a contentious issue even prior to the 1983 creation of the lake. For over a decade the state has been working towards the development of a comprehensive nutrient strategy for the Jordan Reservoir, similar to the strategies and rules that have been put into place for the Neuse and Tar-Pamlico River basins. After several years of studies and informal discussions, the formal rule-making process to establish the "Jordan Lake Rules" was initiated in 2007. This led to the adoption by the Environmental Management Commission (EMC) of thirteen Jordan Lake watershed rules in 2008 that set nitrogen and phosphorus reduction goals for each of the three arms of the lake (15A NCAC 2B .0262 to .0273). These rules affect eight counties and 26 municipalities in this watershed. The rules address agriculture, stormwater management for new development, protection of riparian buffers, wastewater discharges, stormwater from state and federal entities (including NCDOT), fertilizer management, and options for offsetting nutrient reductions. For the first time, these rules included standards for nutrient reductions from existing development, a necessary step given the significant contributions of pollutants from this source in the Jordan watershed. These rules were, however, were put on hold for a period of legislative review in 2009. The legislature adopted two bills that adjusted some of these rules.

The principal law affecting the Jordan Lake rules was S.L. 2009-216 (H 239). This law replaced the EMC's rule on existing development with legislatively adopted standards. All local

governments are to submit Stage 1 adaptive management programs by the end of 2009. More stringent Stage 2 programs would be required in 2014 and 2017 if needed based on water quality monitoring, with further measures potentially required in 2023. The law also created a Nutrient Sensitive Waters Scientific Advisory Board. Part II of S.L. 2009-484 (S 838) made additional largely technical adjustments to several of the rules. The changes mandated by these two laws are to be incorporated into the EMC rules. With these two bills and the adjournment of the General Assembly, the entire set of Jordan Lake rules are now in effect.

Rules for the Falls Lake and Upper Neuse River Basin watershed have also been under development and discussion for some time. S.L. 2009-486 (S 1020) directs the EMC to develop a nutrient management strategy for this area by January 15, 2011, with implementation to be mandated no later than thirty months after the rules become effective. The EMC is also directed to provide credits to local governments and landowners for early implementation of nutrient and sedimentation reduction policies and practices. The law also includes adjustments to compensatory mitigation and sedimentation standards for water-supply watersheds.

The increasing use of mandatory buffers and similar water quality protection measures has led to questions about mitigation and offsets where there are unavoidable impacts or more cost-effective measures of reaching water quality protection needs. S.L. 2009-337 (S 755) addresses this need by expanding the potential use of compensatory mitigation banks. The law amends G.S. 143-214.20 to provide additional mitigation options for nongovernmental permittees whose activities disturb riparian buffers. The law also makes provision for purchase of nutrient offset credits if the offset project is consistent with rules set by the EMC and is located within the same hydrologic area as the associated nutrient loading. The law also directs the Department of Environment and Natural Resources (DENR) to study the effect of compensatory wetland, stream, and riparian buffer mitigation bank programs on the Ecosystem Enhancement Program.

Several other laws address water quality and quantity issues. S.L. 2009-322 (H 1100) directs DENR to develop stormwater best management practices for mulch and compost operations. S.L. 2009-345 (H 1378) creates G.S. 77-125 to -132 to require certain marinas to have pumpout facilities to handle sanitary waste from vessels. Affected marinas are those with ten or more wet slips for vessels with lengths of 26 feet or more. If these marinas are located in no discharge zones or where a petition for a no-discharge zone has been filed by the county or municipality, they must have a pumpout facility on site by July 1, 2010. The law also prohibits boat discharges of sanitary wastes in coastal waters. S.L. 2009-478 (H 569) directs DENR to allow the use of open-bottom culverts on private property, provided specified design specifications are met. These culverts may not be transferred to NCDOT. S.L. 2009-480 (H 1236) creates G.S. 143-355.2(h1) to establish a voluntary water conservation program for commercial car washes. A local bill, S.L. 2009-293 (H 1011) allows Raleigh to make assessments to owners of stormwater facilities to cover the costs to repair damaged or failed facilities. H 1099, which passed both houses of the legislature but is still in conference committee (and is thus eligible for action in 2010), would address a number of additional water quality issues. These include allowing third party certification that parking lots and bioretention areas meet stormwater standards.

The Studies Act of 2009, S.L. 2009-574 (H 945), authorizes several studies relative to water quality and quantity. Section 2.37 authorizes the Legislative Research Commission to study the feasibility and advisability of providing tax credits for installation of innovative, low-

impact development stormwater management systems. Sections 6.2 and 6.3 authorize the Environmental Review Commission (ERC) to study issues related to inter-basin transfers and water allocation and Section 6.10 authorizes the ERC to study ways to phase out animal waste management systems that involve use of lagoon and spray-field systems. Section 39.2 authorizes the Department of Agriculture and Consumer Services to study the adequacy of regulations on land application of sludge and Section 6.10 authorizes the ERC to examine this same issue.

## *Mountain Area Planning.*

The state role in the management of the mountain area of the state under a proposed Mountain Area Management Act was actively debated in the 1974 General Assembly. That discussion continued in 2009 with the adoption of S.L. 2009-485 (S 968). The law creates a seventeen-member Mountain Resources Commission. Ten of the members are to be legislative and gubernatorial appointees, five from the mountain area regional planning agencies, and the remaining two from specified area interest groups. The Commission is to identify issues and recommend programs to address mountain resource issues, coordinate resource planning and protection efforts, provide a forum for discussion, promote communication and education, collect research and information on provision of infrastructure and encouraging quality growth, and to examine new strategies and tools for addressing pressures on mountain resources. The law also creates a thirteen- member Mountain Area Technical Advisory Council made up of professionals with environmental, engineering, planning and governmental expertise.

The Studies Act of 2009, S.L. 2009-574 (H 945), also authorizes the Legislative Research Commission to study "issues affecting important mountain resources" and to recommend policies and programs for those issues/

## *Shoreline Hardening.*

In the early 1980's North Carolina adopted regulations under the Coastal Area Management Act to prohibit use of most oceanfront shoreline hardening devices (bulkheads, seawall, groins, and jetties) to deal with beach erosion. In 2003 this regulatory restriction was codified as G.S. 113A-115.1. The rules do allow temporary structures such as sandbags to allow a period to protect imminently endangered structures while longer term solutions to the problem are implemented. In recent years there has been resistance to requirements to remove the "temporary" structures and calls to allow some jetties installed as part of larger scale beach nourishment projects. S.L. 2009-479 (H 709) does not take those steps, but it does place a moratorium until September 1, 2010, on requirements to remove permitted temporary erosion control structure in any community that was actively pursuing a beach nourishment project or inlet relocation project on or before August 11, 2009. The Coastal Resources Commission is directed to study the feasibility and advisability of the use of terminal groins and report the results of that study to the Environmental Review Commission (ERC) by April 1, 2010.

The Studies Act of 2009, S.L. 2009-574 (H 945), authorizes the Department of Environment and Natural Resources to study existing laws and policies on temporary erosion control structures (Section 41) and measures to mitigate the impact of erosion-threatened structures on public beaches (Section 42). In both instances, reports with recommendations may be made to the ERC. Section 6.9 of the Studies Act also authorizes the ERC to study establishing a system to notify prospective purchasers of coastal properties of coastal hazards.

## *Energy Conservation*

In addition to the legislation regarding solar collectors on residences and incentives for energy efficient developments (both of which are discussed above in the zoning section), the General Assembly adopted two additional laws to promote energy conservation.

S.L. 2009-522 (H 1389) establishes a new vehicle for cities and counties to assist homeowners and others save energy. The law creates G.S. 160A-459.1 and 153A-455 to allow cities and counties respectively to create revolving loan programs for energy improvements. Once a fund is established, the city or county may make loans to finance purchase and installation of "distributed generation renewable energy sources" or energy efficiency improvements that are permanently affixed to real property. Interest for loans from the revolving funds may not exceed 8%, and the loans may not be for a term of more than 15 years. It is anticipated that some of the funds from the Energy Efficiency Conservation Block Grants that will be available through the federal stimulus program may be placed in these loan programs and made available to assist in financing installation of solar panels, small wind turbines, and the like.

S.L. 2009-548 (H 512) extends the state income tax credit or renewable energy projects to include geothermal heat pumps and equipment.

Two local bills address energy conservation. S.L. 2009-427 (S 475) amends the Carrboro town charter to allow the town to prohibit private restrictive covenants that forbid conservation measures (such as clothes lines). S.L. 2009-149 (H 464) allows Raleigh to continue and expand its pilot program regarding LED lighting without use of the competitive bidding process and allow Raleigh and Winston-Salem to lease land for renewable energy facilities for up to twenty years without treating that as a sale of land.

## *Wind Energy*

The General Assembly considered but did not enact legislation to regulate wind energy facilities. S 1068 would establish a regulatory program for both coastal and non-coastal locations of turbines that would have a rated capacity of three megawatts or more from turbines located within a half-mile of each other. In the coastal area, such facilities would require a permit under the Coastal Area Management Act, with detailed requirements specified as to the necessary supporting studies for permit applications and standards for permit decision. A similar program would be established in non-coastal areas, with permit applications to be determined by the Department of Environment and Natural Resources. A key issue in the latter group was whether windmills should be allowed along mountain ridges. The bill would not allow these windmills in areas where they would be prohibited under the Mountain Ridge Law (but would exempt windmills to serve individual residences if the windmill is no more than 100 feet from the base to the turbine hub). Local regulations of windmills would not be preempted either in the coastal area or in non-coastal areas. This bill passed the Senate but is eligible for further consideration in the House of Representatives.

The Studies Act of 2009, S.L. 2009-574 (H 945), authorizes the Legislative Utility Review Committee to study a system of permits for siting wind energy facilities.

### *Additional Studies*

In addition to the studies noted above, the Studies Act of 2009, S.L. 2009-574 (H 945), authorizes several additional studies. Section 6.4 authorizes the ERC to study the desirability and feasibility of consolidating the state's policy-making, rule-making, and quasi-judicial functions into one comprehensive full-time commission. Section 6.7 authorizes the ERC to study how the state can grow in a sustainable manner through the year 2050 and Section 6.6 authorizes the ERC to examine ways to expand alternative energy use by state government. Section 2.38 authorizes the Legislative Research Commission to study incorporating farming into any cap and trade system that may be used for greenhouse gas emission limitations.

## Jurisdiction

Potential major revision to the state's annexation laws was the principal jurisdictional issue before the 2009 session of the General Assembly. A large number of bills were introduced on this topic. A compromise bill, H 524, emerged as the vehicle for addressing annexation standards. This bill was passed by the House, but the late inclusion of a requirement for annexation approval by referendum led to the compromise support for the bill evaporating. This bill was not taken up by the Senate.

The parade of cities securing authorization to undertake satellite annexations where the satellite land areas exceeds the usual limit of not being more than 10% of the area within the primary corporate limits continued in 2009. These include Apex (S.L. 2009-53, H 758), Belmont (S.L. 209-111, H 280), Bridgeton (S.L. 2009-156, H 646), Jamestown (S.L. 2009-323, H 688), Norwood (S.L. 2009-256, S 29), and Richlands (S.L. 2009-40, H 336).

Other local bills annexed specific areas into cities. These include Aberdeen (S.L. 2009-153, S 432), Eastover (S.L. 2009-23, S 214), Kannapolis (S.L. 2009-113, H 422), and Pine Knoll Shores (S.L. 2009-151, S 91). A specified area was removed from Landis (S.L. 2009-159, H 992), Kannapolis (S.L. 2009-430, S 346), Robbins (S.L. 2009-294, S 215), and Washington (S.L. 2009-469, H 921).

Several local governments had their extraterritorial jurisdiction authority modified in 2009. S.L. 2009-371 (S 53) provides Burgaw with a two-mile ETJ. S.L. 2009-251 (S 495) added a specified area to the Oak Ridge ETJ. S.L. 2009-260 (H 743) did the same for Wendell. S.L. 2009-426 (S 251) moves a specified area from the Faison ETJ to Sampson County jurisdiction and specifies the zoning for the tract.

Several potential new municipal incorporations were authorized. These include are pending. These include Archer Lodge (S.L. 2009-466, S 535), Sneads Ferry (S.L. 2009-431, S 359), and Swannanoa (S.L. 2009-467, S 553). All three are subject to approval by referendum. Bills to do the same for other potential new cities were not enacted. These include Enochville (S 549) and Lake James (S 538).

# Code Enforcement

## *Housing Code Enforcement*

Legislationl that makes important changes to the landlord-tenant law was enacted in 2009, but the final section of the act concerns housing code enforcement. The act, S.L. 2009-279 (S 661), makes two key additions to G.S. 160A-443, a key minimum housing code enabling statute.

Under prior law, the code enforcement officer could order a deteriorated dwelling to be either repaired or improved, or closed or vacated. The choice remained in the hands of the owner. In contrast the new law directs the housing–code official to issue an order requiring the property owner "to repair, alter or improve the dwelling in order to render it fit for human habitation." This repair order may be supplemented with an order to vacate and close the unit. However, such an order may be used only if continued occupancy during the time allowed for repair "will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities." In addition, this initial order must state that failure to make timely repairs may result in an "unfit order" allowing the local government to arrange for direct summary action to carry out the order itself.

These changes became effective October 1, 2009.

## *Residential Buildings Condemned Because of Blighting Influences*

For over 100 years the North Carolina statutes have authorized cities to condemn unsafe buildings and structures. However, only since 2000 have cities been authorized to condemn certain buildings and structures solely because they have a blighting influence upon the neighborhood, and even that authority has been restricted to nonresidential properties. In order to exercise this authority the property must (i) be located within a community development target area; (ii) appear to be vacant or abandoned; and (iii) appear to be in such a dilapidated condition that it contributes to blight, disease, vagrancy, fire or safety hazards, is a danger to children, tends to attract persons intent on criminal activities, or otherwise constitutes a public nuisance. A companion statute, G.S. 160A–432.1, permitted a dozen municipalities to apply this power to residential properties as well.

S.L. 2009-263 broadens this authority by allowing any municipality to exercise this authority with respect to both nonresidential and residential property. However, to do so a city must adopt an implementing ordinance after first holding a properly noticed public hearing. (Heretofore the statute did not require that an ordinance be adopted to implement it; a local building inspector was delegated the condemnation power directly by the General Assembly.) This change in the law also means that cities may take summary action to cause both residential and nonresidential buildings to be removed or demolished if the owner fails to do so.

The act repeals G.S. 160A-425.1 (the legislation applicable to a dozen cities) and an associated statute (G.S. 160A-432(a1)), effective October 1, 2009. The act also provides that any new ordinance adopted under this authority may not become effective until October 1, 2009.

S.L. 2009-9 (H 112), adopted in March, 2009, added the Towns of Louisburg, Spring Lake, and Wallace, to the list of municipalities that could condemn residential buildings because of their blighting influence. However, that act was superseded by the later adoption of S.L. 2009-263, applicable to all cities.

## *Building Code Enforcement for State Buildings Transferred*

Late in this year's General Assembly session a bill was adopted that makes major changes in the way new state building construction projects are reviewed for compliance with the State Building Code. S.L. 2009-474 (S 425), which grew out of the late summer rewriting of a bill on a different topic, shifts authority away from the North Carolina Department of Insurance and transfers it to the Office of State Construction in the Department of Administration. The law strips the Commissioner of Insurance, acting through the office of the State Fire Marshal, of the power (G.S. 58-31-40) to review plans for new, expanded, and remodeled State buildings to ensure that they meet fire safety requirements. It adds new G.S 143-345.11 to transfer this authority to the Secretary of Administration; it does direct the Secretary to provide quarterly reports on plans reviewed and approved to the Commissioner of Insurance. The Commissioner of Insurance retains the authority to make necessary inspections of existing State properties to ensure fire safety, but any notice the Commissioner gives to a state agency concerning defects or needed improvements must be forwarded to the Department of Administration. NCDOI does retain existing fire-safety review authority for plans for county, city, and school district buildings with square footage exceeding 20,000 square feet.

The act also adds a new G.S. 143-139(e) to clarify that NCDOA through the Office of State Construction now will have general supervisory authority to administer and enforce all sections of the State Building Code with respect to State buildings. It will act as the official inspector or inspection department for purposes of G.S. 143 - 143.2. It will also be the only agency with authority to pursue enforcement remedies for code violations affecting State buildings.

To carry out these changes the act transfers from NCDOI to NCDOA four existing code review positions selected by NCDOA and requires that the positions continue to be supported by the Insurance Regulatory Fund through fiscal year 2011 – 2012. Thereafter the positions will be funded by the State Property Fire Insurance Fund through the Office of the State Treasurer. In addition, the act creates within NCDOA four new positions that are each entitled "Engineering/Architectural Technician – Advanced" to help the Office of State Construction assume its new duties. These positions will also be supported for now by the Insurance Regulatory Fund to the tune of $69,862 apiece.

Finally, section 6 of the new law directs the North Carolina Code Officials Qualification Board to develop an expedited training course on State Building Code regulation and code-enforcement administration to facilitate the ability of NCDOA employees to obtain Level III standard certification. Specifically, it requires the board to issue a Level III standard certificate to anyone who (i) was employed by NCDOA when the act became effective; (ii) possesses a valid license to practice as a registered architect or registered professional engineer; (iii) successfully completes the expedited training course; and (iv) successfully completes all exams required by the board.

The portions of the act described above became effective October 1, 2009.

## *Building Permit Exemptions for Certain Electrical Lighting Devices and the Replacement of Residential Water Heaters*

S.L. 2009-532 (H 1409) exempts two types of work from the requirement that a building permit be obtained prior to the work being undertaken. One type of exempt work is the replacement of a water heater in a one- or two-family dwelling unit by a licensed plumbing contractor who examines the work at completion. The contractor must ensure that (i) a leak test has been performed on gas piping; (ii) the energy use rate or thermal input is not greater than that of the water heater being replaced; (iii) there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping; and (iv) the replacement is installed in accordance with the current edition of the State Building Code.

The other category of exempt work involves minor electrical work. The repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, is exempt if the replacement involves a fixture or device having the same voltage and the same amperage or less and meets the electrical standards of the current edition of the State Building Code. Also exempt is the connecting of an existing branch circuit to an electric water heater that is being replaced. The replacement electric water heater must be placed in the same location and feature no greater capacity or electrical rating than the original. The work must be done by a licensed electrical contractor.

The new law amends G.S. 143-138(b5), G.S. 153A-357(a), and G.S. 160A-417(a). It became effective October 1, 2009.

## *Seal of Design Professional Confidential When Included in Building Permit Documents*

As a general rule, documents that are a part of an application for a building permit and the like are public records and available for inspection and copying. S.L. 2009-346 (H 1478) makes an exception to this general rule by adding G.S. 132-1.2(5) to the state's public records statutes to disallow a public agency from revealing the seal of a licensed design professional that has been submitted in connection with the building permit approval process. The law specifically applies to documents sealed by either a licensed architect (chapter 83A), a licensed professional engineer (chapter 89C), or a licensed professional land surveyor (chapter 89C). S.L. 2009-346 provides that if a city or county receives a request for a document submitted as part of a project approval that includes the seal of one of these design professionals and the document is otherwise a public record, then the city or county is obligated to allow examining and copying of the document without the seal. However, the law requires the examining and copying to be done in a manner consistent with any rules regarding an unsealed document that are adopted by the North Carolina Board of Architecture and the North Carolina State Board of Examiners for Engineering and Surveying.

The purpose of the law appears to be to prevent the reproduction and counterfeiting of the seals of design professionals.

The law became effective October 1, 2009.

## *Certain Elevators Exempt from Building Code*

S.L. 2009-79 (S 114) adds a new G.S. 143-138(c1) to provide that the North Carolina State Building Code and related standards affecting the installation and maintenance of limited-use or limited-access hydraulic elevators shall not apply to those owned by private clubs or religious organizations. The act also specifically provides that no local government may adopt an ordinance that conflicts with or limits the exemption above.

The legislation specifically provides that it is not to be construed to limit the authority of the North Carolina Department of Labor to perform safety inspections of hydraulic elevators. It does, however, direct the Commissioner of Labor to adopts rules affecting buildings with more than one elevator so that there is posted in the passenger cabin of each such elevator a distinct number in plain view for the purpose of identifying the elevator to "facilitate extrication from any elevator that malfunctions while occupied."

## *Farm Buildings Associated with Equine Activities Exempt from Building Code*

The North Carolina State Building Code does not apply to "farm buildings" located in a county's building-code-enforcement jurisdiction. S.L. 2009-245 adds a new G.S. 143-138(b4)(1) to clarify that the code does not apply to structures associated with the care, management, boarding, or training of horses and the instruction and training of riders. The exemption includes free-standing or attached sheds, barns, or other structures used to store equipment, tools, commodities, or other items associated with equestrian activities. However, the new law also provides that a farm building associated with horses is not exempt if it is to be used for a spectator event at which more than ten members of the public are to be present. These provisions apply to all farm buildings, including those buildings whose construction either began or was completed prior to June 30, 2009, the effective date of the act.

## *Pyrotechnics Safety*

In 2007 the General Assembly revised the manner in which local governments were able to issue permits for indoor events involving pyrotechnics (fireworks). A fatal accident involving the handling of fireworks at the coast early this summer prompted expedited handling of a bill this past summer governing who may handle them. S.L. 2009-507 (S 563) rewrites the law so that pyrotechnics may be exhibited, used, or discharged only at a concert or public exhibition, and then only by authorized personnel. Someone may become authorized by completing a pyrotechnics training and permitting program developed and administered by the State Fire Marshal, if that person is under the direct supervision and control of a "display operator." Alternatively an active member of a local fire or rescue department may become authorized if he has had experience in pyrotechnics or explosives and is either qualified by the jurisdiction where permitting is sought or by the State Fire Marshal. In addition, the act adds a new G.S. 58, article 82A to provide for the training and permitting of display operators.

The act also amends G.S. 14-413 to provide that a local government may not issue a pyrotechnics permit unless the display operator provides proof of insurance in the amount of $500,000 or an amount established in the State Building Code, whichever is greater. It also allows a local government to set an amount higher than the minimum if it chooses.

The pyrotechnics law also directs the Commissioner of Insurance to report to the General Assembly by May 1, 2010, and to recommend additional statutory changes and the need for additional personnel or other resources to implement the act.

## *Code Standards for College Buildings Used by High School Students*

G.S. 116-43.15 provides that the facilities of institutions of the University of North Carolina system and private colleges that comply with the North Carolina State Building Code may be used without modification by public school students who are participating in early college or dual enrollment programs. S.L. 2009 - 305 (S 689) amends the statute to clarify that this is true not only for existing university facilities but new facilities as well. It also provides that for purposes of the use and occupancy classifications of the building code, facilities accommodating these programs for high school students are to be treated as "Business – Group B" in the same manner as other college and university uses. S.L. 2009-206 (H 735) amends G.S. 115D-41(b) to provide similar authorization for community college facilities.

S.L. 2009-206 (H 735) also includes an unrelated provision affecting building code enforcement. Until August 1, 2009, a county may obtain a permit for the construction of administrative facilities under the 2006 version of the North Carolina State Building Code, notwithstanding any other established expiration date for the application of that version of the Code.

## *Building Code Standards for Day-Care Facilities*

S.L. 2009-123 (H 1031) adds a new G.S. 115C-521.1 to allow a public school that voluntarily applies for a child-care facility license to use an existing or newly constructed public school classroom for three- and four-year-old preschool students. However, the classroom must (1) include at least one toilet and one sink for hand washing; (2) meet kindergarten standards for overhead light fixtures; (3) meet kindergarten standards for floors, walls, and ceilings; and (4) include floors, walls, and chairs free from mold, mildew, and lead hazards. The public school must also meet all those other day-care facility licensing requirements that do not apply to the physical classroom.

## *Cistern Water for Toilets and Irrigation*

S.L. 2009-243 amends G.S. 143-138(b) to authorize the Building Code Council to adopt State Building Code regulations that would allow the use of cistern water for flushing toilets and for outdoor irrigation. If adopted, the regulations may allow cisterns to be used in connection with the construction or renovation of both residential or commercial buildings and structures. The act expressly provides that no State or local government regulation may prohibit the use of cisterns to provide water for the uses mentioned above.

## *No Building Permit unless Taxes Paid (Local Acts)*

S.L. 2009-117 (H 103) is a local act that applies only to the following counties: Alexander, Alleghany, Anson, Bertie, Catawba, Chowan, Stokers, Surry, and Tyrrell. It allows the county to withhold a building permit for real property for which property taxes are delinquent. The act already applies to Davie, Greene, Lenoir, Lincoln, Iredell, Wayne, and Yadkin counties.

S.L. 2009-68 (H 563) is very similar, but it requires the adoption of a local ordinance and allows the ordinance to provide that a building permit may be issued to a person protesting the assessment or collection of property taxes. It applies only to the towns of Columbia and Edenton.

Another bill of the same type, H 1000, which applies to Allegheny and Surry counties, has passed the House, has been referred to a Senate committee, and is eligible for further action in 2010.

### *Studies Act*

The Studies Act of 2009, S.L. 2009-574 (H 945), authorizes several studies of interest to building inspectors. Section 6.15 authorizes the Environmental Review Commission to study "the possibility of requiring new and renovated commercial buildings and new residential buildings to comply with energy conservation standards" ("Green Building Code" (H.B. 1443)). Section 8.7 allows the Joint Legislative Utility Review Committee to study "the possibility of extending the standards governing energy efficiency and water use for major facility construction and renovation projects involving State, university, and community college buildings to major facility construction and renovation projects involving buildings of entities that receive state funding" ("Energy Efficiency in State-Funded Buildings" (H 1199)). Section 25.1 permits the State Board of Community Colleges to study strategies for making the construction process for community colleges more efficient (S 418).

## Ethics

S.L. 2009-403 (H 1452) creates G.S. 160A-83 to require the governing boards of every city, county, local board of education, unified government, sanitary district, and consolidated city-county government to adopt a code of ethics for its governing board. It also creates G.S. 160A-84 to require all these governing board members to receive two hours of ethics training within a year of being elected or re-elected.