UNC SCHOOL OF GOVERNMENT

PLANNING AND ZONING LAW BULLETIN NO. 33 | FEBRUARY 2024

2023 North Carolina Legislation Related to Planning and Development Regulation

Jim Joyce and Adam Lovelady

CONTENTS

Jim Joyce is an assistant professor of public law and government at the School of Government. Adam Lovelady is a professor of public law and government at the School of Government. Both specialize in land use planning and development regulation.

The 2023 "long session" was a long session indeed. The North Carolina General Assembly convened in January and notable work continued well into the fall, with the state budget adopted in September, election maps approved in October, and no-vote sessions scheduled through to spring of 2024, in case the General Assembly needs to take up additional matters.

Substantively, the session was notable. The legislature adopted Medicaid expansion and, with a veto-proof majority, the Republican-controlled General Assembly implemented many policy changes across a range of topics. With regard to planning and development regulations, notable changes included the creation of a new Residential Code Council and changes to building code standards and procedures, various changes to environmental standards and utility requirements, and more.

I. Checklist for Local Government Action

The following pages offer summaries of the notable bills from this session. This checklist is a quick-guide for the changes and action that may be needed at the local level.

- Ensure that any local design regulations do not apply to three-family or four-family dwellings, which are now subject to the Residential Code and cannot be regulated for building design elements.
- Ensure that local development regulations do not require fire access roads beyond what is required by the fire code for structures built to the Residential Code.
- Clarify size requirements for parking spaces to align with Chapter 160D, Section 702 of the North Carolina General Statutes (hereinafter G.S).
- Revise private-driveway standards, if necessary, to comply with North Carolina Department of Transportation (NCDOT) standards, and revise procedures to accept inadequate-pavement standards if sealed by a licensed engineer as required at 160D-804.
- Update water and sewer policies, including calculations of system-development fees, to align with S.L. 2023-55 (modeling and system development).
- Confirm that the public health department is aware of updates to on-site-wastewater regulations in S.L. 2023-77 and 2023-90, as well as changes in Section 16 of S.L. 2023-63.
- Note the updated exemptions from water- and sewer-connection requirements in Section 10 of S.L. 2023-90, and update connection policies accordingly.
- Review local wetlands protections for potential changes to come from reduction in state and federally protected wetlands.
- Update rules for review of erosion and sedimentation plans when other environmental permits are involved to conform to S.L. 2023-134, Section 12.10(c).
- Update riparian-buffer enforcement to comply with S.L. 2023-63, Section 11.1 (civil penalties for timber removal in riparian buffers).
- Update building-permit administration, if needed, to align with the broadened scope of the Residential Code (to include three-family and four-family dwellings).
- Update building-permit administration to accommodate expedited and third-party permitting for commercial and multifamily building projects.
- Ensure that building inspections align with various changes, including single permits for residential building projects, repealed energy-conservation rules, updated monetary thresholds for permits, and more.

- Recognize that the Department of Environmental Quality (DEQ) will now administer a solar-decommissioning requirement; local governments may still have their own decommissioning.
- Anticipate new off-track-betting establishments for horse-racing and sports-betting places of public accommodation near professional-sports facilities, as allowed by S.L. 2023-42.
- Consider opportunities that might be available through the Megasites Fund;[1] parks-and-trails programs;[2] and the Major Events, Games, and Attractions Fund.[3]
- For Dare County, the City of Raleigh, and Wake County, be mindful of new zoning exemptions.[4]
- For Buncombe, Cumberland, Durham, Forsyth, Guilford, Mecklenburg, and Wake Counties, and possibly Union County, anticipate the possibility that airports will seek to select a local sedimentation-and-erosion-control program.

II. Zoning and Land Subdivision

A. Limit on Residential Design Standards

The North Carolina zoning statutes already prevented local governments from regulating "building design elements" for structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings. As discussed below, Section 9 of S.L. 2023-108 (H.B. 488) expands the scope of the Residential Code to include three-family (triplex) and four-family (quadplex) dwellings. Section 1.(d) of S.L. 2023-108 (H.B. 488) incorporates that change into G.S. 160D-702 and the limits on design standards. With this change, local governments may not impose restrictions on building-design elements on residential structures with up to four units (structures subject to the Residential Code).

B. Fire Access Roads in Residential Development

Over the last couple of legislative sessions, the General Assembly limited the extent to which fire access roads could be required under the state Fire Code. There was an open question of whether the same requirement could be imposed through local zoning and subdivision. Section 26 of S.L. 2023-137 (H.B. 600) makes clear that local development regulations must match to the building code requirements. The session law added the following language to G.S. 160D-702(c): Local development regulations may not "[r]equire additional fire apparatus access roads into developments of one- or two-family dwellings that are not in compliance with the required number of fire apparatus access roads into developments of one- or two-family dwellings set forth in the Fire Code of the North Carolina Residential Code for One- and Two-Family Dwellings."

1. S.L. 2023-134, § 11.11.
2. *Id.*, § 14.4, 14.6.
3. S.L. 2023-42.
4. S.L. 2023-134 (H.B. 259), § 24.8 (Dare County), 20.5 (Wake County and Raleigh).

C. Size of Parking Spaces

Section 26 of S.L. 2023-137 (H.B. 600) cleans up G.S. 160D-702(c) to clarify that zoning ordinances may not require parking spaces larger than nine feet wide and twenty feet long, except for handicap, parallel, or diagonal parking.

D. Private-Driveway Design Standards

Local government authority to regulate private-driveway standards is limited. Section 3 of S.L. 2023-108 (H.B. 488) adds a new subsection (j) to G.S. 160D-804. The new language provides as follows.

Local government pavement design standards for new private driveways must not be more stringent than NCDOT's minimum pavement design standards. Even if a local government has adopted driveway standards consistent with NCDOT, the local government must accept engineered-pavement design standards that do not meet minimum standards if the design is signed and sealed by a licensed engineer and meets vehicular traffic and fire apparatus access requirements. In the case of such driveways that do not meet minimum standards, the developer must provide disclosures to prospective buyers and the local government is discharged from liability.

This provision applies to "new privately owned driveways, parking lots, and driving areas associated with parking lots within a new development or subdivision that the developer designates as private and that are intended to remain privately owned after construction." The new section does not limit local government or NCDOT authority "to regulate private roads, driveways, or street connections to a public system, or to regulate transportation and utilities."[5] The provision was effective October 1, 2023.

III. Development-Related Local Government Authority

A. Limit Local Regulation of Online Marketplaces

Section 27 of S.L. 2023-137 (H.B. 600) adds statutes to the municipal and county chapters (G.S. 160A-499.7 and G.S. 153A-461, respectively) to prevent local governments from regulating the operation of an online marketplace or from requiring an online marketplace to provide a user's personally identifiable information (except by court order). An online marketplace is defined to be a person or entity that (1) provides a web-based platform through which a service is advertised or offered and (2) provides a payment system between users, communicates offers and acceptance between users, or provides the electronic infrastructure to bring users together. This legislation concerns regulating the operation of an online marketplace (the software platform); the legislation does not appear to limit local authority to regulate land uses that happen to use a software platform.

B. Transient Occupancy

Chapter 42 of the North Carolina General Statutes sets forth the landlord and tenant laws for the state. Among other things, that chapter provides standards for residential rental agreements, procedures for eviction, and procedures for summary ejectment. S.L. 2023-5 (S.B. 53) adds

5. S.L. 2023-108, sec. 3.(a), § 160D-804(j).

language to G.S. 42-14.6 to clarify that Chapter 42 does not apply to transient occupancies and that transient-occupancy agreements do not create tenancy or residential tenancy unless expressly stated in the agreement.

S.L. 2023-5 (S.B. 53) also adds to G.S. 72-1 a definition of *transient occupancy*: "For the purposes of this section, a 'transient occupancy' is the rental of an accommodation by an inn, hotel, motel, recreational vehicle park, campground, or similar lodging to the same guest or occupant for fewer than 90 consecutive days."

The legislative change clarifies the nature of agreements between property owners and transient occupants. It does not appear to directly address local government authority to regulate related to inns, hotels, short-term rentals, or other transient occupancies.

C. Electric Fences

Section 44 of S.L. 2023-137 (H.B. 600) adds new statutes, G.S. 160A-194.1 and G.S. 153A-134.1, to limit local government authority to regulate battery-charged security fences, especially on nonresidential property.

IV. Fees and Exactions

A. System-Development Fees

In 2017 the North Carolina General Assembly authorized local government utility providers to charge system-development fees (impact fees) for water and sewer. The law, outlined in Article 8 of G.S. 162A, sets forth specific procedures and calculations for establishing system-development fees, as well as substantive limits on the authority. There has been some ambiguity around the scope of authority for system-development fees, and the General Assembly has tweaked the statutes several times since 2017. And again this year, the General Assembly amended the authority.

S.L. 2023-55 (S.B. 673) amends the statutes authorizing system-development fees to address issues related to reserved capacity agreements and interlocal utility agreements. In particular, the new law grants clear authority for local governments to enter reserved capacity agreements and for local governments to recoup the costs of those agreements through system-development fees paid by new development.

For more details on the changes, see Kara Millonzi's blog post, *2023 Updates to System Development Fee Law*.[6]

V. Infrastructure

A. Required Connections

North Carolina municipalities and counties have authority, with limited exceptions, to require developed property to connect to public water and sewer under G.S. 160A-317(a) and

6. Kara Millonzi, *2023 Updates to System Development Fee Law*, Coates' Canons NC Loc. Gov't L. (Oct. 25, 2023), https://canons.sog.unc.edu/2023/10/2023-updates-to-system-development-fee-law/.

153A-284(a). Section 10 of S.L. 2023-90 (H.B. 628) and Section 12 of S.L. 2023-108 (H.B. 488) alter that authority in the following notable ways:

Counties may require a property owner to connect to a sewer line only "if the county has adequate capacity to transport and treat the proposed new wastewater from the premises at the time of connection."[7]

Cities likewise may not require a property owner to connect to the city sewer system unless the system has adequate capacity.[8]

In addition, a city may not require sewer connection if the cost to connect to the system is greater than the cost to install an on-site wastewater system (as determined by a licensed soil scientist, on-site wastewater contractor, or licensed plumbing contractor).[9]

Finally, the city cannot require the property owner to connect to the water system if the system will not generate water pressure that is equal to the average of connected customers within a quarter-mile radius of the owner's point of connection (as determined by a licensed professional engineer). The city also may not require the owner to install a larger meter and piping connection or impose an increased fee to achieve the required water pressure.[10]

B. Water Capacity for Charter Schools

Section 40 of S.L. 2023-137 (H.B. 600) adds a new statute, G.S. 115C-218.36, to give rules for reserving water and sewer capacity for charter schools.

C. Wastewater Calculations

Section 18 of S.L. 2023-137 (H.B. 600) modifies the calculations for wastewater design flow rates for dwelling units. Among other changes, wastewater flows will be calculated at 75 gallons per day per bedroom.

VI. Local Environmental Regulation

A. Wetlands

Potentially one of the most significant provisions of the 2023 farm bill, S.L. 2023-63 (S.B. 582), is Section 15, which limits wetlands that are waters of the state (and thus subject to state water-quality laws) to those that are defined as waters of the United States. Previously, there was a small range of coastal wetlands that were not covered by federal regulations but were covered under state law. Those wetlands will no longer be covered under state law.

A contemporaneous decision by the United States Supreme Court in *Sackett v. Environmental Protection Agency* further limits the scope of regulated wetlands under both state and federal law. The federal Clean Water Act gives federal regulatory agencies jurisdiction over "waters of the United States." This term includes certain wetlands, but the text of the Clean Water Act does not make clear *which* wetlands are covered. Regulators had been applying federal protections to wetlands that related to or affected surface-water bodies that qualified as "waters of the United

7. S.L. 2023-90, § 10.(b); S.L. 2023-108, § 12(b).
8. S.L. 2023-90, § 10(a); S.L. 2023-108, § 12(a) (slightly different language with similar effect).
9. S.L. 2023-90, § 10(a).
10. *Id.*

States." In the *Sackett* decision, the U.S. Supreme Court limited the scope of regulated wetlands to those that have a "continuous surface connection" with a body of water that is considered a water of the United States, such that it is difficult to determine where the "water" ends and the "wetland" begins.[11]

The combination of the farm bill and the *Sackett* decision means that the only wetlands likely covered by federal and state regulations are those that are at the immediate fringe of a water body. Use of many other wetlands will now be unregulated.

B. Choice of Fee for Erosion and Sedimentation Control

Section 10 of S.L. 2023-108 (H.B. 488) permits applicants for erosion-and-sedimentation-control approval to choose how their review fee is calculated. Specifically, the law amends G.S. 113A-60 to state that the applicant gets to choose whether the fee will be based on the number of acres disturbed or a flat fee of $100 per lot. Additionally, Section 11 of the law directs DEQ to propose to the United States Environmental Protection Agency a plan to streamline sedimentation regulations for construction activities.

C. Transfer of Stormwater Permits

G.S. 143-214.7 sets out the procedure for DEQ to transfer stormwater permits from developers to owners' associations under certain circumstances. Section 13.1 of S.L. 2023-108 (H.B. 488) makes clear that the same transfer rules apply to local governments.

D. Funds for Maintenance of Stormwater Facilities

Local governments have had authority to require financial guarantees for maintenance of private stormwater as outlined at G.S. 160D-925. Section 13 of S.L. 2023-108 (H.B. 488) sets new limits on that authority.

With the new provisions, local governments may not require an owner of a private stormwater facility to make payments to the local government for the purpose of that facility's maintenance (including maintenance, repair, replacement, or reconstruction) or that of other stormwater facilities. A local government may require private owners to retain funds for maintenance of the private stormwater facility. Such funds may not exceed ten percent of the cost of construction. Owners get five years to collect and retain funds, starting at the time the stormwater facility is accepted by the local government as built to standard. The local government may require funds to be held in a segregated account for the sole purpose of maintaining the stormwater facility.

If a local government has previously required payments to itself to fund maintenance of private stormwater facilities, those funds must be made accessible to the owners to cover maintenance costs. Any such funds must be exhausted before the local government may assess costs against residential homeowners or homeowner associations.

E. Redevelopment and Stormwater Rules

Back in 2021, the General Assembly amended the statutes regulating development in water-supply watersheds to allow developers to exceed maximum allowable density for redevelopment projects in specific circumstances. S.L. 2021-164 (H.B. 218) added a new subsection (d3) to G.S. 143-214.5 to allow excess density if the property was developed prior to the local

11. Sackett v. Env't Prot. Agency, 598 U.S. 651 (2023).

water-supply watershed, the property has not been combined with other lots after January 2021, the property has not been part of density averaging, the property's current use is nonresidential, the stormwater from the redevelopment will be treated to applicable standards, and the remaining vegetation will be preserved.

Section 1 of S.L. 2023-137 (H.B. 600) revised that language for redevelopment projects to specify that the stormwater treatment is only required for any net increase in built-upon area. The prior language required stormwater treatment for new *and* existing built-upon area.

G.S. 143-214.7(b3) already limited the extent to which stormwater rules applied to redevelopment of existing developed areas (stormwater rules apply only to the net increase in impervious surface). Section 2 of S.L. 2023-137 (H.B. 600) amends that statute to make clear that the preexisting development may be demolished or relocated during the development; stormwater controls still are required only for net increase in impervious surface.

F. Exclusion of Rights-of-Way from Impervious Surface

G.S. 143-214.7 sets forth the state law for stormwater-runoff rules and programs. Subsection (b2) of that statute defines *built-upon area* and has special provision to allow some development within an otherwise-protected vegetative buffer as long as the stormwater runoff from "the entire impervious area of the development" is properly treated and will pass through a segment of the vegetative buffer.[12]

Section 2 of S.L. 2023-137 (H.B. 600) amends that language at G.S. 143-214.7(b2)(2) to state that any portion of the development within the municipal or state right-of-way does not count toward "the entire impervious area of the development."

G. Various Stormwater Changes

1. Applicant's Choice of Jurisdiction Under Joint Stormwater-Permitting Programs

Section 2 of S.L. 2023-137 (H.B. 600) amends G.S. 143-214.7(b5) to address applications for permits under joint programs. When local governments establish a joint stormwater-permitting program, an applicant may apply to the local government with jurisdiction over the site or to the other local governments in the joint program.

2. Limit of Off-Site Stormwater Improvements

Section 2 of S.L. 2023-137 (H.B. 600) adds a new subsection (c7) to G.S. 143-214.7. The new statute prohibits DEQ from requiring an applicant to take action on an unaffiliated adjacent property or conditioning issuance of a permit on action to be taken on an unaffiliated adjacent property.

3. Stormwater Fees

Municipal and county stormwater fees are authorized by G.S. 160A-314(a1) and 153A-277(a1), respectively. Each of those statutes allows governments to vary fees based on the type of land use (residential, commercial, or industrial), size of property, amount of impervious surface, and other factors. Section 3 of S.L. 2023-137 (H.B. 600) adds a new factor to that list: "stormwater control measures in use by the property."

12. G.S. 143-217.7(b2)(2).

4. Exemption from Stormwater Requirements for Certain Public Linear-Transportation Projects

Section 4 of S.L. 2023-137 (H.B. 600) requires the Environmental Management Commission to adopt and implement rules so that "[p]ublic linear transportation projects undertaken by an entity other than the North Carolina Department of Transportation or a unit of local government, which are part of a common plan of development, shall be exempt from the requirements of the Post-Construction Stormwater Rule."

5. Choice of Sedimentation-and-Erosion-Control Authority for Airport Authorities

For airports that are wholly or partly located in a county with a population greater than 250,000 (Buncombe, Cumberland, Durham, Forsyth, Guilford, Mecklenburg, Wake, and possibly Union), S.L. 2023-53 (S.B. 240) allows the airport authority to elect to be regulated by the local sedimentation-and-erosion-control program rather than the state Sedimentation Control Commission. To do so, the airport authority must provide the Sedimentation Control Commission with a certified copy of a local government resolution accepting jurisdiction and must specify a date on which the local government program will assume jurisdiction. This act became effective on October 1, 2023.

6. No Denying Erosion-and-Sedimentation-Control Approval for Lack of Other Permits

Section 12.10(c) of the Appropriations Act (S.L. 2023-134 / H.B. 259) prohibits local governments from basing denial of an erosion-and-sedimentation-control plan solely on the applicant's needing to obtain other environmental permits. At the same time, it *requires* local governments to condition approval of a plan on obtaining other environmental permits or authorizations.

H. Various Water-Quality Changes

1. Limit on Penalties for Removing Timber from Riparian Buffers

Section 11.1(a) of the farm bill, S.L. 2023-63 (S.B. 582), limits the amount of civil penalty that can be assessed for removing timber from riparian buffers. This rule, which became effective July 1, 2023, limits the amount of a civil penalty assessed by the state to the value of the timber removed from the buffer.

2. Aquaculture-Permit Rollback

Section 14.1 of the farm bill, S.L. 2023-63 (S.B. 582), directs DEQ to reopen and modify the aquaculture general permit for surface-water discharges. Specifically, it directs DEQ to replace the current version of General Permit NCG530000 (effective December 1, 2021) with a version "substantively identical" to the prior NCG530 permit, which expired March 20, 2021.

I. Additional Environmental Changes

1. Coastal Area Management Act Policy Must Be Written

Section 12 of S.L. 2023-137 (H.B. 600) amends G.S. 113A-107, requiring the state to make guidelines adopted under the Coastal Area Management Act publicly available and for each guideline to cite the law authorizing it. Additionally, the law amends G.S. 113A-110 to require that local land-use plans under the Coastal Area Management Act consist of *written* statements of objectives, policies, and standards. Furthermore, any denial of a permit must tie to those written state guidelines and local land-use plans.

2. DEQ Must Cite Authority for Permit Conditions

Section 13 of S.L. 2023-137 (H.B. 600) adds a new G.S. 143B-279.4A to require that DEQ "shall include in any permit issued by the Department the statutory or regulatory authority for each permit condition required by the Department."

3. Nutrient-Offset Banks Owned by Local Governments

Section 16 of S.L. 2023-137 (H.B. 600) amends G.S. 143-214.26 so that, going forward, local governments cannot sell nutrient-offset credit to private entities; they may only sell to other government entities. This does not apply to instruments approved by DEQ prior to the effective date of this session law.

VII. Agricultural Uses

The 2023 farm bill, S.L. 2023-63 (S.B. 582), which was approved over a gubernatorial veto, makes a number of changes to agriculture, land-use, and water-quality laws. In addition to the provisions discussed below and elsewhere in this bulletin, the bill addresses many different subjects. Among them are promoting muscadine grape juice, modifying timber-larceny and prescribed-burning laws, establishing a state equine trail in south-central North Carolina, identifying the longleaf pine to represent the pine tree for purposes of North Carolina's state tree, exempting certain well contractors from certification, and replacing the scuppernong grape with the muscadine grape as the official state fruit. However, this review does not address those sections that do not relate directly to land use or environmental regulation.

Various portions of Section 1 broaden the scope of covered farm uses for certain purposes:

- Section 1 allows income from honey sales to be used to meet the income requirement for property to be considered agricultural land for purposes of present use tax valuation.
- Section 1.1 clarifies that recycling turkey-brooder litter is a bona fide farm use for purposes of the zoning exemption in G.S. 160D-903.
- Section 1.5 amends the definition of *agriculture* to include areas where pine needles are harvested and to include biofuel production for commercial sale.

Section 2 allows farm-related signs to be placed along state-highway rights-of-way. It does so by adding a subsection (b1) to G.S. 136-32 and modifying subsection (c), which permits and regulates the placement of commercial and political signs along state rights-of-way. Farm signs are now allowed along these rights-of-way if the sign advertises a bona fide farm, advertises a bona fide farm's products or services, or provides directions to a bona fide farm. Sign parameters are the same as those in the existing G.S. 136-32.

VIII. Local Bills

The General Assembly passed a variety of local bills altering the scope and substance of authority for specific local governments.

A. Maggie Valley Extraterritorial Jurisdiction and Moratoria

S.L. 2023-99 (H.B. 184) suspends several areas of development regulatory authority for the Town of Maggie Valley. Section 1 removes all of the town's extraterritorial jurisdiction. Section 2 prohibits the town from enacting development moratoria, and Section 3 alters the definition of *down-zoning* as it applies to Maggie Valley. It adds to that definition zoning ordinances that include requirements or conditions that hinder development that would otherwise be allowed. The act became effective when it became law on July 13, and expires January 1, 2028.

B. Leland Annexation Authority

On the same day that the General Assembly ratified S.L. 2023-99, it ratified House Bill 267, which is now S.L. 2023-100. That bill, which initially was only a deannexation of a parcel on Avent Ferry Road from the Town of Holly Springs, also suspends all annexation authority for the Town of Leland, except for petitions executed on or before March 1, 2023.

C. Capitol-Area Zoning

Section 20.5(a) of the Appropriations Act, S.L. 2023-134 (H.B. 259), exempts from local development regulation all projects managed by the State Construction Office on state-owned and UNC-institution-owned property in Wake County, as well as all projects managed by the Legislative Services Commission. The State Construction Office or Legislative Services Commission still must consult with the appropriate jurisdiction with regard to infrastructure implications, traffic, landscaping, or local environmental regulations. The exemption does not apply to Capitol Square projects, which remain governed by G.S. 143-345.5.

D. Dare County Affordable Housing

Section 24.8 of the 2023 Appropriations Act, S.L. 2023-134 (H.B. 259), exempts certain Dare County affordable-housing projects from all zoning and subdivision regulations. Funds for these units were allocated to Dare County by last year's appropriations bill, S.L. 2022-74. The county and several municipalities disagreed regarding the siting of the proposed developments, and the municipalities denied various development approvals to the affordable-housing projects.

IX. Building Code

A. Changes to the Residential Code

1. Residential Code Council

In 1933 the North Carolina General Assembly created the Building Code Council with authority to prepare and adopt the State Building Code, in conjunction with the commissioner of insurance. For decades the Building Code Council oversaw the State Building Code, including the general building code, residential building code, and the codes for the specific trades such as electrical engineering, plumbing, and fire prevention.

In 2023, the North Carolina General Assembly took some responsibilities from the long-standing State Building Code Council and assigned them to a newly formed Residential Code Council. S.L. 2023-108 (H.B. 488) establishes the new council, describes its duties, and makes necessary edits to align the applicable statutes.

The new council will have thirteen members, seven appointed by the governor and six appointed by the General Assembly (three at the recommendation of the speaker of the house and three at the recommendation of the president pro tempore of the senate). The statute specifies certain expertise and experience for the various appointees. Members will serve staggered six-year terms. The governor appoints the chair.

As for purposes and authority,

> [t]he Residential Code Council shall review and consider any proposal for revision or amendment to the North Carolina Residential Code, including applicable provisions from the North Carolina Energy Conservation Code, North Carolina Electrical Code, North Carolina Fuel Gas Code, North Carolina Plumbing Code, North Carolina Mechanical Code, North Carolina Existing Building Code, and any other code applicable to residential construction.[13]

Additionally, the Council will consider any appeals or interpretations pertaining to the North Carolina Residential Code.

2. Scope of Residential Code

As previously crafted, the Residential Code applied to one-family and two-family (duplex) homes. It was the North Carolina State Building Code: Residential Code for One- and Two-Family Dwellings. Section 9 of S.L. 2023-108 (H.B. 488) expands that to include three-family (triplex) and four-family (quadplex) dwellings. The new law instructs the Building Code Council to adopt rules accordingly.

3. Energy Conservation

Section 8 of S.L. 2023-108 (H.B. 488) prevents the Building Code Council from adopting rules to amend Chapter 11 (*Energy Conservation*) of the Residential Code and from adopting any new provisions relating to energy conservation or efficiency.

Additionally, as required by Section 1(a) of S.L. 2023-108 (H.B. 488), G.S. 143-138(d) states that

> [a]fter its appointment pursuant to G.S. 143-136.1, the Residential Code Council shall review the North Carolina Energy Conservation Code, the North Carolina Fuel Gas Code, and the North Carolina Mechanical Code and may amend the relevant chapters of the North Carolina Residential Code, affected by that review, by January 1, 2026.

4. Energy Sources and Appliances

S.L. 2023-58 (H.B. 130) limits local government authority to prohibit particular energy sources. The new G.S. 160A-203.3 and G.S. 153A-145.11 prevent municipalities and counties from prohibiting connection to an energy service based on the source of energy and from prohibiting the sale, purchase, or installation of appliances. In other words a North Carolina local government cannot prohibit natural-gas connections or natural-gas appliances. The new statutes clarify that a local government may still choose the energy sources used for local government properties, charge fees for reviewing and issuing permits, and manage and operate local-government-owned utilities.

13. S.L. 2023-108, sec. 1.(a), § 143-136.1(d).

B. Commercial and Multifamily Building Projects, Expedited and Third-Party Permitting

1. Summary

S.L. 2023-142 (S.B. 677) creates a new statute, G.S. 160D-1110.1, governing commercial and multifamily building permits. The new rules apply to commercial and multifamily building permits with plans and specifications that are complete and sealed by a licensed engineer or architect. The new rules take effect July 1, 2024.

2. Presubmittal Meeting

Local government must provide the option for a presubmittal meeting "to discuss a building project and to determine whether the permit applicant possesses necessary plans and sufficient information the local government would require for building permit plan review." The presubmittal meeting must be scheduled within five business days of the request.

The applicant is eligible to request a presubmittal meeting under the following circumstances:

> (1) The project plans and specifications for a building project are complete and sealed for construction, as applicable, by a professional engineer licensed under Chapter 89C of the General Statutes or an architect licensed under Chapter 83A of the General Statutes.
>
> (2) The project plans and specifications for a building project are substantially identical to those that the permit applicant would submit with the building permit application.
>
> (3) The building permit applicant has made best efforts to compile and prepare documents required by a local government, and other State or federal agencies, for the building project.
>
> (4) The building permit applicant has determined whether an at-risk permit option will be utilized in accordance with subsection (h) of this section.[14]

3. Shot Clock for Permit Decision

For eligible applications, the local government must complete its review and issue a decision within forty-five days of submission, unless the applicant and local government agree to additional time. If the local government receives, at its request, additional information or a resubmitted plan, it then "has up to 10 additional days to issue a building permit decision."[15]

If the local government has issued an at-risk permit (discussed below), then the deadline for issuing the building permit is sixty days.

4. Third-Party Plan Review

S.L. 2023-142 (S.B. 677) provides that licensed engineers and registered architects who are certified under G.S. 143-151.13(f) may, in certain circumstances, provide independent third-party review of commercial and multifamily construction plans.

G.S. 143-151.13(f) already provided that the North Carolina Code Officials Qualification Board shall issue a standard certificate for building code enforcement to certain licensed professionals that complete a required short course on the State Building Code and code-enforcement administration. Those professionals include registered architects, registered professional engineers, and certain licensed contractors. S.L. 2023-142 (S.B. 677) adds a subsection (g) to G.S. 143-151.13 to state that architects and engineers certified under subsection (f) may provide third-party plan review for commercial and multifamily building projects.

14. S.L. 2023-142, sec. 2.(a), § 160D-1110.1(b)(4).
15. *Id.*, sec. 2.(a), § 160D-1110.1(c).

Under the new G.S. 160D-1110.1, established by S.L. 2023-142 (S.B. 677), local governments may contract with a licensed engineer or architect certified under G.S. 143-151.13(f) to perform independent third-party plan review of commercial and multifamily development. The third-party review must still comply with applicable timelines for review.

If a local government begins plan review and fails to complete it within the time required (the deadline has passed or the local government has determined it cannot meet the timeline), a permit applicant may elect to contract for an independent third-party plan review by a licensed engineer or architect certified under G.S. 143-151.13(f).

The local government shall create a form for certification by a third-party reviewer, and when an applicant opts for third-party review, the applicant must submit to the local government a written certification signed by the reviewer.

Third-party plan reviewers must not have conflicts of interest in conducting reviews. Conflicts of interest include any financial interest or employment relationship with the project or any involvement in making the plans.

> [A] plan reviewer having any financial interest in, or being employed, other than as a plan reviewer under this section, by a business that has a financial interest in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of, or any involvement in the making of plans or specifications for, the project subject to plan review.[16]

5. At-Risk Permits

If an applicant completes a presubmittal meeting for an eligible development, the applicant may request certain permits as *at-risk building permits*.

An applicant may request an at-risk building foundation permit at the time of general-permit application. The local government *must* issue the at-risk building foundation permit if the applicant has (1) submitted all necessary plans and information, as discussed at the presubmittal meeting, and (2) received all approvals necessary to lay the foundation ("notwithstanding that other development approvals from the local government, or other State or federal agencies, for the project have not yet been obtained"). The "approvals necessary" include approval of an erosion and sedimentation control plan for land disturbing activity, but an applicant is not obligated to have obtained other development approvals that may be necessary for the overall development.[17]

An applicant may request an at-risk building structure permit once the applicant has obtained the at-risk foundation permit. A local government *may* issue an at-risk building structure permit if the applicant has (1) submitted all necessary plans and information and (2) received all approvals necessary to build the structure ("notwithstanding that other development approvals from the local government, or other State or federal agencies, for the project have not yet been obtained"). An at-risk building structure permit is for "the erection and installation of structural or framing members for exterior walls and roof assemblies."[18]

For at-risk permits, the applicant assumes all liability and the local government is released from liability for review, approval, and construction pursuant to the at-risk permit.

16. *Id.*, sec. 2.(a), § 160D-1110.1(g).
17. *Id.*, sec. 2.(a), § 160D-1110.1(h)(1).
18. *Id.*, sec. 2.(a), § 160D-1110.1(h)(2).

An at-risk permit does not count as an "initial development permit" for purposes of vesting and multiple permits under G.S. 160D-108(e).

If a local government required manufacturer specifications or engineering information for an element, component, or fixture, the local government may not delay or deny the issuance of the building permits based on receipt of the requested specifications or engineering information.

6. Erosion and Sedimentation Control

Section 2 of S.L. 2023-142 (S.B. 677) adjusts the rules for erosion-and-sedimentation-control plans to align with the streamlined review of commercial and multifamily building projects. G.S. 113A-61 is amended to state that a local government shall "not deny a draft erosion and sedimentation control plan based solely upon the applicant's need to obtain other development approvals [as defined] for the project."[19] The local government may still condition approval upon compliance with applicable state and federal regulations.

G.S. 160D-922 is amended to state that once a local government approves an erosion-and-sedimentation-control plan, the plan holder is allowed to begin land-disturbing activity in accordance with G.S. 160D-1110.1(h) and the approved plan. The plan holder does not have to wait for other development approvals from the local government. The erosion-and-sedimentation-control plan does not count as an initial development permit under G.S. 160D-108(e).

C. Other Building Code Changes

Besides creating the Residential Building Code Council, S.L. 2023-108 (H.B. 488) and other legislation made broad and technical changes to the State Building Code, including insulation standards for unvented attics, implementation of the Appendix B Building Code Summary for All Commercial Projects, and others.

1. Threshold Amount for Building Permits and General Contractors

The threshold amount to require a general contractor and to require a building permit was increased to $40,000. Pursuant to Section 2 of S.L. 2023-108 (H.B. 488), relevant statutes are amended to increase the threshold to $40,000.

2. Single Residential Building Permit

Local governments must not "[r]equire more than one building permit for simultaneous projects at the time of the application located at the same address and subject to the North Carolina Residential Code."[20] G.S. 160D-1110(d) is amended by Section 2 of S.L. 2023-108 (H.B. 488) to add that limitation.

3. Routine Sheathing Inspections

Section 4 of S.L. 2023-108 (H.B. 488) adds language to G.S. 143-138(b23) and 160D-1102(d) stating that neither the building code nor local rules may require "routine exterior sheathing inspections for structures or dwellings . . . located in a region where the ultimate wind speed is less than 140 miles per hour."

19. S.L. 2023-142, sec. 2.(d), § 113A-61(b1).
20. S.L. 2023-108, sec. 2.(f), § 160D-1110(d)(2).

4. Temporary Movie Sets

Temporary movie sets were already exempt from most building code requirements. S.L. 2023-91 (H.B. 782) expands and clarifies that exemption. Under the revised G.S. 143-138(b20), "[b]uildings used for temporary motion picture, television, and theater stage sets and scenery are exempt from use and occupancy classification under the North Carolina State Building Code." No building permit is required. Additionally, under prior law the fire inspector had to inspect such temporary movie sets. The new legislation strikes that inspection from the statute.

5. Elevators in Residential Rental Accommodations

S.L. 2023-68 (H.B. 608) makes technical changes to the specifications for elevators in residential rental accommodations outlined at G.S. 143-143.7, and calls for the Building Code Council to adopt rules accordingly.

6. Piers and Docks

Section 35 of S.L. 2023-137 (H.B. 600) reverts building code rules for piers and docks to 2009 standards.

X. Code Enforcement

A. City Authority to Remove Abandoned Vessels

Certain North Carolina counties already had authority at G.S. 153-132 to regulate abandonment of vessels in navigable waterways and to remove and dispose of abandoned vessels. S.L. 2023-27 (S.B. 465) extends that authority to cover all counties and adds a new statute, G.S. 160A-205.6, to grant the same authority to municipalities.

XI. Renewable Energy

A. Solar Decommissioning, S.L. 2023-58, H.B. 130

S.L. 2023-58 (H.B. 130) adds a new statute, G.S. 130A-309.240, requiring owners of utility-scale solar projects to decommission their project upon the end of operation. A utility-scale solar project is "a ground-mounted [photovoltaic (PV)], concentrating PV (CPV), or concentrating solar power (CSP or solar thermal) project capable of generating 2 megawatts AC (MW AC) or more."[21] Qualifying projects must be connected to the electrical grid. The term does not include facilities owned or leased by retail electric customers for their own use or for net metering.

1. Decommissioning Requirement

Upon cessation of operations, the owner of the project must decommission the project and restore the property. The owner must notify the DEQ within thirty days of cessation and describe the steps to be taken, including at a minimum

- disconnection from the power grid,
- removal of all equipment,

21. S.L. 2023-58, sec. 2.(a), § 130A-309.240(a)(6).

- reuse or recycling of materials,
- disposal of materials that cannot be reused or recycled (i.e., removal of nonhazardous materials to an industrial or municipal landfill and disposal of hazardous materials in accordance with hazardous-waste requirements), and
- restoration of the property to the condition it was in before the project or an alternative condition agreed to in a contract or lease with the landowner.

2. Decommissioning Plan

Owners of utility-scale solar projects must submit a decommissioning plan to DEQ for approval. Such plans must be prepared, signed, and sealed by a professional engineer licensed in North Carolina and include the following: contact information for the project owner and landowner, a narrative description of decommission, information on material to be salvaged and estimated salvage value, a description of steps to restore the property after decommissioning, a cost estimate of decommissioning and restoration, the mechanism of financial assurance, and details for the financial assurance.

3. Financial Assurance

Owners of utility-scale solar projects must establish financial assurance in an amount acceptable to DEQ to ensure sufficient funds are available for decommissioning and restoration. The statute lists several options for financial instruments, including insurance, third-party guarantees, letters of credit, and surety bonds. The owner of the project must maintain financial assurance until decommissioning and restoration is complete. The owner of the project must document the financial assurance at the time of registration and at each five-year update. The statute requires DEQ to adopt rules with criteria for setting the amount of financial assurance, among other rules to implement that law.

4. Registration

Owners of utility-scale solar projects must register with DEQ and update the registration every five years. After the effective date of the law (November 1, 2025), registrations must be filed at least ninety days prior to commencing construction on a new or expanded project. Registration must include identification of the owner and any other legal entity responsible for decommission and financial assurance, summary of the project equipment subject to decommissioning (including identification of per- and poly-fluoroalkyl substances and hazardous materials), project timeline, estimated costs of decommissioning and restoration, proposed financial assurance, any decommissioning plan or financial assurance established pursuant to local requirements or agreement with the landowner prior to registration, and any other requirements by DEQ. DEQ must collect fees at the time of registration and of each periodic update, and it must apply those funds to the cost of administering the program. In addition to the registration requirement, the Utilities Commission must create and maintain a list of all utility-scale solar projects and provide an updated list annually to DEQ.

5. Local and Contract Requirements

The local government may establish more stringent requirements for decommissioning and financial assurance. Similarly, landowners may impose more stringent requirements.

6. Financial Support

DEQ must identify existing incentive and grant programs to research module recycling and reuse and to support the module-recycling-and-reuse industry. Additionally, the law created the Utility-Scale Solar Management Fund, funded by fees imposed on project owners.

7. Effective Dates

The requirements for decommissioning and registration are effective November 1, 2025, and apply to all utility-scale solar projects constructed before or after that date. The requirements for decommissioning plans and financial assurance are effective November 1, 2025, but those requirements apply only to existing projects that are rebuilt or expanded, as defined, and new projects for which applications for certificates of public convenience and necessity are pending or submitted on or after June 26, 2023.

B. Disposal of Photovoltaics

Section 18 of S.L. 2023-137 (H.B. 600) amends G.S. 130A-309.1 to require that photovoltaic modules be disposed in industrial landfills or municipal solid-waste landfills. They must not be disposed in unlined landfills.

C. ~~Renewable~~ Clean Energy Portfolio Standards

S.L. 2023-138 (S.B. 678) changes utility regulations to allow nuclear energy to count toward required portfolio standards. What had been *renewable*-energy and energy-efficiency portfolio standards are now *clean*-energy and energy-efficiency portfolio standards, and nuclear energy is defined as a clean-energy resource.

In 2007, North Carolina became the first state in the Southeast to adopt renewable energy portfolio standards.[22] The law set requirements for energy utilities to meet a certain percentage of energy needs through renewable-energy or energy-efficiency measures. *Renewable energy resource* was defined to include a range of sources, including solar power, wind power, hydropower, biomass, waste heat, and more. The term specifically excluded peat, fossil-fuel, and nuclear energy. S.L. 2023-138 (S.B. 678) changes that. The new clean energy portfolio standards allow nuclear to count toward required portfolio standards.

XII. Other Notable Legislation

A. Sports Wagering

House Bill 347, now S.L. 2023-42, legalizes wagering on sports in North Carolina, but with significant restrictions on where and how that activity can occur. The core of this session law is a new Article 9 ("Sports Wagering") of Chapter 18C of the General Statutes. This new law allows individuals to place bets on sporting events, portions of sports events, and individual-participant statistics. It allows a variety of bets, including parlays, over-unders, in-game bets, moneyline bets, and beyond. These are described in more detail in the new G.S. 18C-901(19). The law also amends other gambling-related statutes in Chapters 14 and 16, as well as ABC statutes, to be consistent with the legalization of sports wagering in the state.

22. N.C. Util. Comm'n, *Renewable Energy and Energy Efficiency Standard (REPS)*, NCUPC.gov (last visited Jan. 7, 2024), https://www.ncuc.gov/Reps/reps.html.

There are a number of exceptions to the sports-wagering system. It does not apply in any way to fantasy sports, and leaves open how those might be regulated (if at all) by other laws. It also explicitly prohibits wagering on youth sports, injury occurrence, penalty occurrence, and the outcomes of disciplinary proceedings or replay reviews.

The law creates an entire regulatory framework for sports wagering, including a licensing system, the use of revenues, who can be licensed, how wagering accounts must work, and similar topics. Those interested in the intricacies of those systems are encouraged to study the session law, as a complete analysis is beyond the scope of this publication.

This law will be effective January 8, 2024, but Section 11.8 of the appropriations act (S.L. 2023-134) gives the Lottery Commission permission to set a date between January 8 and June 15, 2024, for the actual beginning of authorized sports wagering.

Of most interest to land use regulation are the regulations around where betting can take place. The law limits betting to two types of location: "sports facilities" and "places of public accommodation."

1. Sports Facilities

New General Statute 18C-901(17), as revised by Section 11.18 of the appropriations act (S.L. 2023-134), defines *sports facility* to include NASCAR tracks, hosts of major golf tournaments, and home facilities of professional sports teams at the highest level of competition.

2. Places of Public Accommodation

New General Statute 18C-926 allows permanent "places of public accommodation" (presumably sportsbooks or betting windows) to be established on the property of a sports facility. A golf tournament can also have a temporary place of public accommodation on site if it does not have a permanent one. The law also allows up to one place of public accommodation to be on other property owned or controlled by the owner or operator of the sports facility within a half-mile radius of a NASCAR or pro-team sports facility, and no more than one place of public accommodation within one and a half miles of a golf-tournament site.

A revision to the law included in the appropriations act (S.L. 2023-134, Section 11.18) also requires facility owners and operators to commit to working with a single wagering operator. Specifically, a sports wagering operator must enter into a "designation agreement" with a major-league pro sports team, the owner or operator of a NASCAR or pro-golf facility, a sports governing body that sanctions multiple NASCAR races per year, or a sports governing body that sanctions more than one professional golf tournament per year. If the wagering operator breaks its contract, it can lose its license. However, each team, track, course, or governing body may not enter into a designation agreement with more than one wagering operator.

The law also addresses horse racing and sets up a new fund to attract major events. Section 3 of the law adds an Article 10 to General Statutes Chapter 18C to cover pari-mutuel wagers on live or simulcast horse races. It also requires the Lottery Commission to adopt rules governing horse racing in the state, including rules regarding bets on simulcast horse races. The statute does not appear to include the same location restrictions as apply to sports-betting places of public accommodation, although establishments must be licensed by the Lottery Commission.

B. Grants for Local Government Development Assets

Among the items of legislation contained in the 625-page 2023 Appropriations Act (S.L. 2023-134 / H.B. 259) are several additional grant opportunities for local governments. These include the following:

1. Megasite Fund Grants

Section 11.11 allows for two additional megasites in the state, adds the semiconductor industry, allows Megasite Fund grants to be used for due diligence and infrastructure planning, and allows certain public records to be withheld.

2. Grants for Parks and Trails

Section 14.4 provides 5:1 matching grants for improving accessibility at parks and recreational facilities, and Section 14.6 also starts a "Great Trails Fund" that can be accessed by local governments, regional councils of government, and other entities.

3. Fund for "Major Events"

In addition, the sports-betting legislation (S.L. 2023-42 / H.B. 347) creates a new Major Events, Games, and Attractions Fund, to be administered by the Department of Commerce and to be funded by the tax on sports wagering. This fund will be used to retain or attract "major events." The statute defines *major event* as an entertainment, musical, political, sporting, or theatrical event that

- will be held at a sports facility or other significant indoor venue (as described in the new law), or will be sponsored by NASCAR, the Ladies Professional Golf Association, the Professional Golfers' Association of America, the PGA Tour, or the US Golf Association;
- is held no more often than annually; and
- for which a site in North Carolina was chosen over sites outside the state through a competitive process.

Major events thus might include major concerts, political conventions, all-star games, golf tournaments, and international sporting events, to name a few. The awarding of these grants will depend on criteria such as economic activity, positive media exposure, total benefits, and the necessity of the grant to keeping the event in North Carolina.

C. Proposed Legislation

The bills discussed below were proposed during the 2023 Long Session but have not been ratified by the General Assembly as of this bulletin's publication.

1. S.B. 675 Land Use Clarification and Changes

Although it stalled in committee in June 2023, Senate Bill 675 contained a number of proposed changes to land-use regulatory authority that could return to consideration in later sessions. These proposed changes included the following:

- a new provision which would have required all zoning ordinances to allow public school buildings to be permitted (by right or as special use) in commercial zoning districts;
- a clarification that obtaining one vested right does not preclude or extinguish another vested right related to the same property;

- a clarification that where special use permits expire without vesting, the existing zoning classification applies; and
- removal of extraterritorial jurisdiction for counties with populations of 50,000 and below, along with a prohibition on new areas of extraterritorial jurisdiction.

2. S.B. 692 Various Changes to Education Laws

Senate Bill 692, which includes a number of education-related provisions, also would allow public schools by right in commercial zoning districts (similar to Senate Bill 675).

It also would allow public, parochial, and other private schools by right in all residential districts under very particular circumstances. Among these limitations are requirements for county size and population that only Union, Buncombe, Cumberland, Gaston, Guilford, Forsyth, Durham, Wake, and Mecklenburg Counties would meet.