UNC SCHOOL OF GOVERNMENT

PLANNING AND ZONING LAW BULLETIN NO. 35 | NOVEMBER 2024

2024 North Carolina Legislation Related to Planning and Development Regulation

Adam Lovelady and Jim Joyce

CONTENTS

Jim Joyce is an assistant professor of public law and government at the School of Government. Adam Lovelady is professor of public law and government at the School of Government. Both specialize in land use planning and development regulation.

© 2024. School of Government. The University of North Carolina at Chapel Hill.

Introduction

During the legislative short session in 2024, the North Carolina General Assembly made notable changes to the laws related to planning and development regulations. As is typical, they adopted a regulatory reform bill, a farm bill, a variety of local bills, and others. This bulletin is organized by topics rather than by bills; for example, topics addressed by the regulatory reform bill are dispersed throughout the bulletin's sections.

Checklist for Local Governments

Due to the number and variety of bills reviewed and passed in the 2024 legislative session, local governments may want to use the following checklist to ensure local codes stay current.

- Establish a policy to issue approved permits via mail or delivery service. This policy must allow for issuing permits via email where appropriate and where the permittee consents to such delivery. The policy also may allow for in-person pickup if the local government and the permittee desire it.
- Update local regulations to comply with requirements for battery-charged security fences as provided in Chapter 153A, Section 134.1 of the North Carolina General Statutes (hereinafter G.S.) or G.S. 160A-194.1 and advanced air mobility radar as provided in G.S. 160D-970 through -973.
- Update subdivision performance guarantee regulations and procedures to adhere to changes in G.S. 160D-804.1.
- Assure that staff are aware of—and that ordinances do not conflict with—provisions of new G.S. 160D-912.1, which allows for relocation and places new limits on requiring removal of on-premises signs.
- Adjust local curb-and-gutter standards to allow North Carolina Department of Transportation (NCDOT) standards as noted in G.S. 160D-804.
- For municipalities with extraterritorial jurisdiction (ETJ), establish agreements with NCDOT for sidewalk maintenance for small subdivisions in the ETJ, as required by G.S. 160D-804(c).
- Update stormwater maintenance requirements and agreements to align with changes to local government authority.
- Confirm that conditions and scoring systems for providing residential water and sewer service conform to new G.S. 162A-900.
- Align water and sewer requirements such as plumbing backflow preventers, water shut-off valves, and sewer certifications with various amended statutes.
- Update on-site wastewater standards to align with various statutory changes.
- Assure that local law enforcement is aware of the additional penalties and violations available for damage to water systems, public utility properties, and manufacturing facilities.
- For coastal communities, update policies and ordinances related to regulation of piers and aquaculture to comply with Sections 15.1 and 16.1 of S.L. 2024-45 (S.B. 607) and note new legislation related to terminal groins and geotextile sand tubes.
- Update policies to reflect the confirmation that horse boarding is a bona fide agricultural use.

© 2024. School of Government. The University of North Carolina at Chapel Hill.

- Cease enforcing beehive regulations in municipal ETJ areas.
- Add a disclaimer (if not already present) by January 1, 2025, to public-facing GIS tools to the effect that the tool is provided without warranty and customers should consult primary sources to confirm data accuracy.
- Cease charging stormwater utility fees to bona fide farm property.
- Note a development permit fee waiver for structures impacted by Hurricane Helene.
- Advise building code permitting staff to seek certification under the new program.
- Update administration of building code permitting fees to align with changes to G.S. 160D-402.
- Update residential plan review timelines to adhere to the new twenty-day short clock.
- Update policies and practices to recognize limits on inspection authority and certificates of occupancy/compliance.

The following checklist addresses legislative updates that affect specific localities.

- **Catawba County**, together with two or more of **Burke**, **Caldwell**, and **Lincoln counties**, should consider creating a rail transportation corridor authority to manage the rail corridor(s) in their communities.
- **Dare County** should take note of the cancellation of the affordable housing allocation in S.L. 2022-74 that was the basis for the zoning exemption in S.L. 2023-134.
- Modify zoning map and official boundary map to account for the following annexations and deannexations:
  - deannexations of property from the **Town of Fuquay-Varina**, **City of Kannapolis**, **Town of Summerfield**, **City of Washington**, **Town of Andrews**, **City of Asheville**, **City of Boiling Spring Lakes**, and **Town of Newport** and
  - annexations of property into the **City of High Point**, **Town of Mount Gilead**, and **Town of Edenton**.
- Modify zoning map, ETJ map, and other regulations to account for the repeal of extraterritorial jurisdiction authority for the **City of Kings Mountain** and the **City of Southport**.
- Note other various and sundry modifications of authority involving occupancy taxes, vacant positions, ABC funds, and other matters for the **Town of Beaufort**, **City of Hendersonville**, **Town of Northwest**, **Beaufort County**, **Currituck County**, **Town of Woodfin**, **Pender County**, **McDowell County**, **Town of Stanley**, the **City of Concord**, and **Wake County**.

Zoning and Land Development Regulations

Permit Delivery

Until quite recently, some state agencies and local governments have required that permittees pick up approved development permits in person. Section 22.1 of the regulatory reform act, S.L 2024-45 (S.B. 607), eliminates this requirement. The bill adds new G.S. 143-162.6 (for state agencies), 153A-461 (for counties), and 160A-499.6 (for cities), which require all state, county, and city agencies to send approved permits to the permittees via U.S. mail or delivery service, or, if the permittee consents, by email.

© 2024. School of Government. The University of North Carolina at Chapel Hill.

Agencies may charge permittees for the delivery cost. The new law explicitly does not change the methods by which applicants may *apply* for permits. Finally, while a state or local agency cannot require permittees to pick up an approved permit in person, permittees may still choose to do so if the agency allows. Local governments were required to adopt a policy for permit delivery that is consistent with the statute by September 1, 2024.

Battery-Charged Security Fences

As discussed in our 2023 legislative update bulletin, the 2023 regulatory reform act added new G.S. 153A-134.1 (counties) and 160A-194.1 (cities), which set strict new limits on the regulation of battery-charged security fences. Pursuant to that legislation, cities and counties may not adopt ordinances that require fees or approval for installation of battery-charged security fences, impose installation or operation requirements on battery-charged security fences, or prohibit installation or use of a battery-charged fence in property zoned for nonresidential use.

Section 22.5 of the 2024 regulatory reform act, S.L. 2024-45 (S.B. 607), clarifies and expands this legislation. The updates stipulate that a city or county cannot prohibit the use of a battery-charged fence in property zoned *exclusively* for nonresidential use. Previously it was unclear whether the law applied to zoning districts that allow both residential and nonresidential uses, but the new act confirms that the ban on prohibiting battery-charged fences applies only in districts zoned exclusively for nonresidential uses. It also prevents cities and counties from enforcing existing regulations that would conflict with G.S. 153A-134.1 and 160A-194.1.

Drone Traffic Control

Section 23 of the regulatory reform act, S.L. 2024-45 (S.B. 607), adds a new Part 6 to Article 9 of G.S. Chapter 160D allowing local governments to regulate, under certain conditions, the siting, installation, modification, maintenance, and removal of advanced air mobility (AAM) radar used for traffic control of unmanned aircraft systems. A North Carolina nonprofit whose primary purpose is the promotion and growth of AAM technology can apply to a local government for authorization to install and use an AAM system (in addition to complying with all development regulations and obtaining all applicable development approvals).

Local governments may not assess a fee for applications for or installation or use of AAM systems that comply with the new statutes. In reviewing an application, a local government may review an applicant's compliance with public safety and development agreements as well as "information or materials directly related to" a particular regulation, but it must approve or deny the application within thirty days of its receipt.

The local government can also require a permit applicant to evaluate the possibility of collocating AAM infrastructure with existing structures. The law also allows a local government to agree to collocated AAM equipment on property it owns but limits the bases on which it can deny a request for collocation. A local government also can condition approval of the system on the provision of a collocation agreement (if collocation is feasible), installation in compliance with applicable laws and regulations, compliance with Federal Communications Commission safety guidelines regarding exposure to electromagnetic radiation, and construction of facilities within a reasonable amount of time that is no less than twenty-four months.

The new law also allows a local government to require a permit applicant to remove an AAM system within 180 days of the applicant abandoning the system. If the applicant does not remove the system, the local government can remove it and recover the costs for doing so from the applicant.

© 2024. School of Government. The University of North Carolina at Chapel Hill.

Floodplain

S.L. 2024-1 (S.B. 508) adds a new statute, G.S. 143-215.57A, to allow certain airport projects in flood hazard areas.

Seals of Design

S.L. 2024-49 (S.B. 166) adds a new statute, G.S. 160D-111, to specify that "[a]dministrative staff, Code-enforcement officials, or other local government personnel charged with reviewing plans required by this Chapter shall not make administrative decisions on the scope of work covered by architect or engineer seals of designs affixed to work." The statute clarifies that this provision does not limit local government review of plans before a seal is affixed to ensure compliance with applicable codes, ordinances, and standards.

Land Subdivision

G.S. 160D-804.1 authorizes subdivision performance guarantees and sets details for their management. A performance guarantee allows a developer to obtain final plat approval and sell lots in a subdivision before all of the required infrastructure is complete. The developer must provide a promise and financial assurance—a performance guarantee—that the infrastructure will be completed. A local government is not required to allow performance guarantees (it could require completion of all infrastructure prior to final plat approval), but if it does allow performance guarantees, it must adhere to G.S. 160D-804.1.

S.L. 2024-49 (S.B. 166) amends G.S. 160D-804.1 as follows:

- A local government must inspect improvements within thirty days of the developer request and state whether the improvements meet applicable standards.
- If the government and a developer disagree about whether applicable standards have been met, the developer may obtain a certification under seal from a licensed professional engineer.
- A local government must return or release a performance guarantee within thirty days of acknowledging its completion or the receipt of an engineer's certification.
- New language confirms that performance guarantees may not be required for maintenance of an improvement after its completion.

Signs

Compensation for On-Premises Advertising Signs

Since 2004 (S.L. 2004-152, to be precise), G.S. 160D-912 and its predecessors G.S. 153A-143 and 160A-199 have required compensation for removal of lawfully erected off-premises outdoor advertising signs (billboards). A new section of Chapter 160D, added by Section 23.1 of the regulatory reform act, S.L. 2024-45 (S.B. 607), extends this protection to on-site advertising signs. The act adds new G.S. 160D-912.1 to protect the value of *on-premises advertising*, defined as "[a] sign visible from any local or State road or highway that advertises activities conducted on

© 2024. School of Government. The University of North Carolina at Chapel Hill.

the property upon which it is located or advertises the sale or lease of the property upon which it is located." There are two main provisions:

1. Lawfully erected on-premises signs may be relocated or reconstructed on the same parcel if (a) the sign complies with the rules that applied when it was originally constructed, (b) the "total advertising surface area" of the sign does not increase, and (c) any relocation construction work begins within twenty-four months of the sign's removal. If the parties disagree as to whether a sign was lawfully erected, the local government has the burden of proving that it was not.
2. If a local government requires removal of a lawfully erected on-premises sign, it must pay compensation equal to (a) the greater of the sign's fair market value immediately prior to removal or the reduction in value of the property resulting from the sign's removal *plus* (b) the cost of a new sign that conforms to current regulations. The local government would then own the sign and be responsible for removing it.

The new law applies to on-premises advertising signs removed on or after October 1, 2021. For signs removed between that date and July 9, 2024, relocation or reconstruction must begin by July 9, 2026.

Tree Clearing for Billboards

S.L. 2024-15 (H.B. 198) revises the statutes concerning tree cutting near billboards to allow more vegetative cutting and removal along North Carolina Department of Transportation roads.

Fees and Exactions

Fees are discussed under "Building Code," below.

Infrastructure

Streets and Sidewalks

NCDOT Curb and Gutter Standards

S.L. 2024-49 (S.B. 166) amends G.S. 160D-804 relating to subdivision standards, adding subsection (k). Under the new language, a developer may use the North Carolina Department of Transportation (NCDOT) curb and gutter design standards for subdivision roads "adjacent to, and serving, dwellings subject to the North Carolina Residential Code." The local subdivision ordinance may not prevent a developer from using these NCDOT standards.

Sidewalks in the ETJ

S.L. 2024-49 (S.B. 166) amends G.S. 160D-804(c) to provide that a municipal subdivision ordinance may not require sidewalks in subdivisions of twenty lots or less in a municipal extraterritorial jurisdiction unless the city accepts long-term maintenance responsibilities by written agreement with NCDOT. Moreover, a local government must coordinate with NCDOT to accept long-term maintenance responsibility for such sidewalks required after January 1, 2020.

© 2024. School of Government. The University of North Carolina at Chapel Hill.

Stormwater

Stormwater Maintenance Fund Reimbursement

In 2023 the General Assembly adopted S.L. 2023-108, which amended G.S. 160D-925 to prohibit local governments from collecting funds for maintenance of private stormwater facilities. Additionally, the law required local governments to reimburse funds previously collected for stormwater maintenance. S.L. 2024-49 (S.B. 166) clarified the reimbursement requirement, adding language that the local government "shall, upon request of the owner of the stormwater control project, immediately refund the monies to the owner of the stormwater control project to make such funds accessible to the owner to cover necessary maintenance, repair, replacement, and reconstruction costs for the owner's stormwater control project, in accordance with G.S. 160D-925(d1)."

Recordation of Stormwater Operation and Maintenance Agreements

Under prior rules, a stormwater operation and maintenance agreement had to be referenced on the final plat recorded with the register of deeds. S.L. 2024-49 (S.B. 166) changes the rule so that these agreements may be referenced on any instrument of title recorded with the register of deeds.

"Built-Upon Area"

S.L. 2024-49 (S.B. 166) amends G.S. 143-214.7D to clarify that the following may not be considered built-upon area or impervious or partially impervious surface (the term "artificial turf" is new to the statute):

- a slatted deck;
- the water area of a swimming pool;
- a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least 4 inches thick over a geotextile fabric;
- a trail as defined in G.S. 113A-85 that is either unpaved or paved if the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour);
- landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed in areas with pedestrian or bicycle traffic or on portions of driveways and parking areas not compacted by the weight of vehicles, such as the area between sections of pavement that support the weight of vehicles; and
- artificial turf, manufactured to allow water to drain through the backing of the turf and installed according to the manufacturer's specifications over a pervious surface.

Local governments must adhere to this definition and "may not enact, implement, or enforce a local government ordinance, comprehensive plan, or stormwater program that establishes a definition of 'built-upon area' or impervious surface that does not comply with" the exemptions.

Water and Sewer

Conditions and Scoring Systems for Water and Sewer Allocation

Section 12 of the regulatory reform act, S.L. 2024-45 (S.B. 607), adds a new statute, G.S. 162A-900, limiting local authority for certain preferences in water and sewer capacity allocation. Parallel language was included in S.L. 2024-49 (S.B. 166). A local government may not require

© 2024. School of Government. The University of North Carolina at Chapel Hill.

an applicant for water or sewer services for residential development to agree to a condition not otherwise authorized by law, nor may it accept an applicant's offer to consent to such conditions. The prohibited conditions include the following:

- payment of taxes or impact or other fees or contributions to any fund;
- adherence to any restrictions related to land development or land use (general zoning requirements), including those within the scope of G.S. 160D-702(c) (minimum square footage for residential structures, parking space size, and fire apparatus access roads); and
- adherence to any restrictions related to building design elements within the scope of G.S. 160D-702(b).

Additionally, a scoring or preference system used by a local government to allocate water and sewer service may not include any of the following:

- a consideration of building design elements as defined in G.S. 160D-702(b);
- a minimum square footage requirement of any structures subject to regulation under the North Carolina Residential Code;
- a requirement that a parking space be larger than 9 feet wide by 20 feet long unless the parking space is designated for handicap, parallel, or diagonal parking; or
- a requirement for additional fire apparatus access roads into developments of one- or two-family dwellings that do not comply with the required number of fire apparatus access roads into such developments set out in the Fire Code of the North Carolina Residential Code.[1]

Backflow Preventers

S.L. 2024-49 (S.B. 166) adds new G.S. 130A-330 to limit local government authority to require backflow preventers on existing water connections. A backflow preventer is a device installed on a private plumbing system to prevent the backflow of water from that system into the public potable water supply system. The limitation focuses on existing development and existing connections. New construction and redevelopment may still be subject to backflow preventer requirements under the plumbing code and fire code, as noted below. With the new G.S. 130A-330, a local government may still require periodic testing of backflow preventers on residential irrigation systems, but required periodic testing is limited to every three years for irrigation systems that do not apply or dispose chemical feeds.

The local government and its employees are immune from civil liability related to backflow of water where a backflow preventer is not required by state or federal law or where the hazard is not determined to be high. The local government and its employees are also immune from civil liability related to the limited periodic testing.

1. For more on the authority and limits for mandating water and sewer connections, see Kara Millonzi, *Mandating Water & Sewer Connections*, Coates' Canons NC Loc. Gov't L. (July 30, 2024), https://canons.sog.unc.edu/2024/07/mandating-water-sewer-connections/.

© 2024. School of Government. The University of North Carolina at Chapel Hill.

Backflow preventers may still be required for the following:

- as required by the North Carolina Plumbing Code or Fire Code for new construction, retrofit or upfit/fit-up, facility additions, or change of use (but a mere increase of flow or a mere replacement of the service line without change of use or a facility addition does not necessitate a backflow preventer);
- on existing residential and commercial connections if the Department of Environmental Quality (DEQ) determines the cross-connection is a high hazard because potential contamination could cause illness or death, spread disease, or create a high probability of such effects; and
- on existing residential and commercial connections if the local government pays all costs for the backflow preventer.

This new section was effective September 11, 2024.

Duplicative Water Shut-Off Valves

S.L. 2024-49 (S.B. 166) adds new G.S. 130A-331 to prevent local governments from requiring a redundant shutoff valve between the meter and a customer in a dwelling subject to the North Carolina Residential Code. This provision does not apply to an integrated valve at the water meter box nor a valve installed as an accessible main shutoff as required by the North Carolina Residential Code.

G.S. 130A-331 is effective January 1, 2025.

Review Timeline for Sewer Certifications and Water Distribution Systems

The Environmental Management Commission, with administrative support from DEQ, reviews and acts on sewer system permits pursuant to G.S. 143-215.1 and related rules. Prior law required review within ninety days. S.L. 2024-49 (S.B. 166) shortens that timeline. The commission must make a determination of application completeness within ten days of its submission and approve or deny the application within forty-five days of submission.

S.L. 2024-49 (S.B. 166) amends G.S. 130A-328 to set a timeline for DEQ review of applications for water distribution systems. Similar to the requirements for sewer certifications, the department must make a determination of application completeness within ten days of its submission and approve or deny the application within forty-five days of submission.

On-Site Wastewater

Health Department Notice to Inspections Department

S.L. 2023-90 made changes to the permitting and reporting requirements for on-site wastewater systems outlined at G.S. 130A-336.1. S.L. 2024-1 (S.B. 508) further clarifies this language. Local health departments must, upon receipt of an authorization to operate and related documentation from an owner, notify the appropriate inspections department within two days. If the local health department fails to do so, then the owner may submit the authorization to operate and obtain a certificate of occupancy.

Additionally, S.L. 2024-1 (S.B. 508) amends G.S. 130A-336.1 and -336.2 so that a change in ownership does not change the authorization to operate an on-site wastewater system.

© 2024. School of Government. The University of North Carolina at Chapel Hill.

Other Changes

S.L. 2024-49 (S.B. 166) makes a variety of changes to requirements for on-site wastewater, including the following:

- specifying requirements for wastewater contractors and authorized on-site wastewater evaluators and establishing the category of private compliance inspectors (Section 4.4),
- authorizing on-site wastewater system inspections by private compliance inspectors (Section 4.5),
- establishing liability parameters for registered environmental health specialists (Section 4.7),
- amending rules for water supply setbacks (Section 4.8), and
- clarifying changes to statutory requirements and rules for on-site wastewater (Sections 4.9–4.46).

Penalties for Property Crimes Against Infrastructure

Section 9 of the regulatory reform act, S.L. 2024-45 (S.B. 607), makes several statutory changes to increase punishments for offenses against certain infrastructure. Specifically, the law does the following:

- increases the penalties in G.S. 14-159.1 for knowingly and willfully contaminating a public water system or injuring a public water system or wastewater treatment system to make these offenses punishable as a Class C felony and adds a private right of action for injured parties,
- modifies G.S. 62-323 to convert willful injury to property of a public utility from a Class 1 misdemeanor to a Class C felony and adds a private right of action for injured parties,
- creates new G.S. 14-150.3 to establish civil and criminal penalties (again, a private right of action and a Class C felony) for knowingly and willfully damaging a manufacturing facility, and
- adds claims for these violations to the list of exemptions in G.S. 1D-27 from the cap on punitive damages.

This law is effective December 1, 2024, and applies to offenses committed on or after that date.

Coastal Areas

The regulatory reform act, S.L. 2024-45 (S.B. 607), includes several provisions related to coastal management regulations.

Piers

Section 15.1 of the act exempts from Coastal Area Management Act (CAMA) permit requirements the rebuilding of docks, piers, and walkways damaged or destroyed by natural causes. This exemption is effective by statute as of the effective date of the bill and requires the Department of Environmental Quality (DEQ) to draft a rule to this effect. In lieu of a CAMA permit, Section 15.2 requires inspection departments to notify the Division of Coastal Management of the replacement of a dock, pier, catwalk, or walkway within sixty days of inspection of the new structure. This rule is effective on the later of October 1, 2024, or the first

© 2024. School of Government. The University of North Carolina at Chapel Hill.

day of a month at least sixty days after the secretary of DEQ certifies that the National Oceanic and Atmospheric Administration (NOAA) has approved the rule changes.

Vegetation Lines Related to Groin Projects

Section 16 of the regulatory reform act requires the Coastal Resources Commission to revise its rules to allow a local government that has a permit to construct a terminal groin to set a measurement line for the first line of stable and natural vegetation to be covered by a dune building and beach planting project. This rule is effective by statute (until the Coastal Resources Commission adopts permanent rules implementing this standard) on the later of September 1, 2024, or the first day of a month at least sixty days after the secretary of DEQ certifies that the NOAA has approved the final rule changes.

Aquaculture Exemption

Section 16.1 of the regulatory reform act revises G.S. 113A-103 and 143B-289.52 to exempt floating structures used primarily for aquaculture and associated with an active shellfish cultivation lease from the definition of *development* that triggers CAMA permitting requirements. DEQ was to submit the proposed changes to NOAA by August 1, 2024. This rule is effective on the later of October 1, 2024, or sixty days after NOAA approves the changes.

Replacement of Oceanfront Erosion-Control Structures

Section 16.1A of the regulatory reform act revises G.S. 113A-115.1 to allow a terminal groin where the ocean converges with Frying Pan Shoals and for a seventh terminal groin permit to be issued. It also includes rules for replacing geotextile sand tubes originally permitted before 1995 with rock erosion-control structures. DEQ was to submit the proposed changes to NOAA for approval by August 1, 2024. This rule is effective on the later of October 1, 2024, or sixty days after NOAA approves the changes.

Agricultural Uses

S.L. 2024-32 (S.B. 355, the "farm act") represents the General Assembly's annual update to agricultural laws. This summary covers only those sections in the act relevant to land use and development. Other provisions, such as those related to sweet potatoes, shellfish leases, feral swine, and tax credits for donations of certain land for preservation may be of interest to those who operate more extensively in agricultural industries. Except as otherwise indicated, the act became effective when it became law on July 3, 2024.

Equestrian Activities

Section 1.(a) of the act adds "the boarding of horses" to other horse-related agricultural uses in the definition of *agriculture* in G.S. 106-581.1. This definition is incorporated into the bona fide farm zoning exemption in G.S. 160D-903, so the new provision confirms that horse boarding is an agricultural and thus a bona fide farm use for the purposes of zoning and building code exemptions. Section 1(b) also adds "the rearing, feeding, training, caring, boarding, and managing of horses" to the kinds of agricultural operations that qualify for a right-to-farm defense to nuisance actions under G.S. 106-701. Finally, Section 1.(c) adds "the rearing, feeding,

© 2024. School of Government. The University of North Carolina at Chapel Hill.

training, caring, boarding, and managing of horses" to the list of agricultural activities to which sedimentation and erosion control regulations do not apply.

Low-Hanging Phone Lines

Section 4 of the farm act directs the Agriculture and Forestry Awareness Study Commission "to collect information on communication lines that fall below the minimum height requirement and create a public safety hazard, particularly to agricultural operations" and report to the General Assembly prior to the convening of its 2025 regular session.

Animal Waste Management System General Permits

Section 5.1 of the act postpones the expiration of certain AWG general permits—and the certificates of coverage that accompany them—until September 30, 2026. The AWG series of general permits includes those for swine, cattle, wet poultry, swine digesters, cattle digesters, and wet poultry digesters.

Right-to-Farm Defense for Compost Facilities

Section 5.3 of the farm act adds Type I compost facilities to the list of agricultural operations that can claim a right-to-farm defense against a nuisance action under G.S. 106-701. This provision applies to actions filed on or after July 3, 2024.

Beehives in Municipal ETJs

G.S. 106-645(b), which allows cities to regulate beehives, had explicitly allowed this regulation in areas of extraterritorial jurisdiction. Section 12 of the farm bill limits the statute so that a city may regulate only beehives operating within its municipal limits.

GIS Disclaimer

Section 13 of the farm act adds G.S. 153A-463 (for counties) and 160A-499.8 (for cities) to require GIS tools offered to the public to include a disclaimer that the tool is provided without warranty and customers should consult primary sources to confirm the accuracy of any data provided. The disclaimer should be displayed by January 1, 2025.

Bona Fide Farm Stormwater Fee Exemption

Section 14 of the act modifies G.S. 153A-277 and 160A-314 to prohibit counties and cities from imposing stormwater utility fees on any property used for bona fide farm purposes. Unlike the zoning exemption in G.S. 160D-903, this fee exemption applies everywhere in county and municipal jurisdictions, including within city limits. It applies to fees levied on or after July 3, 2024.

Great Trails State Day

The third Saturday in October of each year, beginning in 2024, will be North Carolina Great Trails State Day.

© 2024. School of Government. The University of North Carolina at Chapel Hill.

Hurricane Helene Recovery

The North Carolina General Assembly responded to the devastation of Hurricane Helene with recovery legislation, enacting the Disaster Recovery Act of 2024—Part I, S.L. 2024-51 (H.B. 149), and the Disaster Recovery Act of 2024—Part II, S.L. 2024-53 (S.B. 743). Understandably these bills cover a wide variety of topics ranging from recovery funding to criminal justice, and from education requirements to regulatory relief. The changes related specifically to planning, permitting, and development regulation are discussed below.

Permit Fees

Section 16.2 of the Disaster Recovery Act—Part I limits permit fees for development. The act provides that local governments "shall not impose any fee associated with a permit, inspection, or certificate of occupancy required by law for construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of a manufactured home, building, dwelling, or structure damaged as a direct result of Hurricane Helene." The moratorium applies in counties designated under the presidential disaster declaration and runs from September 26, 2024, to December 31, 2024. Any fees collected that are subject to the moratorium must be refunded, and local governments must communicate the availability of the refund on the local government website. This section also applies to the Department of Insurance.

The language of the act indicates that the permit fee waiver is targeted toward building permit fees. The language is broad, however; it refers to "any fee associated with a permit, inspection, or certificate of occupancy." As such, this language arguably waives fees for zoning permits and similar development approvals.

A local government could choose to waive other fees. These waivers should be adopted into the local fee schedule by governing board action. If the fee schedule was adopted by ordinance, it should be amended by ordinance. Some fees (such as utility fees) have a prescribed implementation process, including public hearing. Local governments must follow any required procedure to amend fee schedules. The inclination to waive fees is understandable, but communities should be cautious about cashflow, especially for utilities.

Building Code Shot Clocks

Section 4E.3 of the Disaster Recovery Act—Part II provides flexibility for building code shot clocks. Under current law, the local inspections department must complete residential plan review and commercial and multifamily permit review within specified time frames. Additionally, building inspections must be completed in a timely fashion. The recovery legislation allows a local government in the affected area to adopt a resolution providing that the inspections department cannot meet those deadlines "due to the damage and disruption caused by Hurricane Helene." With such a resolution, "the local government may utilize and contract with a licensed professional engineer or licensed architect certified under G.S. 143-151.13(f) to perform independent third-party plan review, inspections, or other work of the inspection department consistent with G.S. 143-151.13(b1)." Additionally, permit holders may still contract for third-party plan review under G.S. 160D-1110.1(e).

Temporary Certification for Retired Building Inspectors

Section 4E.2 of the Disaster Recovery Act—Part II allows for retired building code officials to obtain a temporary certificate to assist with recovery permitting and inspections. New G.S. 143-151.22 states that when the governor declares a state of emergency, the N.C. Code

© 2024. School of Government. The University of North Carolina at Chapel Hill.

Officials Qualification Board may issue "temporary standard or limited certificates to retired qualified Code-enforcement officials to conduct Code enforcement in the emergency area, as defined in G.S. 166A-19.3, for the duration of the state of emergency." The temporary standard or limited certificate expires at the end of the state of emergency or after twelve months, whichever is earlier. It may be renewed if the state of emergency extends beyond twelve months. Covered officials are exempt from continuing education requirements unless they have been on inactive or retired status for more than two years and have not been continuously employed by a local inspection department.

Funds to Support Local Government Capacity

Section 5.4 of the Disaster Recovery Act—Part II designates funds to support local planning, permitting, and inspections. The Office of State Budget and Management will provide grants to the N.C. League of Municipalities, the N.C. Association of County Commissioners, and the N.C. Association of Regional Councils of Government specifically to (1) provide technical assistance to units of local government in applying for federal financial aid, (2) support planning and permitting assistance, and (3) expand capacity for building and trade inspectors.

This support is intended for local governments as well as education agencies and community colleges. The grants will prioritize counties with populations of less than 250,000.

Mines for Storm Debris

Under Section 4C.10 of the Disaster Recovery Act—Part II, during a state of emergency the Department of Environmental Quality may allow permitted mines to be used to temporarily store storm-related debris without a permit modification.

License Extensions for Adult Care Homes and Family Care Homes

Under Section 15.2 of the Disaster Recovery Act—Part I (for provisional licenses) and Section 4B.1 of the Disaster Recovery Act—Part II (for initial licenses), the Department of Health and Human Services is authorized to extend provisional and initial licenses for adult care homes and family care homes located in the affected area if the license was due to expire between September 25, 2024, and March 25, 2025. Extensions may be up to sixty days for provisional licenses and ninety days for initial licenses. If local development permits are linked to state-issued licenses, these local permits may be impacted.

Building Code

Building Code Council

The Building Code Council plays a central role in building safety standards in North Carolina. The council adopts the State Building Code, oversees building code enforcement, and handles appeals and hearings related to the building code. In recent years the General Assembly has made dramatic changes to the authority and composition of the council. S.L. 2023-108, for example, expanded the scope of the Residential Building Code, created the Residential Code Council, and took responsibilities for residential building code matters from the Building Code Council and assigned them to the Residential Code Council.

In 2024 the General Assembly made more changes to the Building Code Council. S.L. 2024-49 (S.B. 166) reduced the number of council members from seventeen to thirteen. It also changed

© 2024. School of Government. The University of North Carolina at Chapel Hill.

the appointment process and the types of qualifications required of different appointees. Previously the governor appointed all members of the Building Code Council. Now six members are appointed by the General Assembly (three on recommendation of the speaker of the House of Representatives and three on the recommendation of the president pro tempore of the Senate) and seven by the governor subject to Senate confirmation. The new composition is as follows:

- a general contractor who specializes in multifamily construction (speaker),
- a professional engineer who specializes in structural engineering (president pro tempore),
- a general contractor who specializes in commercial construction (speaker),
- a professional engineer who specializes in electrical engineering (president pro tempore),
- an attorney who specializes in construction law (speaker),
- an electrical contractor (president pro tempore),
- a general contractor who specializes in buildings greater than 75 feet in height (governor),
- a professional engineer who specializes in mechanical engineering (governor),
- a plumbing and heating contractor who specializes in plumbing contracting (governor),
- a plumbing and heating contractor who specializes in mechanical contracting (governor),
- a level III code-enforcement official employed by a municipality or county (governor),
- a North Carolina certified level III fire code official (governor), and
- a representative of the fuel-gas industry (governor).

Permit Technician Certification

S.L. 2024-49 (S.B. 166) creates a new certification program for building code permit technicians. Under new G.S. 143-151.22, the North Carolina Code Qualifications Board will develop a North Carolina State Building Code Permit Technician Certification Program and certificate. Certification must be based on an exam covering the State Building Code, administrative procedures applicable to permit administration, and relevant topics in support of code enforcement officials and local inspections departments. The board will set professional development standards for certificate renewal.

The new statute allows an individual possessing a building inspector standard certificate to obtain a permit technician certificate without an examination. The statute also allows comity for certificates from another jurisdiction or the International Code Council.

Building Code Fees

Fees for Inspections Department

G.S. 160D-402 authorizes local governments to charge fees for permitting and inspections authorized under Chapter 160D for planning, zoning, subdivision, building inspections, and other types of activities. For several years, language within the statute has required that these fees must be used to support programs and staff. The precise meaning and scope of that requirement has been unclear because of the breadth of Chapter 160D topics and the diversity in how local governments administer permitting and inspection activities. S.L. 2024-49 (S.B. 166) provides clarity. G.S. 160D-402(d) now specifies that fees collected for building inspections must be used to support the administration and operations of building inspections. This provision aligns with the reporting requirements under G.S. 159-33.1(a) and 160D-1102(c). Fees collected for zoning, subdivision, and other non-building-permit 160D regulations are not mentioned, so by implication, these fees are not required to be used for those specific departments.

© 2024. School of Government. The University of North Carolina at Chapel Hill.

Residential Plan Review Fee Reimbursement

Pursuant to G.S. 160D-1110, local governments are not required to review residential building plans for structures built under the North Carolina Residential Code, but they may choose to do so. If a local government chooses to review residential building plans, initial reviews must be performed within fifteen business days of submission.

S.L. 2024-49 (S.B. 166) adds language to G.S. 160D-1110 to require concurrent review of development approvals and to require fee reimbursement if plan review is delayed. Under the new language, the local government must perform initial review of the residential building plan "concurrently with processes for project development approvals required from other State, federal, and local agencies." If initial review of the residential building plan is not performed within twenty business days of submission, then the local government must refund 10 percent of the application fee for each business day in which the local government does not perform its initial review, up to ten business days.

Building Code Enforcement

Withholding Certificates of Occupancy

As outlined at G.S. 160D-1116, a local government may withhold a certificate of compliance or certificate of occupancy if the completed work fails to comply with all applicable state and local laws and with the terms of the permit. G.S. 160D-1110 provides that building permits and certificates of occupancy may not be withheld to compel compliance on another property or parcel except for public safety issues. S.L. 2024-49 (S.B. 166) adds language to G.S. 160D-1110(h) clarifying "public safety issue" and that building permits and certificates of occupancy may not be withheld to compel compliance with the following:

- landscaping around dwellings subject to the North Carolina Residential Code within individual lots,
- landscaping within common areas within a subdivision development, and
- street-lighting fixtures within common areas of a subdivision development.

If a developer has not completed these site improvements, it must submit to the local government "a signed affidavit detailing the reasons why the required site improvements are not complete, the expected date of completion and compliance, and a statement promising to complete the required site improvements."

Inspector Rights of Entry

Practically, inspectors must enter properties to inspect permitted work. But property owners do not forfeit constitutional protections from unreasonable searches when they apply for a building permit. S.L. 2024-49 (S.B. 166) clarifies the limits of these inspections and the requirement for consent from owners. G.S. 160D-403 is amended to state that "[a]dministrative staff are prohibited from requiring unrestricted written consent from a permit applicant to enter any premises or areas not open to the public as a condition to accepting an application for, or the issuance of, development approvals." Additionally, Section 1.6.(b) of S.L. 2024-49 (S.B. 166) provides that inspectors may not use over-broad consent obtained prior to enactment of this law. The new law does not limit administrative search warrants or authorized periodic inspections.

© 2024. School of Government. The University of North Carolina at Chapel Hill.

Code Compliance Affidavits

S.L. 2024-49 (S.B. 166) amends G.S. 160D-1104(c) to provide that inspectors may not require an affidavit of code compliance in lieu of conducting inspections required by the North Carolina Residential Code.

Building Code Standards

Building Code Publication

Section 6 of the regulatory reform act, S.L. 2024-45 (S.B. 607), exempts the codifier of rules from having to publish the North Carolina Building Code in the North Carolina Administrative Code. Instead, it will only remain published and distributed to state offices in accordance with the current rules in G.S. 143-138(g).

Model Homes

S.L. 2024-49 (S.B. 166) adds new G.S. 160D-1501 with provisions specific to model homes in subdivision developments.

Local Fire Code Compliance with North Carolina Residential Code

Generally local governments must enforce the North Carolina Building Code and may not enforce local modifications. G.S. 143-138(e) does authorize local governments to adopt local fire prevention codes and floodplain management regulations. S.L. 2024-49 (S.B. 166) constrains that authority for local modification. New language is added to G.S. 143-138(e) to state that local fire prevention code provisions may not require anything not prescriptively required by the North Carolina Residential Code for structures subject to the code.

Building Code Technical Changes

Technical changes made by S.L. 2024-49 (S.B. 166) to the North Carolina Residential Code include the following:

- fire-resistance requirements for townhouse end units (Section 2.2),
- ground fault circuit-interrupter (GFCI) protection requirements for sump pumps located in crawlspaces and basements (Section 2.3),
- stairway adjacent glazing requirements (Section 2.4),
- electric water heater elevation requirements (Section 2.5),
- implementation of code changes for use of certain insulation in unvented attic and enclosed rafter assemblies (Section 2.6),
- implementation of code requirements during incorporation of three- and four-family dwellings into the code (Section 2.7),
- GFCI protection for recreational vehicle site equipment (Section 2.8),
- exclusion of electric vehicle supply equipment load from feeder and service load calculations for dwellings subject to the code (Section 2.9),
- changes to the emergency responder communication coverage exception (Section 2.10), and
- provision for board recovery of attorneys' fees in contractor violation cases (Section 3.1).

Additionally, Section 15.2.(b) of S.L. 2024-45 (S.B. 607) stipulates that the Residential Building Code may not require an engineer or architect to design or certify the construction of residential docks, piers, catwalks, or walkways.

© 2024. School of Government. The University of North Carolina at Chapel Hill.

Renewable Energy

S.L. 2024-44 (S.B. 802) authorizes a statewide commercial property assessed capital expenditure (C-PACE) program that local governments may join. A C-PACE program allows owners of commercial property to obtain low-cost, long-term financing (secured by an assessment or lien on the property) for certain improvements such as energy efficiency, water conservation, renewable energy, and resilience projects. The new statutes, G.S. 160A-239.11 through -239.21, provide for a statewide administrator to consult with stakeholders, provide form documentation, and establish an application and review process. Local governments may participate through a prescribed procedure and resolution. The statutes set forth details on immunity and foreclosure, assessments and liens, scope of financing, and other matters.

Local Bills

Rail Transportation Corridor Authority

Section 19.4 of the regulatory reform act, S.L. 2024-45 (S.B. 607), adds new Article 33 to G.S. Chapter 160A. This article authorizes a group of counties meeting particular criteria (currently only Catawba County with two or more of Burke, Caldwell, and Lincoln counties) to create a rail transportation corridor authority (RTCA) "to establish, construct, purchase, maintain, equip, and operate any structure, facility, or improvement to aid commerce, public transportation, and any other rail services associated with rail corridors." The RTCA would be incorporated and have many of the powers of other local government authorities. Its main function would appear to be to own and operate a rail corridor—limited to 25 miles in length and excluding Class I railroads under federal law or rail corridors owned or operated by the U.S. Department of Defense or the North Carolina Railroad Company—and to engage in economic development projects along the corridor.

Dare County Affordable Housing

In 2022 the General Assembly allocated $35 million to Dare County for an affordable housing development (Section 24.1(b) and (c) of S.L. 2022-74) and in 2023 it exempted the development from local zoning (Section 24.8 of S.L. 2023-134). The exemption from zoning became a local political controversy and legal dispute. S.L. 2024-1 (S.B. 508) repeals the allocation of funds and the regulatory exemption.

Various Local Provisions

S.L. 2024-20 (H.B. 909) introduces a variety of changes to local government authority. These include the following changes relative to jurisdiction:

- deannexations of property from the Town of Fuquay-Varina (Section 1), City of Kannapolis (Section 6), Town of Summerfield (Section 10), and City of Washington (Section 11);
- an annexation of property into the City of High Point (Section 4);
- repeal of the City of Kings Mountain's extraterritorial jurisdiction (ETJ) authority (Section 7); and
- an annexation of property into the Town of Mount Gilead (Section 8).

© 2024. School of Government. The University of North Carolina at Chapel Hill.

This session law also includes changes to other local government authority unrelated to geographic jurisdiction for the Town of Stanley, the City of High Point, the City of Concord, and Wake County.

S.L. 2024-21 (H.B. 911) also introduces a variety of changes to local government authority. These include the following changes relative to jurisdiction:

- deannexations of property from the Town of Andrews (Section 1), City of Asheville (Section 2), City of Boiling Spring Lakes (Section 4), and Town of Newport (Section 8);
- an annexation of property into the Town of Edenton (Section 5);
- removal of the 10 percent cap on satellite annexations for the Town of Laurel Park (Section 7); and
- repeal of the City of Southport's ETJ authority (Section 10).

This session law also includes changes to other local government authority or laws unrelated to geographic jurisdiction for the Town of Beaufort, the City of Hendersonville, the Town of Northwest, Beaufort County, Currituck County, the Town of Woodfin, Pender County, and McDowell County.

© 2024. School of Government. The University of North Carolina at Chapel Hill.

Use of this bulletin for commercial purposes or without acknowledgment of its source is prohibited. Reproducing or distributing the entire publication, or a substantial portion of it, without express permission, is prohibited. For permissions questions or requests, email the School of Government at publications@sog.unc.edu. Other School bulletins can be accessed on the Publications page of our website: sog.unc.edu/publications.