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Bulletin #09-23

Thursday, July 2, 2009

FOOD FOR THOUGHT

"If you can keep your head about you when all about you are losing theirs, it's just possible you haven't grasped the situation yet." – Jean Kerr

OPEN GOVERNMENT BILL HEARD IN COMMITTEE

The House Finance Committee listened to debate but did not vote on [H1134](#) (Open Government Act) on Wednesday. The Association opposes the bill, which presents several issues for counties, including whether or not a county can rely on the advice of its own attorney when deciding its responsibilities in a public records request and when a county must pay attorneys' fees. The bill stipulates that a county must pay its opponent's attorneys' fees if the opponent "substantially prevails," unless the county relied on an opinion from the Attorney General, an appellate court, or existing case law that addressed their specific situation (which would be extremely rare) to withhold the record. Counties would not be allowed to rely on an opinion from their own attorneys, nor could they rely on an opinion from attorneys with the School of Government at UNC-Chapel Hill. As a result, counties (and cities, water and sewer authorities, and all other local and state agencies responsible for public records) will instead be forced to seek an opinion from the Attorney General's Office, which can take months. NCACC General Counsel Jim Blackburn spoke against the bill in committee Wednesday. "There are a lot more agencies, boards and commissions that are subject to these laws, probably more than people realize," he said. Blackburn noted that the bill refers to "more than 430 state and local agencies" that would be subject to the bill when in fact the actual number is in the thousands.

The bill also creates a special Open Government Unit in the Department of Justice that would act as mediator or moderator in attempt to resolve open records disputes between individuals and government agencies. The unit would be allowed to charge a reasonable fee for its mediation or moderation services, but it is unclear who would pay the fee and who could ask for the moderation or mediation, and if a governmental agency would be required to participate if a citizen asked for the issue to be moderated or mediated, or vice versa. A fiscal note prepared by the General Assembly's Fiscal Research Division indicates that the Department of Justice anticipates all expenses for the Open Government Unit to be covered by the fees generated and that the fees would be paid by the government agency involved in the case (not the individual who brings the complaint). One of the bill sponsors, Rep. Deborah Ross (Wake County), said that participation in the mediation and moderation services would be entirely voluntary for government agencies. If no government agency agreed to participate, there would be no fees generated.

ANNEXATION BILL CONTINUES TO COVER MORE GROUND

[H524](#) (Annexation – Omnibus Changes) was heard in the House Finance Committee on Thursday morning. The committee considered multiple amendments but was unable to finish debate on the entire bill. The committee reconvened after the House adjourned on Thursday and hoped to finish with all the amendments and take a final committee vote before the end of the day.

Most notable of the amendments considered during the morning meeting was one offered by Rep. Hugh Holliman (Davidson). The Holliman amendment provides that if 15 percent of the eligible voters in the municipality and the area proposed for involuntary annexation petition for a referendum, then the referendum must be held in the next municipal or county-wide election. Citizens living in the municipality and the citizens within the area being considered for annexation would be eligible to vote on the referendum.

The current version of the proposed committee substitute for H524 accomplishes part of the Association's annexation goal, in that it increases the standards for urbanizing areas, it establishes June 30 following the date of adoption of the annexation ordinance as the effective date for an involuntary annexation, and it requires the provision of water and sewer services within three years. It continues to require a five-year finance plan and gives significant oversight responsibilities to the N.C. Local Government Commission. The Association has worked with members of the committee as well as the bill sponsors and other stakeholders to craft an amendment that would provide for city/county coordination related to utilities planning. The amendment was expected to be offered sometime during Thursday afternoon's session of the House Finance Committee. If the House Finance Committee gives a favorable vote to H534, it will be sent to the House floor for consideration and would likely be heard in the House Chamber next week. The NCACC will continue working toward accomplishment of our annexation goal as the bill moves forward.

E-VERIFY BILL COULD ADD DUTIES FOR COUNTY ATTORNEYS

A Senate bill that would require cities and counties to verify the employment status of their employees could inadvertently cause a lot of headaches for county attorneys. **S32** (Employers Must Use Federal E-Verify Program), sponsored by Sen. John Snow (Cherokee), would require all cities and counties to "register and participate in the federal work authorization program to verify work authorization information of all new employees." In addition, it would require all companies and firms that wish to contract with cities and counties to do the same. Of concern to counties is that county attorneys could be thrust into the role of investigating the claims. According to the bill, when a complaint is filed "the Attorney General or county attorney shall investigate whether the employer has violated" the law. This clause could put county attorneys into the role of investigating private firms' hiring practices. The bill sponsor is aware that county attorneys in North Carolina, unlike in other states, are not typically involved in criminal investigations and pledges to work with the Association to address our concerns.

JOINT RESOLUTION GIVES STATE TWO WEEKS TO PASS BUDGET

The House and Senate agreed to a continuing resolution to keep state government operating for 15 days beyond the June 30 expiration of the 2007-09 budget. The resolution continues funding the 2008-09 budget of \$21.3 billion at 85 percent and makes several changes to keep the state operating while legislators hammer out a new spending plan for 2009-11. While much attention is focused on the size and nature of any revenue package that will be needed to finish the 2009-11 budget, other issues have the attention of counties, including the possibility that secondary road funding costs could be shifted to counties or that the state could close 16 regional child support offices that support 28 counties and shift those responsibilities to those counties. Association legislative staff continues to monitor the appropriations process and will send out alerts to county officials as needed.

SENATE COMMITTEE APPROVES HOMEBUILDERS' DEFERRAL BILL

The Senate Finance Committee approved **H852** (Defer Tax on Builders' Inventory) next week. It is scheduled to be heard on the Senate floor on July 8. According to a fiscal note prepared by the General Assembly's Fiscal Research Division, cities and counties could see as much as \$35 million in property tax revenue deferred in 2010-11, but the amount drops to between \$7 million and \$12 million for 2011-12 and eventually phases out completely by 2015. The Association pushed for several changes, primarily a delay in implementation until the 2010-11 year – since most counties have already adopted their budgets for 2009-10 – and inclusion of a three-year sunset.

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: **HB81**

Sponsor: Cleveland (R14)

Title: NOTICE OF SPECIAL/EMERGENCY MEETINGS

Comments: This bill adds e-mail to the list of ways in which a local government can notify the media or others that have requested notification regarding the scheduling of an unscheduled meeting or an emergency meeting of a governing body. For unscheduled meetings, it also requires a governing body to post the notification on the door of the building or in an area otherwise accessible to the public in the building where the meeting will be held if that building is typically closed during the 48-hour period prior to the meeting. The bill requires public bodies that have Web sites to post their regular meeting schedule on the Web site and to post any notices of special

meetings on the Web site if the Web site is maintained "by one or more of its employees." The House passed the bill on May 4 and it passed the Senate Judiciary I Committee on July 2.

Bill: [HB1268](#)

Sponsors: Stam (R37); Lewis (R53)

Title: EMINENT DOMAIN

Comments: This bill would require a constitutional amendment to prohibit a unit of government from using eminent domain to take property and give it to another party for economic development. It would also give either side the authority to ask for a trial by jury to determine compensation for land seized through eminent domain. It sets the date of the constitutional amendment as Nov. 3, 2009. A similar bill passed the House in May 2007, but the Senate did not take action. It was given a favorable report by the House Judiciary II Committee on April 16 and re-referred to the House Appropriations Committee. It was assigned to the Appropriations Subcommittee on Justice and Public Safety on July 1.

Bill: [HB1452](#)

Sponsors: Howard (R79); Justice (R16); Allen, L. (D49); Harrison (D57)

Title: LOCAL GOVERNMENT CODE OF ETHICS

Comments: This bill would require each county to adopt a code of ethics for its board of commissioners, and for each commissioner to receive two hours of training on ethics within 12 months of being elected or re-elected appointed as a commissioner. It is scheduled to be heard again in the Senate on July 8.

Bill: [SB698](#)

Sponsors: Boseman (D9)

Title: CITY/COUNTY/SANITARY DISTRICT FEES/INTERNET

Comments: This bill would require cities, counties, sanitary districts and water and sewer authorities to provide public notice if the local government or district imposes or increases "rates, fees, charges, or penalties for the use of or the service provided by the county or any public enterprise" if the fee increase is not included in a budget filed in accordance with G.S. 159-12. The House Local Government Committee II revised the bill to include a mandatory "period of public comment" and to include water and sewer authorities. The notice must be posted on the local government's Web site at least seven days prior to the date the imposition or increase takes effect. If the local government does not have a Web site, then it must publish the notice in a "newspaper having general circulation in the county." It has been referred to the House Judiciary I Committee.

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