



Bulletin #06-05

Thursday, June 8, 2006

HOUSE EASILY APPROVES EMINENT DOMAIN CHANGES

The House this week overwhelmingly approved legislation to limit the exercise of eminent domain authority in economic development projects. [H1965](#), introduced by Reps. Bruce Goforth and Wilma Sherrill, both of Buncombe County, was the product of a House Select Committee formed in response to a controversial decision by the United States Supreme Court. The bill proposes to amend statutes authorizing the exercise of eminent domain authority when undertaking projects financed with revenue bonds. It makes clear that this authority does not apply to economic development projects. The bill also repeals local acts granting the authority to exercise the power of eminent domain and limits boards of education exercising the power of eminent domain to purposes authorized by Chapter 115C of the General Statutes, rather than any other statutes.

The House approved H1965 on Tuesday, June 6, with little debate and sent the bill to the Senate, where it was referred to the Senate Judiciary Committee #1.

WHEN "MAY" BECOMES "SHALL"

Legislation to enable judges to coordinate the holding of hearings in contested cases under North Carolina's Administrative Procedure Act took an interesting turn this week with proposed changes involving two little words: "may" and "shall". [S1484](#), introduced by Sen. Martin Nesbitt (Buncombe), proposed to permit a senior resident Superior Court judge to "provide suitable facilities" in which hearings could be scheduled, "to the extent practicable." In addition, the bill provided that the judge "may, to the extent the judge determines necessary and practicable, provide or arrange for security at hearings upon the request of an administrative law judge."

At this week's Senate Judiciary Committee #1 meeting, however, the committee was presented a rewritten version of the bill with the permissive language changed to a mandate. The rewritten proposal provides, "upon the request of the Office of Administrative Hearings, county officials in consultation with court officials shall provide suitable space for the conduct of administrative hearings ... and shall provide normal and routine security as provided generally in the courthouse."

The committee postponed consideration of the proposal.

HOUSE CONSIDERS VIDEO SERVICE REVISIONS

The House Finance Committee this week began consideration of [H2047](#), legislation to shift from local governments to the state the regulation and franchising of cable television service. Introduced by Rep. Becky Carney (Mecklenburg), the bill would permit competition between current providers of cable services and others (telephone companies) that seek to provide cable services. The state system spells out standards to be met in order to obtain a franchise, including notice to be filed with the secretary of state, when service must be commenced, filing and report requirements and service standards.

The bill provides for termination of local franchise agreements when state-franchised service providers begin to compete in the franchise area, but provides for distribution of a share of revenues from sales taxes imposed on video programming to counties and cities. The compensation is designed to support "PEG" – or public education channels – and to compensate local governments for lost franchise tax revenues.

The bill also provides for free service to any public building located within 125 feet of a franchised provider's cable system. Public buildings would include public or charter schools, libraries or buildings including functions of counties or cities. It contains no "build out" provisions but prohibits discrimination or denial of "access to the service to any group of potential residential subscribers ... because of the race or income of the residents." The bill also preserves municipal control and authority over public streets, sidewalks, alleys and bridges. An amendment to the proposal, considered by the House Finance Committee this week, provides for handling of customer complaints related to cable services. Language on the customer's bill would direct calls to the provider first, then to the State Attorney General's Office. The attorney general would respond to customer complaints that a service provider has failed to comply with federal standards or with the terms of the (franchise) contract.

The House Finance Committee is expected to further consider the bill next week. A similar proposal, [S1559](#), is pending before the Senate Commerce Committee.

James B. Blackburn, III, General Counsel
David F. Thompson, Executive Director