UNC SCHOOL OF GOVERNMENT

PLANNING AND ZONING LAW BULLETIN NO. 23 | DECEMBER 2015

2015 North Carolina Legislation Related to Planning and Development Regulation

Adam S. Lovelady and David W. Owens

The North Carolina General Assembly in 2015 resolved several issues regarding planning and development regulation that had been under discussion for several sessions and refined a number of other previously adopted laws. The question of the extent to which cities and counties can regulate the design of new residences and the fate of the zoning protest petition were resolved. Clarifications were made to numerous laws, including performance guarantees for subdivision improvements, the scale of projects eligible for development agreements and the term of those agreements, tax credits for historic preservation projects, and economic development incentives.

Zoning

Design Standards

One of the legislative priorities for the homebuilding industry in recent legislative sessions has been enactment of limits on local government use of zoning to impose design standards on residential construction. A regulatory requirement for particular types of siding (for example, requiring brick facing or prohibiting vinyl siding) was the most frequently cited concern, but limits on where garages can be placed (such as banning "snout houses") and other limits also were raised. Bills to restrict local government use of design standards had passed individual houses of the General Assembly in the past but had never quite become law. Limits on residential design standards were approved by the Senate in 2011 (S.B. 731) and were approved by the House in 2013 (H.B. 150) and in 2014 (H.B. 734). In 2015, limits similar to those proposed in 2013 were adopted. The bill had widespread bipartisan support, securing majority approval from both parties and passing 98 to 17 in the House of Representatives and 43 to 7 in the Senate.

S.L. 2015-86 (S.B. 25) became effective law in North Carolina as of June 19, 2015, and applies to all zoning ordinances adopted before, on, or after that date. The law adds new subsections to Sections 160A-381 (cities) and 153A-340 (counties) of the North Carolina General Statutes (hereinafter G.S.).

Adam S. Lovelady is Albert and Gladys H. Coates Distinguished Term Assistant Professor of Public Law and Government at the School of Government. David W. Owens is Gladys H. Coates Distinguished Professor of Public Law and Government at the School of Government. Each specializes in land use planning and regulation.

The restrictions on design standards apply to any regulation of buildings subject to the N.C. Residential Code for One- and Two-Family Dwellings. Thus all single-family homes and duplexes are covered. Townhouses also are covered if they are built to the single-family code. The restrictions do not apply to multi-family housing or non-residential structures, such as commercial, institutional, or industrial buildings. The restrictions on design standards do not apply to private restrictive covenants, only to government regulation.

The law prohibits the direct or indirect regulation of "building design elements" through a plan consistency review. The law provides a list of elements that cannot be regulated. These are

1. exterior building color;
2. type or style of exterior cladding material;
3. style or materials of roofs or porches;
4. exterior nonstructural architectural ornamentation;
5. location or architectural styling of windows and doors, including garage doors;
6. location of rooms; and
7. interior layout of rooms.

Several items explicitly listed as not being "building design elements" that can still be regulated are

1. height, bulk, orientation on the lot, location of structure on a lot;
2. use of buffering or screening to minimize visual impacts, to mitigate impacts of light or noise, or to protect the privacy of neighbors; and
3. permitted uses of land or structures subject to the one- and two-family building code.

One of the concerns raised during the legislative debate was whether a prohibition of local regulation of the location and layout of rooms would preclude limits designed to limit overcrowding in residential neighborhoods. For example, regulations on the number of proposed kitchens and the locations of multiple entrances have been used by some local governments to limit multifamily occupancy in single-family zoning districts. The law still allows a local government to regulate that use, but a zoning ordinance can no longer presume that the use restriction would be violated based solely on the location, layout, or number of rooms proposed.

The law creates several exceptions to the prohibition of design regulations. Perhaps most importantly for new developments, design standards that are voluntarily consented to by the owners of all the property may be applied if they are imposed as "part of and in the course of" seeking a zoning amendment or a zoning, subdivision, or other development regulation approval. Design standards developed and agreed to by the owners of all affected property can be incorporated into conditional zoning, special use permits, or development agreements. There is debate as to how this provision should be interpreted. Some contend that only design standards proposed by the developer are "voluntary," while others contend that the landowner, developer, local government, or the neighbors can propose standards as long as it is clear that the owners consent to their imposition. The latter interpretation is reasonable, but prudent local governments will secure an explicit acknowledgment from owners that any design standards applied are indeed voluntarily accepted.

Other specific exceptions to the prohibition listed in the law have to do primarily with preserving historic district regulations, where building design elements have long been a central feature of the regulatory scheme. Building design elements can be regulated in the following circumstances:

1. within designated local historic districts;
2. within historic districts on the National Register;
3. for designated local, state, or national landmarks;
4. where directly and substantially related to safety codes;
5. for manufactured housing; and
6. where adopted as a condition of participation in the flood insurance program.

Definition of Bedrooms and Dwelling Units

The local government regulatory reform bill limits how cities and counties define dwelling units and bedrooms. Section 18 of S.L. 2015-246 (H.B. 44) amends G.S. 153A-346 and 160A-390 to provide that zoning ordinances may not use a definition of a "dwelling unit, bedroom, or sleeping unit" that is more expansive than a definition of these terms used in a statute or rule.

Protest Petitions

Another bill that was nearly adopted in 2013 was enacted this year. S.L. 2015-160 (H.B. 201) abolishes the supermajority protest petition that has been a part of city zoning since 1923. The protest petition, a part of the model Standard State Zoning Enabling Act adopted by most states in the 1920s, provided that if a sufficient number of those directly affected by a proposed rezoning made a timely protest, a three-fourths majority of the city council would be required to adopt the amendment. In North Carolina, the protest had to be filed within two working days prior to the hearing on the rezoning and had to be signed by the owners of 20 percent of the land subject to the rezoning or by the owners of 5 percent of the 100-foot buffer around the property subject to the rezoning.

The repeal sparked more debate in this session of the General Assembly than any other bill affecting land use. Supporters contented that the protest was undemocratic and could thwart the will of a majority of a city council. Opponents contended that the possibility of a protest petition forced a conversation between the owner and neighbors in controversial cases and protected the reliance that owners and neighbors had placed in existing regulations. Although several alternatives were proposed (such as increasing the amount of surrounding land owned by protesters to qualify for a protest petition or decreasing the supermajority required), the repeal was eventually adopted as originally proposed by votes of 81 to 31 in the House of Representatives and 39 to 9 in the Senate.

The repeal applies to city zoning ordinance amendments initiated on or after August 1, 2015. The repeal also applies to provisions for protest petitions in local bills and city charters.

The new law provides that citizens can still present written statements on proposed zoning amendments to the city clerk, who must then provide copies to the city council. If the amendment is a combined legislative and quasi-judicial matter, as with a conditional use district rezoning with a concurrent conditional use permit application, only the names and addresses of the commenters (and not the substance of the comments) are to be provided to the council.

S.L. 2015-160 also includes an amendment to the city council voting statute, G.S. 160A-75, which provides that a failure to vote by a city council member who is present but not excused from voting is automatically counted as an affirmative vote. This law makes that provision inapplicable to votes on amendments to zoning ordinances. So if a city council member who is present fails to vote on a zoning text or map amendment, that vote is not counted as an affirmative vote, thereby allowing abstentions on these votes.

Fracking Preemption

In 2014 the General Assembly adopted a comprehensive statute regarding regulation of oil and gas development, particularly addressing regulation of hydraulic fracturing to allow extraction of natural gas (generally referred to as "fracking"). While the practice has become common in other states, fracking has heretofore not been done in North Carolina. While preliminary studies indicate modest potential gas resources in the state, the 2014 legislation sets the stage for its development.

S.L. 2014-4 created the Oil and Gas Commission to oversee the regulatory program and also provided for a limited preemption of local ordinances regulating oil and gas exploration, development, and production. It created G.S. 113-415.1 to preempt any local ordinance that "prohibits or has the effect of prohibiting" oil and gas operations. If oil and gas activities would be prevented by a local ordinance, the operator can petition the commission to review the matter. While the law presumes that generally applicable regulations (such as setbacks, buffers, and stormwater requirements applicable to other types of uses) are valid, the commission is authorized to preempt a local ordinance upon finding that

1. the ordinance would prohibit oil and gas activity,
2. all state and federal permits have been secured,
3. citizens have had adequate opportunity to participate in the permitting process, and
4. the oil and gas activity will not pose an unreasonable health or environmental risk, the owner has taken reasonable steps to avoid or manage foreseeable risks, and the owner will comply to the maximum extent feasible with applicable local ordinances.

S.L. 2015-264 (S.B. 119), an omnibus technical corrections bill, modifies the 2014 local ordinance preemption provision. Rather than being applicable only to ordinances that prohibit fracking, the revisions to G.S. 113-415.1 apply the preemption to "all provisions" of local ordinances that "regulate or have the effect of regulating" oil and gas activities to the extent that the regulation places any restrictions or conditions on fracking beyond state requirements or that are in conflict with state requirements. If the local regulation does this, it is "invalidated and unenforceable." If the local development regulation imposes generally applicable setback, buffers, and similar rules to development, the operator may appeal to the Oil and Gas Commission for a preemption using the same standards set forth in 2014. Prior to enactment of this law, several counties had imposed or were in the process of considering moratoria on fracking and similar industrial operations while they considered amendments to their development regulations. Whether such temporary holds on fracking development are preempted by this amendment or are a "generally applicable regulation" subject to preemption by the Oil and Gas Commission on case-by-case appeals remains to be seen.

Permit Conditions

The 2015 technical corrections bill included a provision limiting conditions that may be imposed on special and conditional use permits. Section 1.8 of S.L. 2015-286 (H.B. 765) amends G.S. 160A-381(c) and 153A-340(c1) to provide that conditions cannot be placed on special use permits for which the local government does not have statutory authority to regulate or for which the courts have held to be unenforceable if imposed as a direct regulation. This provision was likely intended to clarify that cities and counties cannot regulate fracking indirectly through permit conditions, but by its terms it is not limited to that situation.

Permit Choice

In 2014 the General Assembly adopted a regulatory reform bill that included a provision addressing situations where the rules for development change between the time a permit application is submitted and a decision is made. Section 16 of S.L. 2014-120 (S.B. 734) created G.S. 143-750 to allow the permit applicant in these situations the choice of which version of the rule or ordinance is to be applied. That law applied to all development permits issued by the state or by local governments, except for zoning permits.

The local government regulatory reform bill adopted in 2015 removes the zoning exception. Section 5 of S.L. 2015-246 (H.B. 44) allows the applicant to choose between preexisting zoning provisions or the amended provisions if zoning rules change while an application is pending. Thus, in this respect, zoning regulations are now treated as are all other state and local development regulations.

Split Jurisdiction

The local government regulatory reform bill also includes a provision apparently intended to address an issue that can arise if a parcel of land being proposed for development lies only partially within a city's planning and development regulation jurisdiction. Section 3 of S.L. 2015-246 creates G.S. 160A-365(b), which pertains to a city development regulation that is to be applied or enforced outside of its territorial jurisdiction. Since a city has no authority to apply a regulation outside its jurisdiction, apparently the only situation in which this would arise is if a project is located partially inside a city jurisdiction and city provisions are also being applied to the portion of the development outside city jurisdiction. According to the new provision, in such a situation the city and the property owner must certify that city rules are not being applied under coercion or that city approval of the portion of the project within its jurisdiction would be withheld without application of the city rules to the portion of the project located beyond city jurisdiction.

Beehives

In addition, the local government regulatory reform bill adopted restrictions on local regulation of beehives. Section 8 of S.L. 2015-246 creates G.S. 106-645, under which county ordinances may not prohibit any person from owning or possessing five or fewer hives. Municipal regulation of hives is allowed, but a city ordinance must allow up to five hives on any parcel within that city's planning jurisdiction. The ordinance may require the hives to be placed on the ground or securely anchored and may require setbacks from the property line or otherwise regulate where on the parcel the hives may be located. A city can also require removal of hives that are not maintained or, if necessary, to protect the public health, safety, or welfare.

Development Agreements

Several modifications were made to the development agreements statute by the local government regulatory reform bill. Section 19 of S.L. 2015-246 amends both the city and county development agreement statutes to remove the minimum size requirement and the maximum term of agreements. Previously, an area subject to an agreement had to include at least twenty-five developable acres (except within brownfield sites), and the agreement could be for no more than twenty years. Now the agreement can cover property of any size, facilitating its use in more

urban settings where smaller parcels are involved in development and redevelopment. The term of the agreement can now be any reasonable term as specified in it. The law also now allows the development agreement to be incorporated (in whole or in part) into a planning, zoning, or subdivision ordinance.

Subdivision Changes

Performance Guarantees

S.L. 2015-187 (H.B. 721) gives notable clarity and restrictions on the authority for performance guarantees outlined at G.S. 160A-372 and 153A-331.

Completion Only

The statutes now explicitly state that the "performance guarantee shall only be used for completion of the required improvements *and not for repairs or maintenance after completion*" (emphasis added). With this new definition, local governments do not have authority under the subdivision performance guarantee statutes to require ongoing maintenance guarantees. In order to require a maintenance guarantee, a local government will need to find authority elsewhere in the statutes. For example, under G.S. 153A-454 and 160A-459, local governments have explicit authority for financial arrangements to ensure adequate maintenance and replacement of stormwater management facilities. In short, performance guarantees are still available to ensure that a developer completes the required roads to set standards, but subdivision authority no longer extends to requiring a maintenance guarantee.

Statutory Menu of Financial Instruments

Under prior law local governments were required to set a menu of acceptable financial instruments from which the developer could choose. The new law sets the menu (the local government cannot narrow or expand this list) to include any of the following:

- surety bond issued by any company authorized to do business in this state,
- letter of credit issued by any financial institution licensed to do business in this state,
- other form of guarantee that provides equivalent security to a surety bond or letter of credit.

The developer still has the option to choose from the statutory menu of assurances. The last option on the menu—some other form of guarantee—leaves the door open for comparable financial instruments to secure the guarantee. This might include cash in escrow, a trust agreement, or some other financial instrument. The new statute does not specify who decides what types of guarantees "provide[] equivalent security to a surety bond or letter of credit."

Calculation

Per the new statute, a performance guarantee may be up to 125 percent of the estimated cost of completing the improvements. Presumably the additional 25 percent is intended to cover the costs of administration and enforcement as well as inflation.

Extensions

If improvements are not complete as the expiration of a guarantee is approaching, "the performance guarantee shall be extended, or a new performance guarantee issued, for an additional

period until such required improvements are complete." Given the statutory context and the practical mechanics of performance guarantees, this section appears to obligate the developer to obtain an extension or newly issued financial instrument if the current instrument is set to expire. But the language—"the performance guarantee shall be extended"—could be read to require the local government to allow extensions so long as the developer shows reasonable good faith progress toward completing the improvements.

In the event that a developer fails to meet milestones set through the performance guarantee agreement, and the developer is not making good faith efforts, a local government can call the guarantee and use the funds to complete the unfinished improvements.

If an extension is allowed, the amount of the renewed performance guarantee is capped at 125 percent of the improvements yet to be completed. In other words, the amount must be reduced for improvements that have been completed.

Release

After acknowledgment by the local government that the improvement is complete, the local government must return or release the performance guarantee in a timely manner.

Development Agreements

The new provisions for performance guarantees are extended to apply to development agreements as well.

Riparian Buffers and Subdivision Regulation

S.L. 2015-246 (H.B. 44) creates G.S. 143-214.23A that sets various limits on local regulation of riparian buffers (discussed in greater detail in the environmental section below). Certain changes, though, are specific to subdivision regulation: riparian buffers are to be shown on the recorded plat, and the area of a riparian buffer must count toward lot dimensional standards even if the buffer is held as common area. Under the new rules, city and county subdivision ordinances shall require a riparian buffer within a lot to be shown on the recorded plat, and the area of a lot within the riparian buffer must still count toward any dimensional requirements for lot size. If a riparian buffer is designated as a privately owned common area (e.g., owned by a property owners association), "the local government shall attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development-related regulatory requirements based on property size." Dimensional lot requirements include calculations for, among other things, residential density standards, tree conservation area, open space or conservation area, setbacks, perimeter buffers, and lot area.

Environmental Impact Statements (EIS)

Development projects now must be at least ten acres to trigger an environmental impact statement. The State Environmental Policy Act generally addresses state projects, but the act authorizes local governments to require an environmental impact statement for "major development projects." These are defined to include shopping centers, subdivisions, and other housing developments as well as industrial and commercial projects. Under prior law a project had to be at least two acres to be considered a major development project, but an amendment adopted as S.L. 2015-90 (H.B. 795) raises the defining threshold to ten acres.

Zoning and Subdivision Enforcement

Withholding Permits

Sections 2.(a) and 2.(b) of S.L. 2015-187 state that, unless otherwise authorized by law, a local government may not withhold a building permit or certificate of occupancy in order to compel compliance with a permit or ordinance on another property.

For subdivision enforcement, G.S. 160A-375(a) and 153A-334(a) specifically state that "[b]uilding permits required pursuant to G.S. 160A-417 [and 153A-357] may be denied for lots that have been illegally subdivided." To be legally subdivided, a lot must have been created as part of a lawful subdivision—one that complies with the procedural and substantive standards of the local ordinance and state regulations.

Community Appearance and Historic Preservation

Tax Credits

The state budget bill (S.L. 2015-241 (H.B. 97)) includes provisions for a new tax credit for qualified historic preservation rehabilitation. The prior version of the preservation tax credit expired at the end of 2014. The new version includes several noteworthy changes, including new credit rates, a credit cap, credit bonuses for certain areas, a hold period, and broader allowance for claiming the credits.

For income-producing properties, the tax credit rate depends on the amount of expense and any applicable bonuses. For project expenses up to $10 million the tax credit rate is 15 percent; for expenses over $10 million and up to $20 million the tax credit rate is 10 percent. A credit bonus of 5 percent is awarded in two situations: for projects located in a development tier one or two area and for projects located on an eligible targeted investment site (the latter defined as historic warehouses, manufacturing facilities, and public or private utility buildings that have been at least 65 percent vacant for the past two years). For income-producing properties, the total tax credit amount for a project is capped at $4.5 million. A pass-through entity may allocate tax credits to any of its owners pursuant to certain limitations.

For non–income-producing properties, the tax credit rate is 15 percent with the credit amount capped at $22,500 per parcel.

A tax credit may be claimed against franchise taxes, income taxes, or gross premium taxes, but the tax payer must choose one of these tax types and claim the entire credit against that tax.

The budget bill also includes provisions for the forfeiture of credits if the property is sold or if there are certain changes in ownership in the pass-through entity within five years of completion.

The new tax credit sunsets January 1, 2020.

Preservation Grants

S.L. 2015-277 (S.B. 472) helps to clarify the laws for local economic development. Among other things, it provides explicit authority for local governments to make grants or loans for the rehabilitation of commercial or noncommercial historic structures, whether publicly or privately owned.

To be sure, there are notable statutory and state constitutional limits to grants for private development. For much more detail on the authority and limits for preservation grants, see Tyler Mulligan, *Local Government Economic Development Powers*

'Clarified,' Cmty. & Econ. Dev. in N.C. & Beyond (Oct. 26, 2015), http://ced.sog.unc.edu/local-government-economic-development-powers-clarified.

Construction Fence Signs

S.L. 2015-246 (H.B. 44) adds language to G.S. 153A-340 and 160A-381 (the statutes granting power for zoning) exempting construction site fence wrap signs from zoning sign regulation. Exempt signs are those affixed to perimeter fencing at a construction site. The exemption lasts until issuance of the certificate of occupancy or twenty-four months, whichever is shorter. Under the new statute, the only advertising that may be displayed on the fence wrap is advertising "sponsored by a person directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required." Given the recent U.S. Supreme Court decision in *Reed v. Town of Gilbert* (135 S. Ct. 2218 (U.S. June 18, 2015)), it is unclear if the statute's preferential treatment of certain types of speech would withstand constitutional scrutiny.

Building and Housing Code Enforcement

Code Inspection Requirements

S.L. 2015-145 (H.B. 255) makes a number of changes primarily affecting building code inspections, but a few provisions have broader application.

Inspections

Section 8 of S.L. 2015-145 amends G.S. 160A-412 and 153A-352 to provide that when conducting building code inspections, the inspector is to conduct all inspections requested for each scheduled inspection visit. For each requested inspection, the inspector must inform the permit holder of any work that is incomplete or that otherwise fails to meet the standards of the code on one- and two-family dwellings.

Architect and Engineer Approval and Inspection

Section 9 of S.L. 2015-145 amends G.S. 160A-412 and 153A-352 to require approval of designs and proposals for a component or element in the construction of buildings received from licensed architects and engineers. The submission must be completed under the valid seal of a licensed architect or engineer, with field inspection of the installation or completion of construction performed by a licensed architect or engineer, and that person must sign a written document stating that the inspected component or element is in compliance with the N.C. residential code. If that is done, the inspector has no responsibility to inspect. The statute discharges the city or county inspector from any duties or responsibilities with respect to these components or elements.

Increase Work Excluded from Building Permit Requirements

Section 4 of S.L. 2015-145 increases the threshold for work exempted from building permit requirements from $5,000 to $15,000 in single-family residences and farm buildings.

Misconduct by Code Officials

G.S. 143-151.17 allows the North Carolina Code Officials Qualification Board to discipline code officials, including suspending or revoking any and all certificates and demoting any certificate

to a lower level. That law specifies six grounds for taking disciplinary action against an official who

1. has been convicted of a felony against this state or the United States or of a felony in another state that would also be a felony if it had been committed in North Carolina;
2. has obtained certification through fraud, deceit, or perjury;
3. has knowingly aided or abetted any person in practicing contrary to the provisions of Article 9C of Chapter 143 or of the State Building Code or of any building codes adopted by a federally recognized Indian tribe under G.S. 153A-350.1;
4. has defrauded or attempted to defraud the public;
5. has affixed his or her signature to an inspection report or other instrument of service that has not been made by the inspector or under his or her immediate and responsible direction; or
6. has been guilty of willful misconduct, gross negligence, or gross incompetence.

Section 3.(a) of S.L. 2015-145 expands the definition for this last ground for discipline by the Code Qualifications Board by amending G.S. 143-151.8 to provide that is "willful misconduct, gross negligence, or gross incompetence" for a code enforcement official

1. to enforce a code requirement applicable to one area or set of circumstances to other areas or circumstances,
2. to refuse to accept an alternative design or construction method that has been approved by the Department of Insurance or that is allowed in the building code,
3. to enforce a requirement that is more stringent than or otherwise exceeds code requirements,
4. to refuse to accept an interpretation of the Building Code Council, or
5. to habitually fail to supply requested inspections in a timely manner.

Fees

Section 7 of S.L. 2015-145 amends G.S. 160A-414 and 153A-354 to provide that all fees collected for inspections may be used only for support of administration and activities of the inspection department. This provision codifies the general rule set forth in *Homebuilders Ass'n of Charlotte v. City of Charlotte* (336 N.C. 37, 442 S.E.2d 45 (1994)) that reasonable fees may be charged for the costs of administering development regulations, with the amount of the fees not to exceed the costs of administration.

One administratively challenging dimension of this directive is the use of the term "inspection department," terminology that often has no parallel in local government organizational structure. This new fee provision is in the "Building Inspection" part of the articles of the General Statutes authorizing various planning and development regulation programs. Under G.S. 160A-411 and 153A-351, which authorize "inspection departments," also included are inspectors responsible for a variety of development regulations (not only building inspectors, but also zoning and housing code enforcement). In many jurisdictions the staff responsible for inspections and field enforcement are housed in various local "departments," sometimes with building inspectors in one department and zoning inspectors in a different department. On the other hand, staff responsible for other functions, such as long-range planning, GIS administration, or community development, are sometimes located in the same "department" as the inspectors. Some of this organizational confusion would be resolved by the reorganization and clarification of these statutes in the proposed Chapter 160D (discussed later in this bulletin). For

now, though, local government bookkeeping needs to assure that fees collected for inspections and administration of development regulations do not exceed the costs of performing these services.

Building Code Council

Section 2 of S.L. 2015-145 directs the Building Code Council to study procedures and policies for the approval of alternative materials, designs, and methods. Council members are directed to specifically examine the application process, timeline for review, and procedures for appeal of denied applications. A report is to be made to the 2016 session of the General Assembly.

Section 5 of S.L. 2015-145 creates a seven-member residential code committee of the Building Code Council. This committee will review all proposed amendments to the Residential Code for One- and Two-Family Dwellings. The full council may not consider revisions to these codes unless so recommended by the committee. The committee will also consider all appeals and interpretations of the residential code and make recommendations of these to the full council. A similar committee with similar duties and responsibilities is created for all structures except those covered by the residential code.

Section 6 of S.L. 2015-145 requires the Department of Insurance to post all appeal decisions, interpretations, and variations of the code on the Building Code Council website within ten business days of issuance.

Section 4.38 of S.L. 2015-286 (H.B. 765) directs the Department of Insurance, the Department of Public Safety, and the Building Code Council to jointly study how flood elevations and building heights are established and measured in the coastal region. A specific direction is made to consider how height calculation methods could be made more consistent and uniform. The report is to be submitted to the General Assembly by March 1, 2016.

Commercial Buildings

Section 10 of S.L. 2015-145 exempts commercial building projects with a total value of less than $90,000 and with less than twenty-five hundred square feet of space from the requirement for a professional architectural seal.

Open Air Camp Cabins

S.L. 2015-19 (H.B. 706) directs the Building Code Council to adopt regulations for "open air camp cabins," defined as having three walls consisting of at least 20 percent screened openings, no heating or cooling systems, occupied less than 150 days per year, and accommodating no more than thirty-six persons. The cabins are to have at least two remote exits (but lighted exit signs are not required), are not required to have plumbing or electrical systems (but the code applies if they do), and may be required to have fire extinguishers (but no sprinkler systems may be required). Pending adoption of the rules, these provisions are to be applied by local code enforcement officers.

Overgrown Vegetation

The local government regulatory reform bill consolidates the municipal provisions on chronic violators of public nuisance and overgrown lot ordinances. Section 1 of S.L. 2015-246 puts both provisions into G.S. 160A-200.1 and applies the same procedures to both situations. Chronic violators are still defined as the owners of property with three or more notices of violation of either a public nuisance or overgrown lot ordinance in the previous year. The city may notify

chronic violators by registered or certified mail that if the property is found in violation the city can, without further notice, remedy the situation and place a lien on the property for recovery of the expenses of doing so.

Public Trust Area Enforcement

County Ordinances in Public Trust Areas

S.L. 2015-70 (H.B. 346) provides that counties may adopt and apply regulations applicable to ocean beaches (the area between the vegetation line and the mean high-water line). This law is discussed in the "Environment" section below.

Municipal Ordinances on Uninhabitable Houses in Public Trust Areas

The local government regulatory reform bill amends the municipal statutes to allow cities to take action to deal with uninhabitable houses on the beach. Section 1.5 of S.L. 2015-246 (H.B. 44) amends G.S. 160A-205 to provide that a city can prohibit, regulate, or abate the situation created by a structure that is on the ocean beach and has been uninhabitable and without water and sewer services for more than 120 days.

Transportation

NCDOT Study

S.L. 2015-217 (S.B. 581) calls on the N.C. Department of Transportation (NCDOT) to study the process and standards for acceptance of subdivision streets dedicated to the public for NCDOT maintenance. Issues to be studied include "(i) whether the process that must be followed is efficient and timely, (ii) whether the minimum right-of-way and construction standards established by the Board of Transportation for acceptance on the State highway system are reasonable, (iii) what the financial impact is on the State and homeowners when subdivision streets are or are not accepted on the State highway system for maintenance, and (iv) any other matters the Department of Transportation deems relevant to the study."

Due to a variety of factors, the topic of subdivision street maintenance in counties is becoming increasingly significant. The recent recession left many county subdivisions in a bind. For some, the subdivision has been left incomplete with roads unfinished. For others, the property owners association lacks the finances for proper maintenance. At the same time, recent legislative limitations on municipal annexation mean that more subdivision streets are remaining in county jurisdiction, and counties, unlike municipalities, lack general authority to finance and maintain streets. In addition, new amendments (discussed above in the section titled "Subdivision Changes") end county authority to require maintenance guarantees in order to ensure proper street maintenance before NCDOT accepts a street.

Environment

Riparian Buffers

The local government regulatory reform bill includes provisions to limit local riparian buffer rules. Section 13 of S.L. 2015-246 (H.B. 44) creates G.S. 143-214.23A, effective October 1, 2015, which prohibits cities and counties from enacting or enforcing a riparian setback that exceeds setbacks required to comply with state or federal requirements. An exception is made for

local ordinances adopted prior to August 1, 1997, if the ordinance includes findings that it was enacted for specified purposes beyond the protection of water quality and prevention of excess nutrient runoff. The specified purposes include protecting aesthetics, fish and wildlife habitat, and recreational uses as well as natural shorelines in order to minimize erosion or chemical pollution. In other instances, a local government may petition the Environmental Management Commission for permission to enact a riparian buffer with requirements more exacting than those enforced by the state. A local request must include scientific studies that support the necessity for more stringent buffers.

Cities and counties are also directed not to treat riparian buffers as if they were public property unless they have required an easement or other property right. Privately owned land within buffer areas may be used by the owner to satisfy development regulations, as is discussed in more detail in the "Riparian Buffers and Subdivision Regulation" section above.

Wetlands and Intermittent Streams

Section 4.18 of S.L. 2015-286 (H.B. 765), the omnibus state regulatory reform bill, limits regulations affecting isolated wetlands. The law limits application of state rules on isolated wetlands to "Basin Wetlands and Bogs" and prohibits their application to isolated man-made ditches or ponds. Mitigation requirements cannot be imposed for impacts to isolated wetlands that exceed one acre east of I-95 and one-third of an acre west of I-95. The Environmental Management Commission is directed to amend its rules to establish a coastal, piedmont, and mountain region for purposes of regulating impacts to isolated wetlands.

Section 4.27 of S.L. 2015-286 enacts G.S. 143-214.7C to prohibit requiring mitigation for impacts to intermittent streams except as required by federal law.

Local Regulations

The local government regulatory reform bill includes a provision that prohibits local regulations from requiring compliance with state regulations that are voluntary or Environmental Management Commission rules that have been delayed from taking effect by the General Assembly. Section 2 of S.L. 2015-246 (H.B. 44) prohibits cities and counties from requiring compliance with any such rule, even if such compliance was required as a condition in a previously issued permit or local approval. This restriction applies to current rules, repealed rules, those temporarily on hold due to legislative objection, and those adopted but not yet effective. The principal effect of this law is likely limitation of local action regarding stormwater regulations to protect surface water quality, particularly the long-disputed Jordan Lake rules.

Stormwater

S.L. 2015-149 (H.B. 634) amends G.S. 143-214.7(b2), which defines impervious surfaces for the purpose of stormwater regulations. This law provides that certain gravel areas and trails are not to be considered "built upon" if they meet specified standards.

Section 4.20 of S.L. 2015-286 (H.B. 765) amends G.S. 143-214.7 regarding state and local stormwater management programs. The amendment specifies that calculation of the pre- and post-development runoff anticipated in a one-year 24-hour storm may be calculated using any acceptable engineering hydrological and hydraulic method. It provides that development may be allowed within a required vegetative buffer if stormwater from the entire impervious area is collected, treated, and discharged so that it passes through the vegetative buffer and is managed to comply with state and federal requirements.

Section 4.19 of S.L. 2015-286 directs the Department of Environmental Quality to evaluate the quality of water in the coastal region and the impact of stormwater on water quality there. The department is specifically directed to examine whether the built-upon area can be increased under its low-density stormwater option without harm to water quality. A report of its study is to be made to the Environmental Review Commission by April 1, 2016.

Coastal

Flood Elevations and Building Height Study

As noted in an earlier section, Section 4.38 of S.L. 2015-286 directs the Department of Insurance, the Department of Public Safety, and the Building Code Council to jointly study how flood elevations and building heights are established and measured in the coastal region. A specific direction is made to consider how height calculation methods could be made more consistent and uniform. The report is to be submitted to the General Assembly by March 1, 2016.

Public Trust Area Enforcement

S.L. 2015-70 (H.B. 346) provides that counties may adopt and apply regulations applicable to ocean beaches (the area between the vegetation line and the mean high water line). This area (often referred to as the "dry sand beach") is privately owned but subject to public trust rights of passage and recreation. Counties are specifically authorized to regulate, restrict, or prohibit placement of equipment, personal property, or debris in this area. This is in response to the practice that had evolved in some areas, such as the Currituck Outer Banks north of Corolla, of placing large tents, umbrellas, and other beach equipment on the beach and then leaving it overnight or abandoning it altogether. This authority had been granted to cities in 2013 (S.L. 2013-384) in response to *Nags Head v. Cherry, Inc.*, a court case holding that the state had exclusive authority to regulate to protect public trust areas. 723 S.E.2d 156, 157 (N.C. Ct. App.), *appeal dismissed*, 366 N.C. 386, 732 S.E.2d 580, and *review denied*, 366 N.C. 386, 733 S.E.2d 85 (2012).

The local government regulatory reform bill amends the municipal statutes to allow cities to take action to deal with uninhabitable houses on the beach. As previously noted, Section 1.5 of S.L. 2015-246 (H.B. 44) amends G.S. 160A-205 to provide that a structure located on the ocean beach that is uninhabitable and has been without water and sewer services for more than 120 days creates a situation that the city can prohibit, regulate, or take action to abate.

Erosion Control Structures

S.L. 2015-241 (H.B. 97), the state budget act, makes two changes to rules under the Coastal Area Management Act affecting regulation of ocean-front shoreline hardening structures. For several decades, state rules have prohibited bulkheads, seawalls, groins, and jetties as measures to deal with beach erosion. Temporary erosion-control structures (typically large sandbags) are allowed to protect imminently endangered structures (generally those within twenty feet of the shoreline).

Section 14.6.(p) of the act directs the Coastal Resources Commission to amend its rules to allow more temporary erosion-control devices. It specifies that the rules must allow these devices if the property involved does not have an imminently endangered structure but is located adjacent to property with temporary devices. Also, the devices may be extended to the property boundaries, and if multiple permits affect a single property, the expiration date for removal of the devices is the latest of any permit. Finally, devices may be repaired or replaced if litigation regarding them is ongoing.

Section 14.6.(r) of the act amends G.S. 113A-115.1 to allow permits for up to six terminal groins (the limit had been four). It further provides that two of the six groins can be permitted only at Bogue Inlet and New River Inlet.

Finally, Section 14.10I of the act directs the Division of Coastal Management to conduct a study of preventing, mitigating, and remediating the effects of beach erosion. The study is to consider methods to prevent erosion and overwash and to renourish and sustain beaches. The report is to be made to the Environmental Review Commission by February 15, 2016.

EIS Limits

The General Assembly adopted the Environmental Policy Act in 1971. This law requires environmental impact analysis to be conducted by state agencies for actions involving a substantial expenditure of state funds or the use of public land when the proposed action would significantly affect the environment. G.S. 113A-4. The law also allows cities and counties to require private developers to conduct an environmental analysis of "major development projects." G.S. 113A-8. Only a handful of local governments have enacted such local ordinances.

S.L. 2015-90 (H.B. 795) amends several provisions of the state Environmental Policy Act, primarily affecting the state review requirements. The law sets a threshold of $10 million as a "substantial expenditure" of state funds that triggers the act. It further defines the use of public land that triggers the act as land disturbance that creates substantial, permanent changes in the land that are greater than ten acres.

Department Reorganization

Section 14.30 of S.L. 2015-241 (H.B. 97), the state budget bill, moves a number of nonregulatory programs from the Department of Environment and Natural Resources (DENR) to the Department of Cultural Resources (DCR). State parks, the State Zoo, state aquariums, and the Natural Science Museum are all transferred, along with associated staff, authorities, boards, and commissions. The Clean Water Management Fund and the Natural Heritage Program also were included in the transfer. The names of the departments were adjusted to reflect this transfer. DENR is now the Department of Environmental Quality, and DCR is now the Department of Natural and Cultural Resources.

Housing, Community Development, and Economic Development

Grants and Credits

The state budget bill (S.L. 2015-241 (H.B. 97)) includes provisions for notable economic development grants and tax credits. As discussed above, a new tax credit for qualified historic preservation rehabilitation was authorized with new limits and requirements, and local grants and loans for historic preservation were authorized as well.

The Job Development Investment Grants program (JDIG) received funding of almost $58 million for fiscal year 2015–16 and almost $72 million for fiscal year 2016–17. The JDIG program is managed by the state's Economic Investment Committee and provides sustained annual grants to new and expanding businesses.

Tax credits to support the film industry expired at the end of 2014. In their place the General Assembly established the Film and Entertainment Grant Fund (S.L. 2014-100). Film production companies apply to the Department of Commerce for such grants. The 2015 state budget bill allocated $30 million for each of the next two fiscal years.

For many years the renewable energy industry enjoyed a tax credit for investing in renewable energy systems in North Carolina. That tax credit, paired with the Renewable Energy Portfolio Standard for electric utilities, was a major driver for making North Carolina a leading state for solar energy investment and production. The tax credit law included a provision to expire at the end of 2015, and the General Assembly took no action to continue the credit.

Municipal Service Districts

Section 15.16B of the state budget bill sets new limitations on municipal service districts (including business improvement districts). The tax rate for a municipal service district must be set to meet the reasonably expected needs of the district but with no accumulation of excess funds. And when a municipality contracts with a private entity to provide services or functions of the municipal service district, the municipality now must follow certain procedures before awarding such a contract. The municipality must

- solicit input from the residents and owners as to the needs of the district,
- use a bid process to select the private entity,
- hold a public hearing,
- require annual reporting from the contracting entity,
- specify the scope of services to be provided by the contracting entity, and
- limit the contract to five years.

It is worth noting that Section 15.16B of S.L. 2015-241 also calls for a legislative study committee to study the "feasibility of authorizing property owners within a municipal service district to petition for removal."

For more on the general authority and requirements of municipal service districts, as well as the new statutory changes, see Kara Millonzi, *Changes to Municipal Service District (MSD) Authority*, Coates' Canons: NC Local Gov't L. Blog (Oct. 19, 2015), http://canons.sog.unc.edu/?p=8264.

Jurisdiction

No significant changes were made in the General Statutes regarding annexation or extraterritorial planning and development regulation jurisdiction in 2015. However, the General Assembly did continue its recent trend of making changes in jurisdiction for individual cities.

Specified territory was annexed into the following municipalities: Cary (S.L. 2015-77); Clayton (S.L. 2015-79), Dunn and Holly Ridge (S.L. 2015-175), Lenoir (S.L. 2015-129), and Mint Hill (S.L. 2015-131). Deannexations were made for Angier (S.L. 2015-139), Lake Lure, subject to referendum (S.L. 2015-140), Murphy (S.L. 2015-81), Polkton (S.L. 2015-78), and Weldon (S.L. 2015-132). The city boundary for Clayton was moved (S.L. 2015-83) and property transferred from Locust to Stanfield (S.L. 2015-257). Property was also transferred from the extraterritorial area of Clayton to that of Wallace (S.L. 2015-171). Durham was granted authority to annex adjacent streets (S.L. 2015-82). The maximum area of satellite annexations was increased for Archdale and Franklin (S.L. 2015-81) and for Wilson Mills (S.L. 2015-80).

Statutory Reorganization: Proposed 160D

A bill that would reorganize the entire body of statutes on city and county planning and development regulation was introduced but not enacted in 2015. The bill was proposed by the North Carolina Bar Association to create a new platform with consensus changes to modernize these statutes.

The bill draft was produced by the Bar Association's Zoning, Planning, and Land Use Law section, a group of attorneys who represent local governments, developers, and neighbors. The bill draft was circulated in October 2014 to some four thousand attorneys, industry groups, planners, zoning officials, and others. Updated drafts that incorporated comments from the reviews were circulated in January and again in February 2015. House Bill 548, sponsored by Representatives Paul Stam (R-Wake), Dan Bishop (R-Mecklenburg), Rob Bryan (R-Mecklenburg), and Susi Hamilton (D-New Hanover), was introduced on April 2, 2015. In late April the House Judiciary IV Committee approved several refinements to the bill and then proposed to create an eighteen-member North Carolina Zoning Modernization Legislative Task Force to further study the bill and report back in 2016. The Senate subsequently decided not to pursue a formal task force but rather to review the proposal informally. Since the bill passed the House prior to the "crossover deadline" at the end of April, it is eligible for action in 2016.

The bill now under consideration does the following:

1. consolidates city and county planning and development statutes (retains intentional differences, such as agricultural exemption for county zoning);
2. reorganizes existing statutes into a more accessible and logical organization with fourteen articles, as follows:
   - Article 1 consolidates provisions applicable to all development regulations (definitions, vested rights, moratoria, conflicts of interest),
   - Article 2 consolidates provisions of geographic jurisdiction for planning and development regulations,
   - Article 3 consolidates provisions for boards and commissions,
   - Article 4 consolidates administrative provisions (staff, permit processing, enforcement, quasi-judicial procedures),
   - Article 5 consolidates provisions on planning,
   - Article 6 consolidates provisions on the process for adoption, amendment, and repeal of development regulations,
   - Articles 7 to 13 retain specialized provisions in individual Articles (such as zoning, subdivision, building inspection, housing codes) while consolidating related provisions together,
   - Article 14 consolidates provisions on judicial review;
3. establishes uniform, consistent procedures to be followed by all cities and counties;
4. clarifies confusing, dated statutory language;
5. makes numerous consensus reforms but leaves substantial policy initiatives to other bills.