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Bulletin #09-24

Thursday, July 9, 2009

FOOD FOR THOUGHT

*County attorneys have gotten mixed messages from the General Assembly this week. **H1134** (Open Government Act) would establish a new layer of bureaucracy in the Attorney General's Office to mediate, for a fee, disputes regarding public records. This will chill the ability of counties to rely on their own attorneys for guidance on these questions and will presumably make counties pay for any mediation conducted, whether requested by the county or by the party bringing the complaint. **S32** (Employers Must Use E-Verify Program) requires that county attorneys investigate and bring actions against employers who violate the law by employing or contracting with illegal aliens. Since the majority of county attorneys are retained private practices, this requirement means counties will have to pay the contracted hourly rate for any work conducted to fulfill this mandate. Counties with on-staff attorneys will have to absorb the costs, as well. In other words, county attorneys are trusted to investigate immigrations issues, but are not trusted to render opinions in open records cases.*

OPEN GOVERNMENT BILL PASSES SECOND READING IN HOUSE

The Open Government Act took one step forward in the House on Thursday after significant debate on an amendment that would have allowed counties and cities to rely on the advice of their in-house attorneys. **H1134**, which makes several significant changes to the state's public records laws, passed second reading Thursday and will need one more vote before it is sent to the Senate. The bill requires the payment of reasonable attorneys' fees if a local government loses an open records lawsuit, makes it so that a local government cannot rely on its own county attorney to interpret the open records law, and creates an Open Government branch in the Attorney General's Office that would serve as a moderator or mediator in public records disputes before they go to litigation, provided both sides agree. The government entity would be responsible for paying the fee for the cost of the moderation or mediation. Rep. Lucy Allen (Franklin) attempted to amend the bill to enable a unit of local government or state agency to rely on the advice of its own legal counsel in an open records dispute, but the amendment failed 76-39.

Bill sponsor Rep. Deborah Ross (Wake) argued against the amendment, saying that since the local government attorney is paid by one side involved in the dispute, any opinion rendered would therefore be biased. State agencies are also subject to the bill, but they will be allowed to seek an opinion from the state's attorneys, even though one could make the same argument about bias, said NCACC Executive Director David F. Thompson. The bill also requires the unit of government to pay for the mediation service. "These local government attorneys know more about open meetings laws than anybody anywhere," said Rep. Bill Owens (Pasquotank). "What a detriment it would be if you could not count on your attorney to given an opinion." Rep. Jeff Barnhardt (Cabarrus), a former Cabarrus County commissioner, argued that local governments should be able to rely on the advice of their own counsel. "Let's not get so far carried away that we don't give that Board and that attorney the right to conduct their business," said Barnhart.

LEGISLATORS NOT GOING TO 'BEAT IT' OUT OF TOWN ANYTIME SOON

Governor Beverly Perdue weighed in Tuesday on the state's budget impasse, sending a personal letter to each legislator asking for a rapid resolution to finalizing the state's biennial budget. By not having a budget in place, Governor Perdue estimates \$5 million is being lost each day in revenues and savings. Furthermore, the governor highlighted the uncertainty in resources and services facing local governments and school districts. Included in the governor's letter is a chart of possible financing options to help bridge the budget shortfall, including some stopgap

measures such as a temporary 1 percent sales tax increase and an emergency personal income tax surcharge on upper income taxpayers. Many of the other options are contained in either the House or Senate plan, including an expansion of the existing sales tax base to some selected services. While this should provide additional county revenues, the chart also lists ceding 0.1% of the local sales tax to the state, a proposal seen earlier in the Senate's outline. With one week remaining in the continuing resolution, House and Senate leadership are reportedly pessimistic about reaching agreement by July 15.

ANNEXATION BILL FIT TO BE TIED

The House's effort to pass an annexation bill was temporarily stalled Wednesday after [H524](#) (Annexation – Omnibus Changes) was re-referred to House Appropriations Committee for financial analysis. The bill contains additional responsibilities for the Local Government Commission, and Appropriations Chairman Mickey Michaux (Durham) asked for a fiscal note to determine how much it would cost the commission to meet these new responsibilities. Rep. Michaux's motion sparked some debate on the floor as House members argued whether or not the bill should be sent back to the committee or just taken off the calendar until a fiscal note could be provided. There is a rule in House proceedings that allows a fiscal note to be requested, and under that rule it is not required that a bill be sent back to committee. However, Rep. Michaux argued that the bill would still have to get back to Appropriations in order to put the necessary funds in the budget bill. Eventually, Speaker Joe Hackney (Chatham) ruled that the motion to re-refer was in order, which allowed the full body to make the decision. By a vote of 60-59, the motion passed.

The current version of the bill accomplishes a significant part of the Association's annexation goal. The bill was amended in House Finance to require a referendum in the municipality and proposed area to be annexed upon receipt of a petition signed by 15 percent of the registered voters in the municipality and the area to be annexed. This was a compromise amendment that at least partially addresses the Association's desire for a referendum if public services are already in place in the area to be annexed. Another amendment, offered on behalf of the NCACC by Rep. Dale Folwell of Forsyth County, would have required the development of joint utility service plans by the municipality and county. The proposal received favorable comments from several members of the committee but was withdrawn amid some discomfort with the language as drafted. The Association will work with interested parties to have this provision inserted in the bill on the Senate side. Other parts of the NCACC goal that are accomplished in the bill include a requirement that water and sewer services be provided within three years of the annexation, an increase in the urbanization standards by which annexation is authorized, and establishment of June 30 following the adoption of an annexation ordinance as the effective date for an involuntary annexation.

Commissioners should focus their discussions on members of the House Appropriations Committee, listed below for your convenience:

Senior Chairman: Rep. Michaux

Chairs: Reps. Adams, Martha Alexander, Crawford, Haire, Jeffus, Tolson and Yongue

Vice Chairs: Reps. Bordsen, Cole, Earle, England, Fisher, Glazier, Goforth, Harrison, Insko, Love, Martin, McLawhorn, Owens, Pierce, Rapp, Underhill, Edith Warren and Womble

Members: Reps. Allen, Avila, Barnhart, Bell, Blackwell, Boles, Brisson, Brown, Bryant, Burr, Burris-Floyd, Cleveland, Coates, Current, Daughtry, Dickson, Dockham, Dollar, Farmer-Butterfield, Elmer Floyd, Frye, Gill, Gillespie, Goodwin, Grady, Guice, Gully, Harrell, Hilton, Holliman, Holloway, Hurley, Iler, Ingle, Jackson, Johnson, Justice, Justus, Killian, Langdon, Lucas, Mackey, McElraft, Mills, Mobley, Moore, Neumann, Parmon, Randleman, Ross, Sager, Samuelson, Spear, Steen, Stevens, Stewart, Sutton, Tarleton, Tucker, Wainwright, Ray Warren, West, Whilden, Wiley, Wilkins, Williams and Wray

The Senate has appointed a special subcommittee to review the Senate annexation bills. That subcommittee is chaired by Sen. Dan Clodfelter of Mecklenburg and includes Sens. Larry Shaw (Cumberland), Josh Stein (Wake), Floyd McKissick (Durham), Fletcher Hartsell (Cabarrus), Richard Stevens (Wake) and William Purcell (Scotland).

ETHICS BILL HELD UP IN SENATE AGAIN

A House bill that would require county commissioners and other locally elected officials to undergo mandatory ethics training passed second reading in the Senate on Thursday, but third reading was delayed after Sen. Dan Clodfelter (Mecklenburg) objected. [H1452](#) (Local Government Code of Ethics) requires local government entities, including cities, counties, sanitary districts, unified governments and boards of education, to adopt a "code of ethics to guide actions by the governing board members in the performance of the member's official duties as a member of that governing board." In addition, it requires each elected member to "receive a minimum of two clock hours of ethics

education within 12 months of election or appointment.” The bill sailed through the House and the Senate Committee on State and Local Government, but was twice pulled from the Senate’s calendar and rescheduled for the next day. During debate, Sen. Clodfelter raised questions about how specific the code of ethics would be in identifying potential conflicts of interest and if the entities would be required to use the model code of ethics being developed by the School of Government. Sen. Floyd McKissick (Durham) explained that the entities would not be required to use the model code being developed by the School of Government and added that many jurisdictions have already adopted a code of ethics.

SENATE APPROVES HOMEBUILDERS’ DEFERRAL BILL

The Senate approved [H852](#) (Defer Tax on Builders’ Inventory) on Wednesday by a 46-2 vote. 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. Because the Senate did not make any changes, the bill now goes to Governor Beverly Perdue for her signature.

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: [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 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, which changed the date of the referendum from Nov. 3, 2009, to the 2010 primary election on May 4, 2010, thus easing some county concerns about the cost of holding a special election just for the constitutional amendment. A similar bill passed the House in May 2007, but the Senate did not take action.

Bill: [SB32](#)

Sponsor: Snow (D50)

Title: EMPLOYERS MUST USE FEDERAL E-VERIFY PROGRAM

Comments: This bill 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 and would require county attorneys to investigate any complaints filed against employers. It was reported favorably by the Senate Commerce Committee on July 7 even though the Association spoke against the bill due to the expanded duties that would be forced onto county attorneys. It was referred to a Senate Appropriations Subcommittee.

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Bill: [SB405](#)

Sponsor: Hartsell (R36)

Title: REAL PROPERTY SALES INFORMATION

Comments: This bill originally required that a sales information report be filed with the county whenever property changes hands to assist the N.C. Department of Revenue to determine its sales-assess ratio for each county. The report would have included such data as the total sales price, whether the transaction was the result of an auction or foreclosure, if it involved relatives or a business and if any personal property was conveyed during the

transaction. The committee substitute approved July 8 by the House Committee on Commerce, Small Business, and Entrepreneurship restricted the data required to be collected and reported on the deed to the name and mailing address "of each grantor and grantee" and a "statement whether the property includes the primary residence of a grantor."

Bill: [SB658](#)

Sponsor: Atwater (D18)

Title: MODIFY SUPP. RETIREMENT BOARD/FURLOUGHES

Comments: Committee conferees have been appointed to work out differences in this bill, which passed the House with a provision sought by the NCACC to hold county employees harmless for any loss of retirement benefits due to being furloughed. Ordinarily, an employee's retirement benefits are based on the amount of earned income; without the authority granted in this bill, an employee who is furloughed could see a reduction in retirement benefits due to the loss of income. The bill authorizes a local government employer, at their option, to consider furloughed employees to still be in active service for purposes of computation of retirement benefits. Employers that opt to use this provision must pay both the employee and employer contributions to the retirement system. The provision applies to local government furloughs on or after Jan. 1, 2009.

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