



## TOP 10 NCHBA LEGISLATIVE ACCOMPLISHMENTS IN THE 2018 SESSION

### A. Pro-Active Accomplishments

#### 1. [HB 948 \(Building Code Regulatory Reform\)](#) Session Law 2018-29

NCHBA's top session priority arose from the work of the interim House Select Committee on Implementation of Building Code Regulatory Reform Legislation which NCHBA was instrumental in creating and before which NCHBA testified on several occasions. Key provisions of the new law include:

- Creates a statutory basis for the "inspector marketplace pool" of fully credentialed, retired Code enforcement officials within the Department of Insurance (DOI) and provides builder access thereto whenever the builder demonstrates that a requested inspection from a local department has not been provided within two (2) business days of the request. The DOI would charge the builder for the inspector's time (set at \$30 per hour for the inspection service plus mileage at the state rate) but the builder would recoup a portion of the permit fee previously paid to the local jurisdiction for the inspections it failed to provide. Any claims for negligent inspection by the marketplace inspector would fall on the state. This provision becomes effective on 08/01/18.
- Clarifies the 2015 law which allows a licensed architect or engineer to design and inspect an element or component of a building by providing that local jurisdictions must accept reports from these professionals with no further approval or authorization and that electronic or physical delivery of these reports must be promptly acknowledged by the local inspection department.
- Establishes new reporting requirements for local governments to ensure compliance with another provision of the 2015 law requiring that inspection fees may only be spent to support the administration and activities of the inspection department "and no other purpose".
- Enacts other provisions designed to assist local governments including the ability to enter into mutual aid contracts; allows the Code Officials Board to grant a provisional 3-year standard certificate to officials who are certified and in good standing in another state or by the ICC; and would reduce the number of continuing education hours needed to reactivate an inactive certificate.
- Requires copies of building frame inspections finding fifteen (15) or more separate code violations be submitted to the DOI in order to assess whether this is widespread problem and, if so, to recommend an appropriate response. The reporting requirement becomes effective 07/01/18 and sunsets on 10/01/19 with a report due to the General Assembly by DOI by 12/31/19.

**Key Legislators: Representatives Mark Brody (R-Union), Dennis Riddell (R-Alamance), Carla Cunningham (D-Mecklenburg) and Larry Potts (R-Davidson); Senator Rick Gunn (R-Alamance)**

#### 2. [SB 715 \(Various Changes to Revenue Laws\)](#) enacted in SB 99 (Appropriations Act of 2018) Session Law 2018-5

NCHBA sought this final fix to the sales tax on labor issue which had been requested by scores of our members who perform repair, maintenance and repair (RMI) services. Previously, NCHBA was instrumental in exempting all new construction and most remodeling from the sales tax on labor. This final fix will allow contractors who pay sales tax on materials for an RMI project at the retail level to receive credit on the sales tax remitted to the Department of Revenue in lieu of the prior requirement to obtain the materials by an exemption certificate. RMI

contractors will continue to charge customers sales tax on the entire project (i.e., material, labor and profit) but will be able to deduct the sales tax paid on materials from the sales tax remitted to the state.

**Key Legislators: Representatives Bill Brawley (R-Mecklenburg), Jason Saine (R-Lincoln), Representatives John Szoka (R-Cumberland); Senators Tommy Tucker (R-Union), Jerry Tillman (R-Randolph)**

**3. [HB 826 \(Clarify System Development Fees\)](#) Session Law 2018-34**

In August 2016, the Supreme Court of North Carolina decided the Quality Built Homes v. Carthage case. The court struck down the town's impact fees for water and sewer services to be furnished in the future calling into question similar fees in other jurisdictions. NCHBA participated in this case by filing an *amicus* brief on behalf of the builder. As refund lawsuits began to be filed across the state, the local government associations sought legislation to limit the liability of their members and to obtain the authority to legally impose fees for future water and sewer availability services. The legislative leadership asked NCHBA to work with these groups to see if a compromise was possible.

Last year, after months of negotiation, a deal was struck which provides authority for local governments to impose lawful water and wastewater capacity fees in the future but under a new structure which has clear standards and limitations. The responsibility for paying for future water and wastewater capacity will be shared between the development community and existing customers unlike the situation that previously existed in a number of jurisdictions. The bill also creates a three-year statute of limitations for refund lawsuits for the recovery of any unlawful fee collected by a unit of local government for water or wastewater services.

This year, HB 826 was utilized to clarify several provisions of the 2017 law. First, it amends the planning horizon for the capacity fee calculation from not less than 10 years to 5 years. Second, it allows system development fees to be paid at plat approval or allocation of services whichever is later. Third, it clarifies that these fees can be used to secure revenue bonds for water and wastewater systems. Finally, it requires the Environmental Management Commission to study and update water and wastewater use numbers for homes which have not been updated for more than a decade and do not account for current construction techniques which use significantly less water. Accurate water usage assumptions are an important factor in the proper calculation of system development fees under the new law.

**Key Legislators: Senator Paul Newton (R-Cabarrus); Representative Dennis Riddell (R-Alamance)**

**4. [HJR 1099, SJR 818 \(Confirm Robert J. Harris/Industrial Commission\)](#)**

For more than three decades, NCHBA has been a leader of the business community in legislative and regulatory efforts to reform the workers' compensation system administered by the NC Industrial Commission (IC). In reform legislation enacted in 2011, NCHBA insisted on including legislative confirmation for appointments by the Governor to the IC because it was then very much out of balance. Subsequently, this process has worked well and resolved the imbalance. However, in early February, the Governor nominated Mr. Harris to an employer seat which his record as a deputy commissioner did not support. Consequently, NCHBA and other business groups opposed and testified against his confirmation. Both bodies of the General Assembly rejected his nomination in separate votes (House 74-40; Senate 38-8).

**Key Legislators: Representative Nelson Dollar (R-Wake), David Lewis (R-Harnett); Senator Bill Rabon (R-Brunswick)**

**5. [HB 573 \(Business/Regulatory Changes\)](#) Session Law 2018-65**

It directs the State Building Code Council to provide an exemption from the requirements contained in the residential energy codes for detached and attached garages located on the same lot as a dwelling. This provision will save builders significant sums in unnecessary energy requirements for this non-living space which can be

passed along to future homebuyers. Another provision allows wastewater systems to be installed within 50 feet of a well (instead of the current 100-foot setback) thus allowing builders to build homes on smaller lots.

**Key Legislator: Senator Trudy Wade (R-Guilford)**

**6. [HB 374 \(Regulatory Reform Act of 2018\)](#)**

This bill contains a provision which allows a licensed soil scientist to inspect and determine that soil and land conditions have not been altered on a site where an onsite wastewater permit was previously issued has expired. Last year the General Assembly grandfathered permits whose five-year period expired due to inaction largely during the Great Recession. Grandfathered permits dating back to January 1, 2000, are deemed valid as long as the ground conditions remain unchanged. Some local governments misinterpreted last year's law and failed to allow work to proceed, thus requiring this additional legislative fix.

**Key Legislators: Senator Trudi Wade (R-Guilford); Representatives Dean Arp (R-Union), Rep. Dennis Riddell (R-Alamance)**

**B. Pro-Active Bills not enacted**

**7. [HB 507 \(Land Use Regulatory Changes\); SB 419 \(Planning/Development Changes\)](#)**

For the past two sessions, NCHBA has obtained House approval of HB 507 (HB 483 in 2015 Session) only to see the measure fail to be heard on the Senate floor. As passed the House, HB 507 contains several important reforms. It integrates the permit choice language of G.S. 142-755 (allowing an applicant to choose which version of a rule or ordinance applies if the rule or ordinance changes after the application is filed) with statutory vesting protections for landowners. It also eliminates the present ability of third parties to initiate rezoning requests and reserves this right exclusively to the landowner, its agent or local governments.

The bill allows certain land use claims (e.g., lack of authority, constitutionality, pre-emption, vesting or takings) to be filed directly in Superior Court without first bringing them to the Board of Adjustment. Another provision clarifies when attorneys' fees and costs may be awarded to a landowner who wins a lawsuit if a local government acts outside the scope of its legal authority. Awards would be mandatory whenever the local government violated a statute or case law setting forth unambiguous limits on its authority. It allows landowners to challenge unlawful conditions imposed by local governments by eliminating a defense that the landowner accepted the benefits of the action. It makes needed refinements to the performance guarantee reform legislation enacted in 2015, limits illegal conditions on special use permits and assures uniform application of DOT driveway regulations on state roads in municipalities.

A number of the provisions of this bill were strongly opposed by local government attorneys, local planners and a committee of the bar association who drafted SB 419. In an effort to get the bill calendared for Senate consideration, NCHBA agreed to remove several of the more controversial provisions. The reduced version, which still contained several important provisions, was given a favorable report by two committees of the Senate. While the bill was calendared for floor action, it was removed and sent back to committee when NCHBA refused to remove another key provision important to our members.

SB 419 has been squarely on NCHBA's radar for the past two sessions. It is the product of the bar association's zoning, planning and land use drafting committee. This more than 100-page bill seeks to "reorganize and clarify" the existing municipal and county planning and development provisions of Chapters 160A and 153A into a new Chapter 160A. While the bar committee has accommodated a number of our proposed revisions, there are still some issues in dispute. Consequently, the fate of these two bills became intertwined and when the Senate failed to move HB 507, the House chose not to move SB 419. Both of these bills will return in 2019.

**Key Legislator: Representative Jonathan Jordan (R-Ashe)**

## **8. [HB 457 \(Performance Guarantees/Subdivision Streets\)](#)**

The legislation, sought by the NCHBA and the N.C. Association of Realtors among others, creates a residual performance guarantee for streets located outside municipal jurisdiction, in developments approved on or after October 1, 2017 while creating a specific timeframe for the NC Department of Transportation (DOT) to accept county subdivision roads once they are completed. The legislation also requires DOT to accept subdivision roads offered for public dedication within subdivisions or developments approved on or after October 1, 2010. Finally, the bill would create a "County Public Street Information Database" on or before January 1, 2019. The information provided shall accurately convey the status of roads within the jurisdictional area. While this bill passed the House unanimously last April, the bill was never referred to a substantive committee in the Senate for consideration for the stated reason that DOT did not have the resources to take on the so-called "orphan roads" mandate in the bill.

**Key Legislators: Representatives John Torbett (R-Gaston), Frank Iler (R-Brunswick), Kelly Hastings (R-Gaston) and Phil Shepard (R-Onslow)**

## **C. Bills Successfully Stopped**

### **9. [Inclusionary Zoning; SB 300 \(Inclusionary Zoning/Durham\); SB 784 \(Affordable Housing Act\)](#)**

Inclusionary zoning is a controversial procedure touted by its proponents as a "solution" to the affordable housing crisis present in many fast-growing communities. As implemented in other states, it requires builders to set aside a percentage of units below market rate as a condition of zoning approval. For more than 30 years, NCHBA has successfully opposed legislation which would authorize inclusionary zoning in North Carolina. Last session, SB 300 was introduced as a local bill to authorize this procedure in both Durham County and its municipalities. As a result of our efforts, this bill was never referred to a substantive committee. This session, SB 784 as proposed, contained a provision to authorize all local governments across the state to impose such a requirement. However, before the bill was introduced, its sponsor, Senator Jay Chaudhuri sought our views on this topic and we were able to persuade him that this "solution" merely drives up the cost of the remaining units while actually exacerbating the very affordable housing problem that it purports to solve.

**Key Legislator: Senators Jay Chaudhuri (D-Wake)**

### **10. [HB 557 \(Mitigation Services Amendments\); HB 1018 \(Carteret County/Regulate Navigable Waters\)](#)**

Current law requires developers to purchase mitigation credits whenever development disturbs wetlands or other environmentally sensitive areas. The credits must be obtained from the private mitigation banks unless these banks are unable to provide the necessary credits in which case credits can be purchased from the state. HB 557 would have eliminated the state program without any assurance that credits would be available. For that reason, NCHBA successfully opposed this legislation and the bill was not heard. HB 1018 was a local bill which would have allowed all local governments in Carteret County the authority to regulate vegetation on private property and would have also allowed them to regulate the size and placement of piers, docks, boatlifts, pilings and floating platforms.

**Key Legislators: Former Representative Chris Millis (R-Pender) on HB 557 and Representative Pat McElraft (R-Carteret) on HB 1018**