



**Bulletin #05-10**

**Thursday, March 31, 2005**

### **LOTTERY BUZZ**

With a commitment by House Speaker Jim Black to bring a lottery proposal to the floor in early April, and the appointment of a select committee to draft a proposal, discussion this week focused on distribution of net proceeds from the lottery. **Funds for school construction are a high priority for county and school officials.** Other favorites are funding for education programs and for higher education scholarships for North Carolina students. The special committee is chaired by Rep. Bill Culpepper of Chowan County, who also chairs the House Rules Committee.

### **MEDICAID ... MEDICAID ... MEDICAID**

A number of members of the General Assembly remain uninformed about the history of counties' role in Medicaid, particularly the growth in those costs over the last 10 years. As local budgets are being prepared, county officials have an opportunity to track this trend and communicate this history to legislators. Don't pass up the chance!

### **CORRECTIONS, LAW ENFORCEMENT AND EMERGENCY MANAGEMENT Introductions**

**S1008** **“To amend the Public Safety Telephone Act.”** Sen. Kay Hagan (Guilford). **This bill, if enacted, would accomplish an Association Legislative Goal.** It would allow funds from the Emergency Telephone System Fund to be used for training, continuing education, certification and recertification of Public Safety Answering Point staff and support personnel related to 911 call intake and call processing, and installation and maintenance of security and environmental health systems relating to operation of communications centers. The bill would also provide that monthly 911 charges could not be assessed until 60 days after any change in the enabling county or city ordinance. The bill was referred to the Senate Commerce Committee.

### **ENVIRONMENT Introductions**

**S1114** **“To provide additional authority for local governments that administer approved local environmental programs, and to provide additional incentives for local governments to request the authority to administer all or a portion of certain environmental programs.”** Sen. Charles Albertson (Duplin). This bill would amend the Sedimentation Pollution Control Act to specifically authorize a local government to establish a fee for the review of an erosion and sedimentation control plan and other activities. The North Carolina Sedimentation Control Commission would

review any local government plan approval, as well as local government enforcement actions or failure to take enforcement actions and could require changes in either. The bill would authorize a local government to submit a limited erosion and sedimentation control program to the commission for its approval. It provides guidelines for a local government setting up such a program and such programs subject to existing commission review requirements for local programs. Under a limited program, the local government would be granted the responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within its jurisdiction, while the commission would administer and enforce all other components of the program. A local government could adopt ordinances and regulations necessary to establish a program. Such an ordinance would have to at least meet minimum state requirements regarding inspection of land-disturbing activities. The local government would establish a fee to be paid by each person who submits an erosion and sedimentation control plan to it and the bill specifies how the amount of the fee is to be determined and how it is to be allocated between the state and the commission. Joint programs for two or more local governments would be allowed and the bill provides guidelines for their establishment. The bill would require that approved plans under either a state or a local erosion and sedimentation control program contain a schedule for inspection of the area covered by the plan by the person submitting the plan or his or her agent. It would amend the statute relating to the fee schedule for water quality permits to specify that it would not limit a local government's authority to assess or collect a fee for the review of an application for a permit or a mitigation plan under any local program that is approved by the North Carolina Environmental Management Commission and would authorize local governments that are certified and approved by the EMC to administer and enforce stormwater programs or riparian buffer protection programs. The bill was referred to the Senate Committee on Agriculture and Environment.

## **GENERAL GOVERNMENT**

### **Introductions**

**S792** **“To clarify the Public Records Laws.”** Sen. Philip Berger (Rockingham). This bill would provide that notes taken during a closed session of a public body and from which session minutes are produced would be defined as minutes subject to public inspection, unless disclosure would frustrate the purpose of the closed session. It would also amend the Public Records Law to provide that telephone numbers of cellular telephones and pagers provided by law enforcement agencies to sworn law enforcement officers for official use are not public records. The bill was referred to the Senate Judiciary Committee No. 1.

**S856** **“Regarding access to a public record that is also a trial preparation record.”** Sen. Dan Clodfelter (Mecklenburg). This bill would amend the Public Records Law to provide that if a record is both a public record and a trial preparation record (as defined by the Rules of Civil Procedures), access to the records could be denied by their legal custodians. A person denied access could seek court review and access to the records would be permitted after litigation is concluded. The bill was referred to the Senate Judiciary Committee No. 1.

**S932** **“To protect confidential information of public agencies and subdivisions.”** Sen. Dan Clodfelter (Mecklenburg). This bill would provide that documents of all types (paper, electronic, photographic, and so forth) are not public records when they are in draft form, retained solely by the author, and not distributed beyond the author's clerical support staff. It would provide that attorney-client privilege applies to state agencies and subdivisions to same extent as it applies to private parties, and communication subject to the privilege are not public records. The bill would add to the list of material that does not have to be disclosed the following: information that reveals the identity, Social

Security number, address, phone number, or bank account of a donor; information that reveals the identity of a juvenile enrolled in a recreational program; or information about the home or cell phone number of a governmental employee. The bill would exclude from the definition of public record most records about volunteers, subject to exceptions for review by the volunteer, a supervisor, or a litigant with a court order, or if ordered released by the agency head to preserve public confidence in the agency. The bill would specify that a public agency need not provide a list of e-mail addresses if the addresses are available in a publicly accessible directory. It would amend the Open Meetings Law to include among the things that can be discussed by governmental bodies in closed session, locations or property to be acquired, identities of owners of the property and intended uses of the property. The bill was referred to the Senate Judiciary Committee No. 1.

**S933** **“To protect certain public officers and employees from liability in their individual capacities for good faith or reasonable reporting of criminal activity.”** Sen. Fletcher Hartsell (Cabarrus). This bill would subject city, county and school officials to liability under state law for failing to report conduct that could result in destruction or misappropriation of public property only if there is proof by clear and convincing evidence that the officer or employee both acted maliciously and had no objectively reasonable basis for making a report. A claim of such liability would be summarily dismissed (1) unless accompanied by sworn affidavits as a proffer of evidence to support the claim, or (2) if the proffer of proof does not establish a prima facie case. The bill was referred to the Senate Judiciary Committee No. 2.

## HUMAN RESOURCES

### Updates

**H239** **“To exempt from the law governing smoking restrictions Local Health Departments and the buildings and ground where they are located.”** Rep. William Wainwright (Craven). ([Bulletin #05-05](#), Feb. 24, 2005; [Bulletin #05-09](#), March 24, 2005). This bill, approved by the House last week, has been referred to the Senate Committee on Health Care.

### Introductions

**S804** **“To improve the public health infrastructure by establishing an accreditation system for Local Health Departments, as recommended by the Public Health Task Force 2004, and to appropriate funds to implement this act.”** Sen. Fletcher Hartsell (Cabarrus). This bill would establish a 17-member Local Health Department Accreditation Board appointed by the Secretary of the Department of Health and Human Services. It would require that the board implement accreditation of local health departments over an eight-year period beginning Jan. 1, 2006, and that the board ensure that all local health departments have applied for accreditation by Dec. 1, 2014. The Commission for Health Services would establish accreditation standards for local health departments, including those that evaluate each department’s: (1) capacity to provide certain listed essential public health services; (2) facilities and administration; (3) staff competencies and training procedures or programs; and (4) governance and fiscal management. The accreditation process would include a self-assessment by the local health department, a site visit by a team of experts, and a final action by the board of each department’s accreditation status. The bill would appropriate \$1.25 million for 2005-06 from the General Fund to the Department of Health and Human Services to be allocated to the board to implement the act’s provisions. The bill was referred to the Senate Education Committee.

**S931** **“To raise the excise tax on cigarettes and to phase out the county share of Medicaid costs.”** Sen. Dan Clodfelter (Mecklenburg). This bill would raise the tax on cigarettes from 5 cents to 75

cents per pack. It would eliminate county payment of Medicaid service costs in enterprise tier 1, 2 and 3 counties in 2005-06 and in tiers 4 and 5 over the next two years. The bill was referred to the Senate Finance Committee.

## **PERSONNEL**

### **Introductions**

- S863** **“To terminate payments of Workers’ Compensation other than medical compensation for employees who are convicted of having fraudulently obtained the compensation.”** Sen. Philip Berger (Rockingham). This bill would add language to the Workers’ Compensation statutes as provided in the title. It was referred to the Senate Judiciary Committee No. 2.
- S865** **“To create an incentive to return to work for employees who are partially incapacitated and receiving compensation under the Workers’ Compensation Act by repealing the provision that limits such employees to receive compensation for no longer than 300 weeks.”** Sen. Philip Berger (Rockingham). This bill would delete the 300-week limitation on a partially incapacitated worker’s receipt of Workers’ Compensation benefits. The bill was referred to the Senate Judiciary Committee No. 2.
- S984** **“To amend the Workers’ Compensation Act.”** Sen. David Hoyle (Gaston). **This bill, if enacted, would accomplish an Association Legislative Goal.** It would make the following changes to North Carolina’s Workers’ Compensation Act: (1) It would provide that for the purpose of the provision denying compensation if the injury or death was due to an employee’s impairment by alcohol or drugs, a positive substantive test is conclusive evidence of impairment by the substance and refusal to submit to a test is a bar to compensation if the employee has been notified in writing that such a refusal would forfeit the employee’s right to compensation. (2) It would provide that the two-week deadline for an employer’s payment of compensation runs from the date the employer completes an investigation (not the date employer had written notice of the injury or death), if the employer admits the employee’s right to compensation. The employer would have 90 days to admit or deny the employee’s right to compensation after receiving notice of the claim. (3) It would provide that an employee who claims to have a work-related injury or illness waives confidentiality of medical information relating to the condition for which the employee seeks compensation and health care providers must provide medical records. It would limit benefits for total and partial incapacity to the lesser of 500 weeks or a period ending when the employee turns age 65, or in the case of an employee who was 60 or more when injured, a maximum of 260 weeks. In the case of total incapacity, however, benefits could extend beyond age 65, but not beyond 500 weeks if the employee suffered “the loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof.” (4) It would provide specific conditions relating to loss of, or permanent injury to the lung, for which no compensation has been paid or is payable for partial or total disability. (5) It would repeal the provision that allows compensation to an employee whose refusal of employment suitable to his or her capacity was justified, as determined by the Industrial Commission. The bill was referred to the Senate Commerce Committee.
- S1082** **“To require local governments to provide health insurance benefits to their disabled law enforcement officers if this benefit is provided to the employer’s other retirees.”** Sen. Philip Berger (Rockingham). This bill would make law enforcement officers of state political subdivisions who become disabled and entitled to retirement benefit eligible for health insurance benefits on the same basis as those who retired from that employer. The employer would provide the health insurance benefits without regard to the number of years of service credited to the officer. The bill was referred to the Senate Commerce Committee.

## PLANNING, DEVELOPMENT AND LAND USE

### Introductions

- S814** **“To modernize and simplify city and county planning and land-use management statutes.”** Sen. Dan Clodfelter (Mecklenburg). This bill would allow cities and counties to adopt ordinances allowing electronic notice of public hearings and an on-site posting to substitute for newspaper publication of notice with regard to planning and regulation of development. It would expand subdivision ordinance options, clarify that creation of a single new lot or parcel could be considered a subdivision, clarify that to qualify for an exemption under state law a development’s supporting infrastructure would have to equal or exceed the standards of the ordinance and authorize expedited review of specified classes of subdivisions. The bill would rewrite city and county zoning laws to (1) specify that zoning ordinances may be incorporated into a unified development ordinance and may regulate building maintenance; (2) delete the limitation on use of severable development credits and rights; (3) codify current laws that prohibit changes in permitted uses by variance and prohibit financial conflicts of interest on zoning amendments, and apply that same rule to planning board advisory decisions; (4) recognize local government authority to adopt temporary moratoria of reasonable duration and specify limitations on use of moratoria; (5) set out the approach to analyzing the reasonableness of certain re-zoning requests and allow a requirement for meetings of petitioners and neighbors as part of the process of developing a conditional re-zoning petition; (6) require a governing board, before adopting a zoning provision inconsistent with a comprehensive plan, to adopt a statement explaining why the board considers the action reasonable and in the public interest; and (7) make various clarifying and simplifying changes. The bill would authorize counties to allow for zoning protest petitions in the same manner as cities. The bill would add new provisions addressing reimbursement agreements with private developers and property owners with respect to design and construction of infrastructure, intersection and roadway improvements, and public enterprise improvements. It would add detailed provisions authorizing local governments to enter into development agreements, not to exceed 10 years, with developers with respect to developable property of at least 25 acres. The bill also provides detailed procedures and requirements for appeals to superior court, for review of decisions on special and conditional use permits, enforcement actions, variances, plats, etc. It was referred to the Senate Judiciary Committee No. 1.
- S845** **“To strengthen the requirements for issuing building permits under the laws regulating general contractors.”** Sen. A.B. Swindell (Nash). This bill would appropriate \$10,000 to the North Carolina Code Officials Qualification Board to fund its efforts to ensure that building inspectors enforce the provisions of G. S. 87-14, relating to building permits, and to bring disciplinary actions against inspectors who fail to do so. The bill was referred to the Senate Appropriations Committee.
- S913** **“To impose an advance disposal fee on new and used manufactured homes, to require counties to develop plans that provide for the deconstruction of abandoned manufactured homes and the removal of reusable or recyclable components, and to provide for the ABA.”** Sen. Dan Clodfelter (Mecklenburg). This bill would establish a manufactured home disposal tax of \$300 for each new or used single-wide manufactured home and for each section of each new or used multi-section manufactured home, applicable to sales that occur on or after Jan. 1, 2006. Net proceeds would be deposited quarterly in the Manufactured Home Management Account in the Department of Environment and Natural Resources, Division of Waste Management. The bill would require counties, as part of their comprehensive solid waste management plans, to develop written plans for management of abandoned manufactured homes. It would authorize counties to contract for this management, and a process for county abatement of nuisances caused by abandoned manufactured

homes. The bill would create, and specify permissible use of the Manufactured Homes Management Account. It was referred to the Senate Judiciary Committee No. 1.

## **PUBLIC EDUCATION**

### **Introductions**

**S1075** **“To create a North Carolina Education Lottery.”** Sen. Tony Rand (Cumberland). This bill would provide for a statewide lottery without a referendum. Net proceeds would be used to support a voluntary statewide pre-kindergarten program to prepare at-risk 4-year-olds for school; to reduce class sizes in public schools and fund items necessary for that purpose; to provide for more one-on-one instruction; and to fund school construction projects, including paying the principal and interest on bonds that were issued on or after Jan. 1, 2003, for school construction, as long as counties continue their local school construction maintenance of effort. The bill was referred to the Senate Committee on Ways and Means.

**S1095** **“To establish a state lottery to provide funds to support education capital programs and to provide funds for prescription drugs for seniors.”** Sen. Julia Boseman (New Hanover). This bill would create a statewide lottery, with a referendum, with net proceeds to be spent as follows: 75 percent for school construction and 25 percent on a prescription drug benefit for senior citizens administered through the Department of Health and Human Services. The bill was referred to the Senate Committee on Ways and Means.

## **TAXATION AND FINANCE**

### **Introductions**

**S852** **“To allow low-income elderly and disabled homeowners to defer Homestead Property Taxes.”** Sen. Dan Clodfelter (Mecklenburg). This bill would allow a taxpayer eligible for the state’s Homestead Exemption to defer payment on taxes on a residence. To qualify, the taxpayer’s income would have to be under \$25,000 (\$34,000 for a married couple) and the taxpayer would have to have occupied the property for at least 10 years. The taxpayer could take the existing exclusion or the deferral, but not both. The taxes could be deferred until the death of the owner or until the property is transferred, unless transferred to the qualifying spouse of the deceased taxpayer. The bill was referred to the Senate Finance Committee.

**S1081** **“To amend the procedures for notifying owners and advertising tax liens on real property.”** Sen. Philip Berger (Rockingham). This bill would provide that the name of the record owner, not the name of the listing owner, would be posted and advertised in a newspaper where the taxing unit has a lien for unpaid taxes and the listing owner has transferred the property after Jan. 1 proceeding the fiscal year for which the tax liens are advertised. The bill was referred to the Senate Judiciary Committee No. 1.

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