



Bulletin #09-10

Thursday, April 2, 2009

FOOD FOR THOUGHT

As of April 1, nearly 2,100 bills had been filed in the General Assembly, and 300 of them were listed in the Local Government – Counties category by The Insider, a bill tracking service that categorizes every bill filed in the General Assembly each year. This means that one in seven bills – or roughly 14 percent – would have an impact on counties. In addition, the Association routinely follows scores of other bills each year that could have an indirect impact on county governments but that are classified in other categories.

ASSOCIATION OPPOSES TORT CLAIMS BILL

S1026 (Local Government Tort Claims Act), sponsored by Sen. Tony Rand (Cumberland) and co-sponsored by Sen. Fletcher Hartsell (Cabarrus), waives immunity for local governments in all cases (allows jury trial) and broadly redefines proprietary functions to widen the net of services for which local governments can be held liable. Under current law, counties can choose to waive their governmental immunity through the purchase of liability insurance. This bill eliminates the choice and prohibits administrative resolution of any claims greater than \$25,000 unless reviewed and approved by the court. The bill establishes a cap of \$1 million per person per occurrence for awards and exempts from that limitation damages and claims that arise out of the exercise of proprietary functions. The bill then redefines proprietary functions to include many more functions than are currently considered proprietary, including the operation of a hospital; the provision of medical, dental, or other health care by a local government employee; the establishment, maintenance and operation of a public enterprise (for counties, this now generally means water and sewer); the design, construction and maintenance of public streets, sidewalks, alleys and bridges subject to a local government's authority and control under G.S. Chapter 160A; and the design, construction, maintenance and operation of a stadium, auditorium, civic center, or exhibition hall. The effect of this bill is to increase the number of cases that will go to trial; few cases are likely to be resolved through local administrative processes, which will increase personnel and insurance costs for counties. The NCACC opposes this bill.

HOUSE AMENDS SMOKING BAN

The House of Representatives approved several changes to a bill that would have banned smoking in most all public places on Wednesday, changing the legislation to allow smoking in establishments that ban customers who are younger than 18. The House passed the ban on Thursday, after one more amendment that will allow smoking in private clubs, such as country clubs or VFW halls. H2, Prohibit Smoking in Public and Work Places, authorizes local governments to adopt local laws governing smoking that are more restrictive than state law. Local health directors would be authorized to impose certain administrative penalties on owners, managers, or operators of public places and places of employment who violate the Article's provisions, but these violations are not punishable as criminal violations.

ANNEXATION BILLS RE-REFERRED TO COMMITTEE

A series of annexation bills, including local bills for Wayne and Rowan counties, were re-referred from the House Rules Committee to the House Judiciary II Committee earlier this week. The committee is chaired by Rep. Dan Blue (Wake). They have not yet been scheduled. If any of the bills are approved by the Judiciary II Committee, they will then be referred to the House Finance Committee. At least 15 bills impacting the state's Annexation laws have been filed in the House and Senate this year.

PRE-TRIAL RELEASE PROGRAMS TARGET OF SENATE BILL

A bill that would require every pre-trial release program to compile a register of detailed information on each person who is approved for participation in their program has been filed in the Senate. S1013 (Citizens' Right to Know

Act/Pretrial Release) is sponsored by Sen. Doug Berger (Franklin). The register would have to be maintained at the Clerk of Court's office and would be available to the public. Among the information required to be collected for each individual accepted into the program would be the charges filed against and the case numbers for each, prior criminal convictions, scheduled court appearances, the date each defendant failed to appear for a court appearance and the number of warrants issued for a defendant's failure to appear at a scheduled court appearance. The practical impact of this bill would be to make it so cumbersome to operate pre-trial release programs that many programs would stop functioning and more detainees would be backed up in county jails.

BILLS OF INTEREST

The Association has created a section on its Web site to track bills of interest to county officials. Visit www.ncacc.org/legislation/about.html for updates on key legislation, including the bills listed below.

Bill: [HB63](#)

Sponsors: Grady (R15); Tucker (D4); Cleveland (R14)

Title: MODIFY ONSLOW COUNTY SALES TAX DISTRIBUTION

Related: 2009:SB81

Status: 03/31/2009 – Senate Committee On Finance

Comments: This bill would create a third way for Onslow County to divide sales tax revenue with its municipalities. The "Combined Method" would allow for the "net proceeds of the tax collected in a taxing county shall be distributed to that county and to the municipalities in the county by using both the per capita and the ad valorem methods with neither method being used to distribute less than forty percent (40%) of the net proceeds of the tax." The bill passed the House on March 30 and has been referred to the Senate Finance Committee.

Bill: [HB852](#)

Sponsors: Brubaker (R78); Wainwright (D12); Holliman (D81); Dickson (D44)

Title: DEFER TAX ON BUILDERS' INVENTORY

Status: 03/30/2009 – First reading in the House

Position: Oppose

Comments: This bill allows a homebuilder to defer property taxes owed as the result of the increased value of land after a homebuilder has built a residence on the land. The homebuilder can defer paying the increased property taxes for up to five years. Once the house is sold, the homebuilder would be liable to pay the deferred taxes. The homebuilder would have to apply for the deferral, and the tax collector would be responsible for mailing a notice of how much is owed in deferred taxes and interest by Sept. 1 of each year to each person participating in the program.

Bill: [SB887](#)

Sponsors: Vaughan (D27)

Title: AMEND ELECTRONICS RECYCLING LAW

Status: 03/26/2009 – Filed in the Senate

Comments: This bill rewrites the electronics recycling law that was passed in 2008 to clarify that computer manufacturers and television makers are only responsible for recycling equipment used by individuals for home use and not from commercial users.

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