



The 2016 Short Session saw multiple benefits to counties in the form of budget appropriations, legislation passed, and legislation that did not cross the finish line. The NC General Assembly's Adjournment on the first day of fiscal year was earlier than usual, though the session convened about three weeks sooner than is typical. Rancor between chambers throughout final day – when deals between House and Senate leadership began to fall apart – led to an abrupt ending soon after the final budget vote, leaving many bills unexpectedly dead.

NCACC made progress on the county goal to repeal statutory authority for local school boards to sue county commissioners. The final budget includes large appropriations to behavioral health initiatives, including recommendations from the Governor's Task Force on Mental Health and Substance Abuse, to help counties. (Click here for our final budget report.) Many pieces of legislation that tried to limit local government authority were stopped or their negative impacts were vastly reduced.

#### SHORT SESSION PRIORITY GOALS

Counties directed NCACC to focus on three of its biennial goals during the short session.

**Seek legislation to repeal the statutory authority under NCGS 115C-431(c) that allows local school boards to file suit against a county board of commissioners over county appropriations for education.**

Last session, the House rejected a bill that would have achieved one of the counties' priority goals for the biennium--to repeal the statutory provision explicitly allowing local school boards to file suit against county boards of commissioners to dispute the sufficiency of education appropriations. [H726](#) (School Bds. Can't Sue County) passed a House Judiciary committee, but was voted down on the House floor by a vote of 66-52. Much later in the session, the Senate resurrected the issue by amending H561 (School System Auth. Re Legal Proceedings) to impose a five-year moratorium on school board lawsuits against county commissioners. The House did not concur in the Senate amendment to H561, and a conference committee of House and Senate members did not convene before the 2015 session adjourned, which left H561 eligible for consideration this session.

After months of discussions between the NCACC advocacy team, key members of the conference committee and other stakeholders, the conferees for [H561](#) settled on a conference report that would require a thorough examination of the issue. The final bill does not include a moratorium on school board lawsuits, but directs legislative staff to conduct a comprehensive study of the school funding dispute resolution process set forth in G.S. 115C-431.

During the study, the Division will examine a number of factors, including how often mediation and litigation have been used to resolve education funding disputes, the impact the current process has had on relationships between the boards, and the cost to taxpayers. The Division will then make

recommendations for alternative ways to resolve these disputes or modifications to the current process and report to the Joint Legislative Oversight Committee on Program Evaluation no later than May 1, 2017. Both the House and Senate adopted the conference report for [H561](#). NCACC extends its profound thanks to all members of the H561 conference committee and all sponsors of [H726](#) for their work on and support of this issue.

Despite reluctance to do so on a statewide basis, the General Assembly approved two local bills that impose a moratorium on school board lawsuits against county commissioners. [S881](#) (Union County School Funding) institutes a one-year suspension on lawsuits filed by the Union County school board against the board of county commissioners on the basis of education funding. The bill provides that the two boards shall meet periodically during the interim to facilitate “a greater mutual understanding of immediate and long-term budgetary issues and constraints affecting public schools and county governments.” The boards are directed to assess school capital needs and develop a joint five-year plan for meeting those needs. The agreed-upon plan is to be considered in preparing and approving the budget ordinance for the 2017-18 fiscal year.

[S382](#) (Revision of SB 612) amends the law that provided for the merger and consolidation of the school administrative units in Nash County and the City of Rocky Mount. The bill sets forth new funding requirements for Nash-Rocky Mount Schools (NRMS) and establishes a 10-year moratorium on litigation related to local funding for that school administrative unit. The bill further provides that if Edgecombe County or the City of Rocky Mount fail to provide the funding as required, the portion of NRMS located in Edgecombe County will transfer to the Edgecombe School Administrative Unit.

#### **Seek legislation to authorize local option revenue sources already given to any other jurisdiction.**

NCACC sought to address this goal by expanding the use of the Article 43 transit tax to all counties for education purposes, and by providing the option for a county to seek up to ½ cent through Article 46 (currently limited to ¼ cent). Language to this effect was included in two bills during the 2015 session, [H518](#) sponsored by former NCACC President Rep. Howard Hunter among others, and in a House rewrite of [S605](#), which passed the House but was not considered by the Senate. NCACC advocates and members made multiple efforts to revive the legislation through various channels, but the Senate was unwilling to pursue the change in an election year.

#### **Support legislation, regulations and funding that would preserve local option and authority where needed to deploy community broadband systems and ensure community access to critical broadband services.**

Promising work early in session to authorize counties to install and lease digital infrastructure in partnership with private providers ran into opposition late in session. At the beginning of the short session, NCACC reached agreement with industry on language, found a relevant legislative vehicle while receiving agreement from the bill’s original sponsors, and identified champions in the House and Senate. Ultimately, however, continued concerns in the Senate about the municipal level playing field law from 2011, about counties getting into private enterprise, and about providing grants to large corporations stalled our efforts as session came to a close. There was some progress on this goal in the budget with

\$1.25 million to help with the State Broadband Plan as well as \$500,000 in total for two broadband initiatives in Cumberland and Stokes counties. Furthermore, legislators are noticing this issue and discussing it more and more as a necessary tool for counties to attract industry and educate students.

#### MAJOR INITIATIVES LEFT UNDONE AT THE END OF SESSION

Many bills with serious policy implications did not become law, but counties should expect to see some of them reappear next year. While several received a great deal of publicity, others progressed more quietly.

The Senate modified and passed [H100](#) (Local Government Immigration Compliance) and [H3](#) (Omnibus Constitutional Amendments), but the House chose not to consider either of these bills. The proposed constitutional amendments would lower the state income tax cap to 5½ percent, almost half of its current cap of 10 percent; require a specified amount of the annual state budget to be added to the “rainy day fund” and require a two-thirds vote of both the House and Senate to spend those funds in an emergency; put the statutory language specifying when a government can condemn property under its eminent domain authority into the state constitution; and affirmatively state that people have the right to hunt, fish and harvest wildlife in the state.

[H100](#) would penalize counties by withholding school construction funds if the county or county law enforcement agency fails to comply with state immigration laws related to E-verify, sanctuary ordinances and acceptable forms of identification. It would require the Attorney General to investigate all complaints alleging that a county, city or local law enforcement agency is in violation of a state immigration law.

The bill states that if the Attorney General determines that a complaint is verified, all affected local governments shall be ineligible to receive distributions under the Public School Building Capital Fund and the Powell Bill funds for the first year following the date of noncompliance. An "affected local government" is defined as either a county or a city that fails to comply, or a county or a city whose law enforcement agency is not in compliance. The bill further provides that if the violation is not cured within 60 days of the Attorney General’s determination, the affected local governments will lose these sources of funding for an additional year.

[H100](#) raises a number of concerns for counties. It would create a process by which a county would be penalized for the conduct of its local sheriff, an independently elected office over which the county has no supervision or control. In addition, the bill as drafted presents some ambiguity as to whether a county could be deprived of critical school construction dollars if a city or municipal police department located within the county is found to have violated the state’s immigration laws.

On the other hand, the Senate never took up several bills the House sent to that chamber. A bill requiring tests for certain contaminants in drinking and recreational water, [H1074](#) (Schools/CC Facilities – Test Water for Lead), appeared late in session. It would have required public schools and childcare facilities built before 1987 to test drinking water for lead and, depending on the results, take subsequent remedial action. In response to the death of a visitor to a whitewater park from a rare amoebic

infection, the House amended the bill to include regulation of health and safety at water recreation attractions and to require a legislative study of health requirements for such parks.

[S778](#) (Performance Guarantees/Subdivision Streets) was in response to a law passed last year prohibiting counties from requiring bonds for maintenance of subdivision roads until they become part of the state highway system. The legislation would have established such authority, though it was drafted to give great discretion to the developer. It also would have changed how improvements to roads around schools are determined and shifted most of the cost to the Dept. of Transportation. The Senate had concerns about how much the legislation would cost DOT.

Other bills passed by the House yet largely ignored by the Senate include:

- [S1047](#) (Welfare Reform/Food and Nutrition Benefits), the bill requiring the NC Education Lottery to share names of winners over a certain dollar amount with the Dept. of Health and Human Services to cross-check those names with those receiving FNS benefits, with the possible end result being disqualification for receipt of benefits;
- [S29](#) (County Eugenics Compensation Authority), which would authorize counties to compensate individuals sterilized under individual county eugenics programs.

The two chambers could not agree on [S371](#) (LME/MCO Claims Reporting/Mental Health Amends), or regulatory reform legislation, both of which are covered in more detail elsewhere in this report. Efforts to revive [S554](#) (School Building Leases) continued up to the last minute. This legislation would give school boards greater flexibility to enter into operating leases with private developers for school buildings, and creates a financing structure where operational savings from school consolidation may be used for capital expenses. Concerns about the financing policy, the 40-year allowable debt repayment timeframe, and the commitment of future legislatures to appropriate operational funding for capital uses delayed movement of the bill in the House. A final attempt to add a modified version to a bill regarding background checks for teachers failed, and possibly caused the ultimate failure of the bill to which it was attached. Finally, [S846](#) (Change the LOST Adjustment Factor) never moved in the Senate. While its provision to repeal the \$17.6 million that was part of the sales tax distribution compromise from last session was included in the state budget, the attempt to change the sales tax adjustment rate factor from county-specific rates to rates tied to a county's economic tier designation was not part of any final legislation.

#### OMNIBUS REGULATORY REFORM LEGISLATION STALLS AT THE END OF SESSION

The legislature attempted to tackle regulatory reform this session through three separate pieces of legislation. The House passed [S303](#) (Regulatory Reform Act of 2016) while the Senate moved two bills through their chamber: [H593](#) (Amend Environmental and Other Laws) and [H169](#) (Regulatory Reduction Act of 2016). While conferees worked until the last hours of session to combine the three bills into a single omnibus regulatory reform act, in the end, the General Assembly could not agree to a final version and did not pass a regulatory reform bill for the first time in a number of sessions. [H169](#) later passed both chambers as an unrelated bill dealing with state claims for wrongful discharge. The

following provisions of note to counties appeared in the different versions of reg reform throughout this short session.

- In the House's original changes to [S303](#), the bill set a three-year statute of limitations on enforcing certain land use violations that can be seen from a public right of way. The bill was later amended to set a three-year statute of limitations on violations that are known by the county government, have been reported to the county or are part of the public record. It would set a six-year statute of limitations on violations that can be seen by the public and are not hazardous to public health or safety. NCACC worked to oppose this provision throughout session.
- [S303](#) also would have exempted subdivision ordinances from applying in certain cases including a five-acre lot divided up to three times. Thanks to efforts by our counties contacting legislators, the bill was amended to limit this provision to once every 10 years while still requiring certain zoning, ingress and egress regulations to be met.
- The Senate amended [H169](#) to repeal the state's electronics recycling program while also lifting the ban on landfilling electronics. This issue arose from an interim report and recommendations by the Department of Environmental Quality; however, the House never included it in its regulatory reform legislation.
- [H169](#) also repealed yard waste permitting requirements while allowing counties to continue regulating the collection, storage and disposal of yard waste.
- [H593](#), the Senate's second regulatory bill, contained a section allowing life-of-site franchise agreements for landfills with franchises in place prior to Oct. 1, 2015. These would only execute if all parties, including the local government, agreed to the life-of-site extension. Furthermore, this would have clarified that life-of-site franchises could not extend beyond 60 years.
- [H593](#) would also allow a county to satisfy accessibility requirements for public records by making records or databases available online in downloadable format. Counties that also offer hard copies of documents may charge fees to a requester for the cost of providing those copies.

While an omnibus regulatory reform bill did not pass this session, some individual bills with significant impacts to county regulatory authority did gain traction toward the end of session. In particular, [H483](#) (Land-Use Regulatory Changes) began moving late in session with changes in the Senate. The bill ultimately passed the House and Senate on the last day of session but, due to efforts by our counties, the negative impact was mitigated substantially.

The original version of the bill made complex changes to land-use regulatory statutes. These would have incentivized litigation against counties, constrained county authority to apply land-use changes to multiphase developments, and shifted performance guarantee decisions to developers limiting county ability to recover costs for unsafe infrastructure. The version of [H483](#) that ultimately passed only addressed multiphase developments in one provision, which allowed certain developments to lock in existing land-use regulations for seven years. [H483](#) was presented to the Governor on July 1. We appreciate all the work our counties did in contacting legislators to address concerns with early drafts of this bill.

While [H483](#) passed with significant improvements thanks to county efforts, the House rolled out changes to [S326](#) (Local Gov'ts/Blds/Structures/Inspection) in the Rules committee in the last week. This bill limits the number of times and areas where a local government can use periodic inspections to review possible violations at homes and apartments, while also limiting the authority of counties to register and track repeat violators, and recover fees from repeat violators. While the practical impact to counties is unclear, NCACC heard concerns from a few members and worked to modify the bill. Ultimately the House passed the bill and the Senate concurred with the House's changes on the final day of session.

## H2 CHANGES GENERATE MUCH DEBATE BUT LIMITED OUTCOME

Throughout the session, speculation and rumors swirled as to what, if any, action the legislature would take to address concerns regarding the recently passed [H2](#) (Public Facilities & Security Act). [H2](#), passed during a special session in March, prohibits local governments from enacting regulations that ban discrimination. Instead, the bill creates a statewide law that bans discrimination on the basis of "race, religion, color, national origin or biological sex," which is defined as the sex stated on a person's birth certificate. The law does not include sexual orientation and gender identity as categories protected from discrimination and directs all public schools, college campuses and government agencies to require bathrooms or locker rooms to be designated for use only by people based on their biological sex.

[H2](#) also restricts counties and cities from regulating employment practices, i.e. counties and cities cannot require contractors to abide by regulations or controls on employment contracts as a condition of bidding for work. In addition, the bill eliminates causes of action for workplace discrimination in state court.

On the final day of the session, the House and Senate approved a bill to undo the provision in H2 regarding workplace discrimination suits. [H169 Restore State Claim for Wrongful Discharge](#) restores the right of workers to bring a claim in state court for unlawful employment discrimination. However, the bill shortens the time for filing such a claim from three years to one year. H169 passed the House by a vote of 85-15, and the Senate by a vote of 27-14. The bill has been sent to the Governor for his consideration.

## OTHER BILLS OF INTEREST TO COUNTIES

Following an [interim report](#) on Medicaid application processing timeliness from the legislative Program Evaluation Division, the House and Senate introduced companion bills [H1087/S841](#) (Medicaid Eligibility Timeliness/Funds) setting up a multi-step system for addressing timeliness including the possible takeover of processing similar to the current framework for child welfare services. This system was ultimately passed in the budget. If a County DSS has consistent issues meeting Medicaid timeliness requirements, the first step is a 12-18 month joint corrective action plan that would include specific responsibilities and actions for DHHS and the county. If a county does not meet targets in the plan, following a 90-day notice, DHHS will take over processing until timeliness improves. A county can appeal this takeover determination to the Office of Administrative Hearings.

As the state transitions toward a new model for physical and behavioral health service delivery through Medicaid reform and LME/MCO reorganization, the House and Senate released a conference report on [S371](#) (LME/MCO Claims Reporting/Mental Health Amends) in the last days of session. This bill would have authorized the secretary of DHHS to direct mergers of LME/MCOs and sets out minimum criteria for the secretary when considering possible consolidations including solvency, population served and financial performance. The bill makes other changes to LME/MCO board governance but does not include a provision limiting county LME/MCO disengagement until the Secretary of Health and Human Services adopts procedural rules. The Senate approved the conference report in the last hours of session; however, it was never voted on in the House.

As counties and the state work to tackle behavioral health issues including the opioid abuse epidemic, the General Assembly considered legislation lowering barriers to obtaining lifesaving overdose prevention drugs. [S734](#) (Statewide Standing Order/Opioid Antagonist) authorizes the State Health Director to prescribe an opioid overdose inhibitor by a statewide standing order. The bill became law late in the session with the Governor's signature following a unanimous vote in the House and Senate. This legislation makes it easier for a person to obtain naloxone hydrochloride from a pharmacy if they believe someone may be at risk of an overdose. Naloxone is a drug that blocks the effects of opioids, preventing overdoses and saving lives. According to some reports, this drug has helped save 3,300 North Carolinians from dying due to opioid overdose.

The House and Senate unanimously agreed to a bill making it unlawful to transfer custody of a minor child or advertise the custody transfer of a minor child outside of current adoption processes, foster care systems, legal custody transfers and relative care processes. [H424](#) (Prohibit Unlawful Custody Transfer of Child) was introduced in a Senate committee in the last week of session before passing the Senate 50-0 and the House 109-0. Unlawful custody transfer of a child would be a Class A1 misdemeanor unless the transfer results in serious physical injury to the child, which would be a Class G felony. The bill also directs DHHS to develop a more comprehensive program to help families at risk of adoption dissolutions.

[H1035](#) (LGC/Training for Local Gov't Finance Officers), authorizes the Local Government Commission to require local finance officers and any local employee with finance duties to attend formal training if the commission determines a need, particularly if the local government has received a deficiency letter from the commission.

[S575](#) (NC/SC Original Boundary Confirmation), which closely mirrors legislation passed in South Carolina earlier this year, reestablishes the original border between the Carolinas that has become indistinct over time as landmarks have shifted or disappeared. A few residents who have been determined to live in different states will have to change their driver licenses and will now pay taxes in their "new" state of residence. Students may choose to stay in schools they currently attend and will be eligible for in-state tuition in their previous state of residence for ten years.

[S667](#) (Elections Omnibus Revisions) makes changes to various elections laws and requires the Attorney General to represent local governments whenever the validity or constitutionality of local acts is challenged and to represent the state in most litigation. Among other elections changes, [S667](#) adjusts

the time requirements for canvassing after elections, directs the order of candidates on the ballot for Court of Appeals, adjusts voting tabulation districts in preparation for the 2020 census, sets uniform standards for precinct boundaries, requires maintenance of voting data by precinct instead of tabulation district, and directs a legislative study of municipal elections in even-numbered years.

[H992](#) (Amend Industrial Hemp Program) adds requirements to the hemp program established by the legislature last year, achieving an NCACC goal. It clarifies the powers and duties of the Industrial Hemp Commission, grants rulemaking authority to the commission, and requires the industrial hemp research program to be managed and coordinated by state land grant universities. It also sets specific responsibilities of licensees and authorizes research purposes for the industrial hemp program and creates civil and criminal penalties for various violations of the program.

The General Assembly approved [S865](#) (State Health Plan/Admin Changes/Local Govts) that increases the number of local governments that may participate in the State Health Plan. It raises the enrollment cap on local government employees and dependents from 10,000 to 16,000. The bill also prohibits participating local governments from charging more for employee and dependent coverage than the Plan allows.

[H550](#) (Raleigh Apodaca Service Dog Retirement Act) would allow cities and counties to turn publicly owned service animals like police dogs over to their handlers once the animals have reached retirement age. The bill extends the provisions found in a number of local bills across the state and passed both chambers unanimously. Previously, local governments would be required to auction-off animals as surplus. [H550](#) was named for Rules Chair Tom Apodaca's bulldog, Raleigh, who died in September.

The General Assembly passed the annual bill addressing agricultural regulations approving [S770](#) (NC Farm Act of 2016) in the last two days. Part of the bill clarifies the current permit exemption for some small construction projects costing less than \$15,000. This change lists the type of small construction projects to include fixing windows, doors, railings and decking as well as replacing some plumbing and electrical equipment, and fixtures. It exempts horticulture operations from sedimentation control laws and allows well contractors to install pipes and electrical wiring in limited circumstances, and would add notification responsibilities for local health departments.

Two provisions with possible financial impacts to counties were not included in the final version. The original version of the bill decreased the farm income threshold from \$10,000 per year to \$5,000 per year to qualify for the farm equipment sales tax exemption. The bill also contained a provision expanding when deferred taxes are waived or pro-rated for gifts of PUV property for preservation purposes — this provision was removed from [S770](#) but later became law in [H533](#) (Modify PUV Exceptions to Disqualification).

Two bills, ([S811](#)) Lottery Funds for School Construction & [S728](#) (Lottery – JLOC Recommendations), were introduced in the Senate and would have addressed the issue of county school construction needs. The Department of Public Instruction conducted a facility needs survey during the interim and found that LEAs will need \$8 billion over the next five years and \$13.4 billion over the next 10 years to build new schools and to renovate or expand existing schools. The Department further concluded that local

funding is inadequate to meet these needs, and that additional state funding will be needed to fulfill the “highest facility needs in relation to the capacity to raise revenue.”

[S811](#) would create a Critical Public School Building Needs Fund to provide grant assistance to counties for school construction needs based on the counties’ ability to generate revenue through sales and property taxes. The bill would appropriate \$25 million in lottery revenues to the critical needs fund, which would be in addition to the \$100 million appropriated to the Public School Building Capital Fund. The bill would have provided for an additional \$25 million to the critical needs fund if [S728](#) passed.

[S728](#) and House companion [H1038](#) were referred out of the Joint Lottery Oversight Committee and would make two substantial changes to the lottery statutes. The bill would increase the cap on lottery advertising expenses from 1% to 2%, which the N.C. Education Lottery estimates would generate an additional \$48.4 million in lottery revenues. The bill would also direct all unclaimed prize moneys to be included in the amount appropriated for "education-related purposes" each year. Currently, 50% of unclaimed prize monies are used to enhance prizes.

Neither proposal received a hearing; however, the final budget includes a provision directing the Program Evaluation Division to contract for an independent assessment of school construction needs and to determine which LEAs have the highest facility needs in relation to their capacity to raise revenue.

[H1080](#) (Achievement School District) creates a state-managed school administrative unit designed to boost low-performing schools from across the state. The bill establishes an Achievement School District (ASD) as a pilot program authorizing the State Board of Education (SBE) to select private charter school companies to take over the administration of qualifying elementary schools. Under the bill, the SBE must select and enter into a five-year contract with an achievement school operator, but may extend the contract for three years if certain performance criteria are met.

[H1080](#) states that once the local school board has been notified that one of its schools has been selected for transfer to the ASD, it can take one of two actions. The board can: (1) consent to the transfer, or (2) close the school. The bill further states that the LEA would transfer the per-pupil share of local current expense funds to the achievement school and would remain responsible for the school’s capital and transportation needs. The state would allocate funds to the school in an amount equal to the average per pupil share of the LEA’s ADM allotment plus amounts for disability and English proficiency.

An additional pilot program provided for under the bill would allow a local school board to create “innovation zones” comprised of three struggling schools within the LEA. These innovation zones would be given exemptions from state regulations similar to those afforded to public charter schools.

[H972](#) (Law Enforcement Recordings/No Public Record) governs the disclosure of audio and video recordings captured by body cameras, dashboard cameras or other recording devices used by law enforcement officers while performing their duties. The bill exempts these recordings from the state’s public records laws.

The bill provides that the head of the law enforcement agency having custody of a recording may release it only to a person or personal representative of one whose image or voice is in the recording. The custodial agency may consider a number of factors in determining whether to release the recording, such as whether it contains otherwise confidential information or would reveal information of a highly sensitive personal nature. A decision denying disclosure may be appealed to the superior court. The standard of review by the court is whether the custodial agency abused its discretion, and the bill lists several criteria the court must consider in making its decision on whether to release the recording.

The bill was later amended to include language allowing governmental and nongovernmental organizations to establish and operate hypodermic syringe and needle exchange programs. The bill sets forth the requirements for such a program and provides that a person found to be in possession of new or used needles, syringes or other injection supplies shall be immune from prosecution if they were obtained from or returned to a needle exchange program. [H972](#) passed both chambers following spirited and lengthy debates on the issue of public access to law enforcement recordings.