



Legislative Bulletin

October 6, 2023 | nclm.org

The Recap

Former Speaker of the House Tip O'Neil is credited with saying, "The House Republicans are not the enemy, they're the opposition. The Senate is the enemy." The Massachusetts Democrat was commenting on the state of affairs in 1980's Washington, but there may not be a better truism about life in the current North Carolina General Assembly.

With a last push on redistricting, the Legislature may finish the long session in October. As we review the legislative business that has been completed in the last month, understanding the friction between the North Carolina Senate and the House is instructive. While an outside observer may be forgiven for thinking that supermajorities in both chambers would yield a timely budget, North Carolina politics is not quite so simple. Negotiations stretched over several months.

The reality is that the House and Senate are different and, in many ways, designed to be. Senators come from larger geographic districts representing a greater number of people, whereas House districts are more intimate. Even in House and Senate districts that have strong political leanings, the larger populations in Senate districts change the constituencies and the incentives for members. These subtle differences lead to conflicting policy preferences even within the same party, as evidenced by the budget fights on gambling, tax cuts, and medical marijuana. Even with the announcement that Speaker Tim Moore will relinquish the gavel and not seek reelection at the end of his current term, the current dynamic between bodies is unlikely to change in the coming years. In the work that we do – both by our Government Affairs team and by you, representatives of cities and town – in advocating for local needs, it's always good to keep in mind these differences that go beyond party affiliation.

John McDonald

A handwritten signature in black ink, appearing to read "John McDonald", is placed below the printed name.

Senior Government Affairs Associate

State Budget Details

North Carolina cities and towns are finding a lot of good in the final state budget that state legislators approved last month, even as a handful of policy provisions may be causing some heartburn. [The \\$30 billion state spending plan](#), which Gov. Roy Cooper allowed to become law but without his signature, includes over \$3 billion in local infrastructure spending. Among those appropriations are individual earmarks of \$1.9 billion for drinking water and wastewater (Sec. 12.2, pg. 362) and an increase of \$15.5 million for street funding under the Powell Bill (Sec. 41.5) in each year of the two-year budget, bringing the total to \$185.8 million in the second year. Other major funding items include:

- \$30 million to the Disaster Relief and Mitigation Fund and the Transportation Infrastructure Resiliency Funds. (Sec. 5.9, pg. 55)
- \$107.8 million for industrial megasite readiness and preparation. (Sec. 11.11, pg. 344)
- \$10 million for local governments to evaluate areas of less than 1,000 acres for industrial development sites. (Sec. 11.12, pg. 346)
- \$10 million to local governments for coastal storm damage mitigation. (Money Report, pg. D-67)
- \$30 million for local and state parks and beach access, with another \$12.5 million going to the Parks and Recreation Trust Fund to provide matching grants for park facilities for persons with disabilities. (Money Report – pg. D-97; Sec. 14.4, pg. 398)
- \$17.5 million for trail development programs. (Sec. 14.6, pg. 400)
- \$35 million to the Housing Finance Agency for multi-family affordable housing. (Money Report, pg. F-162)

The legislation also makes changes to the Criminal Justice Fellows Program in an effort to increase the number of graduates available for law enforcement jobs, as well as provides the N.C. Police Chiefs Association with some funding to assist local agencies with employee performance and wellness programs.

Concerning policy provisions include one that will subject local governments to oversight by the Joint Legislative Commission on Governmental Affairs, a legislative oversight body traditionally focused on state operations. Another provision would prevent retail plastic bag bans or fees, as well as penalties for retailers due to shopping carts being taken and discarded away from retail sites. Find more about those and other policy provisions in the items below.

You also can find a spreadsheet laying out all significant provisions affecting cities and towns, [here](#), with the section citations allowing you to find the budget provisions either in the [bill text](#) or what is known as the [money report](#).

Lawmakers Pass Targeted Local Preemption Measures

State lawmakers included several targeted local preemption measures in late-session bills passed last month. In all cases, the language had not appeared in earlier legislation. Further, provisions included in [the state budget](#) became law with no opportunity for input or changes. Those [state budget](#) provisions do the following:

- **DARE COUNTY ZONING:** Sec. 24.8 (pg. 520) preempts the application of most Dare County zoning code provisions (practically, the municipal codes) to a specific affordable housing project the county seeks to build. Further, it requires any municipality within a one-mile radius of the proposed development site that has water system capacity to serve that development.
- **WAKE COUNTY ZONING:** Sec. 20.5 (pg. 510) preempts the application of most Wake County zoning code provisions (practically, the municipal codes) to any development involving a state-owned institution, including state university properties. Instead, the provision requires state construction entities to consult with the applicable local government on basic development matters.
- **SMITH REYNOLDS AIRPORT TAXES:** Sec. 42.23 (pg. 623) preempts local real and personal property tax authority as it is applied to one specific airport, the Smith Reynolds Airport in Forsyth County. Specifically, this provision reduces the airport's \$500,000+ annual tax liability by half. [According to the Winston-Salem Journal](#), local leaders agreed to this reduction in taxes in lieu of the provisions in [HB 459 Smith Reynolds Airport Deannexation](#), which would have removed the property from the Winston-Salem city limits. Airport officials had sought the deannexation, arguing that because airports in neighboring counties were not within the corporate limits of any municipality and therefore not subject to municipal property taxes, Smith Reynolds Airport was at a competitive disadvantage.
- **PLASTIC CONTAINERS & SHOPPING CART REGULATIONS:** Sec. 5.9(e) (pg. 65) preempts all municipal regulations related to the use, disposal, or sale of consumer plastic containers, like plastic bags and fast food packaging. The provision provides an exception for recycling programs and the use of such products on the city's own property. The same preemption applies to regulations related to the use of shopping carts. The NC Retail Merchants Association [supported](#) these provisions.

Legislators also responded to long-held desires by charter school interests to preempt local decision-making related to the development of schools.

- **WATER SERVICE:** First, using a procedural move that did not allow for input or changes to the bill text, lawmakers voted to require public water systems to provide water service to charter schools upon request, unless the water system does not have capacity or is under a service moratorium. On Monday, Gov. Cooper vetoed the bill that included this provision, [HB 600 Regulatory Reform Act of 2023](#) (Sec. 40). Legislators will likely override that veto when they reconvene.
- **SCHOOL SITING:** Second, House members inserted the above water service provision into [SB 692 Changes in Education Laws](#) (Sec. 3), along with other local zoning preemption proposals related to the siting of schools. The detailed provision outlines circumstances under which a local government must allow a school to be built in a residential area. It also preempts all local zoning related to the siting of schools in commercial areas. This bill now awaits a Senate vote on whether or not to accept these changes and others made in the bill by the House.

Legislative Commission Oversight Expands to Include Local Governments

As previously reported by NCLM, [the 2023-2024 state budget](#) extends the oversight authority of the Joint Legislative Commission on Governmental Operations (GovOps) to local governments, a move that pushes beyond its traditional role of examining state operations. The budget provision (Sec. 27.10, p. 531), which only showed up in the final negotiated version of the budget bill and could not be amended, allows the commission to review and evaluate the implementation of public policy, and the efficiency and effectiveness of local government. It also allows the commission to compel access to local government building, facilities, documents, and systems of records—the failure of which constitutes a Class 2 Misdemeanor. Several lawmakers expressed concern that these changes grant immense power to a partisan commission.

Budget Changes Public Records Law

Another change in the state budget (Sec. 27.7, pg. 530) creates a permanent exemption to the public records law for governmental entities, including local governments, when involving written communication and documents subject to attorney-client privilege. Under previous law, these communications could only be withheld for three years, after which the government had to produce the communication upon request.

A governmental body could still choose to make the communications public.

New Requirements for Bond Referendums

Another provision included in the state budget (Sec. 36.3, pg. 563) requires [ballots to contain specific language](#) for bond referendums, potentially posing significant barriers for local borrowing. Specifically, the question on the ballot must note the potential for an increase in property taxes as necessary to pay the principal and interest of the bond, if approved. The ballot language must include an estimate of the cumulative cost of the bond and the amount of property tax liability increase for every \$100,000 of property tax value to service the bond. The state's bond counsel expressed concern about the reliability of this information when the language was introduced in [SB 99 Bond Referendum Transparency](#). SB 99 passed the Senate but had stalled in the House.

Legislature Makes Substantive Changes to Water Programs

The North Carolina General Assembly included funding and policy changes for stormwater and wastewater programs in both the [HB 259 2023 Appropriations Act](#), now codified as S.L. 2023-134, and [HB 600 Regulatory Reform Act of 2023](#), which was vetoed by the Governor on October 2nd. It is expected that the HB 600 will become law when legislators return and vote on an override of the governor's action.

The biannual budget included the following:

- \$2 billion in total funding for water infrastructure through over 200 grants to local governments. The projects selected will be funded through the Viable Utility Reserve (VUR), Local Assistance for Stormwater Infrastructure Investments Fund, the Drinking Water Reserve, and Wastewater Reserve.
- Statutory authority to allow local systems to discharge wastewater that meets certain water quality standards into low or no flow waterways.
- A requirement that the Local Government Commission and the State Water Infrastructure Authority develop selection criteria for municipalities on the Unit Assistance List to receive water infrastructure grants. Further, the bill lifts the current three consecutive year cap on receiving VUR funding.
- A prohibition on local governments denying erosion and sedimentation permits based solely on need to receive other environmental permits.
- A new DEQ Express Permitting program with timeline and shot clocks for the department to follow. Additionally allows permittees to opt for permit review in their local jurisdiction. Finally increases DEQ fees, including for NPDES wastewater and stormwater permits as well as sewer system extension permits, and water system construction permits to pay for program and personnel.

HB 600 includes the following changes:

- Modifies when increased stormwater controls are needed for redevelopment projects. Specifically, it would require that the property owner treat the increase in stormwater resulting from the net increase in built upon areas, in order to exceed allowable density under the applicable water supply watershed rules.
- Removes DOT and municipal right-of-ways from the impervious surface calculation in vegetative buffer rules.
- Grants a stormwater applicant the ability to submit the application for review to a local government with permitting authority.
- Requires local stormwater programs to take into account the existing stormwater control measures when determining fees for a property.

Budget Provision Splits Insurance Commissioner's Job from State Fire

Marshal's Responsibilities

In yet another change included in the state budget (Sec. 30.8, pg. 551), the State Insurance Commissioner will have to appoint someone to a three-year term as the State Fire Marshal and the choice will be subject to General Assembly confirmation. Previously, the Insurance Commissioner had acted as State Fire Marshal. As head of the Office of the State Fire Marshal, the newly appointed administrator will be responsible for administering the state building code, overseeing the Code Officials Qualification Board, as well as number of other items related to fire safety and risk management. The independent fire marshal provision goes into effect at the beginning of the year.

Local Bills Zero In on Municipal Authority

The largest local omnibus bill of the session, [HB 5 Local Changes Omnibus.](#), originated as a noncontroversial bill aimed at Fuquay-Varina, but the final, negotiated [conference report](#) ended up affecting 11 municipalities with provisions involving de-annexation, extraterritorial jurisdiction, annexation authority and elections changes. Most notably, the bill would de-annex nearly a thousand acres of property currently within the Town of Summerfield. The property has been the subject of an ongoing dispute between the property owner, a local developer and the town, which has rejected multiple development proposals. The dispute caught the attention of legislative leaders, leading to the legislation. The conference report awaits final votes by both the House and Senate before becoming law.

A separate bill, that includes many of the noncontroversial provisions from [HB 5](#), also seeks to move municipal elections for the Town of Hookerton and the Town of Walstonburg to even-numbered years, to align with the state and federal general elections calendar. At this point in the legislative session, it is not unusual for different bills to contain the same provisions as legislators consider multiple avenues to achieve their legislative priorities. Since the bill, [SB 68 Various Local Changes](#), passed the House with changes, it must now be placed on the Senate calendar for a floor vote to concur with the House version.

Meanwhile, [SB 169 Local Omnibus Changes. \(SL 2023-118\)](#) passed into law last month. The measure included clarifications to session law passed last session pertaining to satellite annexation authority in Davidson County. The bill also switched the method of Gastonia city council member elections from at-large district elections to districted ward elections. What began as an innocuous, technical correction bill, was amended late in the process to include the Gastonia provision. Gastonia officials are unanimous in their opposition to the change.

Commercial Building Inspections, Local Plan Review Changes Advance

Perennial legislation aimed at commercial building inspections and plan review advanced late last month as legislators scramble to finalize their priorities before the session ends. The bill, [HB 893 Private Commercial Building Inspection.](#), would authorize inspections by private inspectors for commercial buildings across our state. Under the bill, developers and contractors would have the option of choosing a private building inspector for commercial projects. Local government inspections departments would be released from all liability and would only be responsible for issuing a final certificate of occupancy. In a significant change from the original version, Section 4 of the bill now includes provisions from [HB 332/SB 275 Streamline Comm./Multifam. Bldg. Plan Review.](#), which would impose a 21-business day “shot clock” on local building inspections departments to review and sign off on commercial building plans, with 10 more business days given in cases where the local government sought more information from the applicant. Applicants would also be authorized to utilize a private, third party or a state-hired inspector to review and sign off on the project’s building plans. The measure is now before the Senate, where it awaits further committee assignments.

In a bout of legislative maneuvering, a new version of the so-called “shot clock” bill, referenced above, was introduced in a proposed committee substitute (PCS) for [SB 677 Surveyors Right of Entry/Exped. Comm. Bldg.](#) during a House Rules committee meeting. Section 2 of the bill provides significant changes to commercial plan review processes. They include:

- Requiring local inspection departments to offer “pre-submittal meetings” for prospective building permit applicants.
- Imposing a 45-day “shot clock” on local building inspections departments to review and sign off on commercial building plans, with 10 more days given in cases where the local government sought more information from the applicant. A local government may issue a building permit decision within 60 days if a local government issues an at-risk building permit.
- Allows applicants to utilize a private, third party or a state-hired inspector to complete commercial building plan review.
- Establishes a formal process for permitting “at-risk building permits” where applicants have not yet met other local, state, or federal agency requirements, but wishes to begin building foundation or building structure construction. Local governments and inspection departments are discharged and released from any liabilities, duties, and responsibilities imposed by these changes.
- Prohibits local governments from denying a draft erosion and sedimentation control plan based solely upon the applicant’s need to obtain other development approvals for the project.

The bill passed a House floor vote and now awaits a concurrence vote in the Senate.

Omnibus Occupancy Tax Bill Being Negotiated

In a significant legislative development this week, [SB 154 Omnibus Occupancy Tax Changes](#), which encompasses a comprehensive array of changes related to occupancy taxes, has been referred to a House-Senate conference committee, setting up negotiations to work out any differences between the two chambers on the legislation. The omnibus bill consolidates all occupancy tax-related proposals introduced in both the House and Senate during this legislative session, and also includes additional measures. It would also extend the sunset provision regarding Mecklenburg County's authority to impose a meals tax. Substantial portions of this comprehensive bill have garnered bipartisan support during its progression through the legislative process.



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