City-initiated Annexation Reform and ETJ Changes

HB 845 – Annexation Reform; many others

Current Situation: Annexation Reform

In 2009, the League realized and worked to address the need for reform of the long-standing annexation laws when we proposed our "20 Point Proposal on Annexation," which would have addressed the majority of reasonable concerns and would have imposed restrictions on all annexations.

However, the proposal did not contain a petition or referendum of the annexed residents, which became the focus of the debate.

It is almost certain that North Carolina's successful city-initiated annexation statutes **will** be changed this session. A moratorium to stop all city-initiated annexations (**SB 27 – Involuntary Annexation Moratorium** (Brock, Newton, Goolsby)) has passed the Senate and remains in the House Rules Committee. **HB 9 – Involuntary Annexation Moratorium** (Dollar) remains in the House Judiciary Committee. Other bills, such as **HB 531** (Brown) and **SB 548** (Davis) would shut down all city-initiated annexations, given over-burdensome restrictions, and are totally unacceptable.

A moratorium, even if the legislation indicates a short period of time, would be extremely vulnerable to never-ending extensions, given the political and emotional climate surrounding the issue. This would be devastating for our communities, economic development and quality of life in North Carolina.

Given this fact, the League is advocating for reform instead of a moratorium.

The only viable alternative to a moratorium comes in the form of extremely strict reform — **HB 845 – Reform Annexation Laws** (LaRoque, Dollar, Owens). **HB 845** is extremely restrictive overall and has two major provisions of note. First, upon a simple majority of the annexed residents "opting in," the bill requires the annexing municipality to provide water and sewer lines and connections at **no cost** to the property owners who want it. Second, the bill includes a veto petition. If 60 percent of the real property owners in the annexed area submit an individual petition form, the annexation is voided and the municipality cannot adopt a resolution of consideration for that area for 36 months. There has been no required increase to services necessary in **HB 845.** A municipality would be required to provide "substantially the same" services as provided to current residents. Also, there are no changes to current law regarding contiguity and qualifications of an area to be annexed. The bill does allow for the annexation of doughnut holes (area surrounded on all four sides by municipal limits).

Local De-Annexation Bills

A number of bills were filed this session to de-annex areas across the state. The League is opposed to these de-annexation bills, unless the municipality specifically requested it. These bills usurp local authority, are very costly to taxpayers and place a cloud of uncertainty over annexations conducted according to existing law.

No Annexing of Farms/No Regulation of Farms in ETJs

Several bills have been introduced this session to stop annexation of bona-fide farms and/or to stop a municipality's ability to regulate farms in its extraterritorial jurisdiction (ETJ), unless the property owner specifically requests it. League staff has been working to lessen the impact of these bills by narrowing and/or clarifying language. **SB 380 – ETJ/Definition of Bona Fide Farm Purposes Property** (Jackson) exempts bona fide farms, as defined in the bill, that are located in a municipality's ETJ, from compliance with the municipality's zoning authority and building code enforcement. The bill passed Senate Ag Committee last week and is expected to pass the full Senate and move to the House. **HB 168** (Sanderson, Cleveland, Hill) exempts bona fide farms from city-initiated annexation and from ETJs. This bill passed the House and remains in Senate Government Committee. **HB 195 – ETJ/Clarify Definition of Bona Fide Farm** (McCormick, Hill, Dixon, Brubaker) exempts farms from ETJs and also prohibits annexation of them. This bill remains in House Government Committee.

OVER

Elimination of ETJs

HB 281 (LaRoque) would completely eliminate extraterritorial jurisdictions (ETJ) for municipalities wherever countywide zoning was in effect. If countywide zoning is not in effect, residents of the ETJ would be permitted to vote in municipal elections. The bill is in House Government.

Core Statement

The League wants to pass an annexation reform bill this year, but it must be fair to city residents and annexation area residents. We must allow for city-initiated annexations because they provide the continued management of balanced growth and economic development so crucial to our citizens' quality of life. Further, those who benefit from living near a city/town center should contribute to it.

A moratorium creates significant uncertainty for the future of annexation, given the very likely extensions that would come. A "temporary" moratorium has been in place in Virginia, for example, for 24 years. We have found **HB 845** to be our communities' only alternative this session.

The League opposes changes impacting the ability of our cities and towns to effectively regulate property within their ETJ. Proper zoning and building code enforcement is crucial to well-managed communities that are livable and can be enjoyed by all residents.

Member Message Points

- We are ready for real annexation reform, but please don't put so many restrictions in place that we are unable to effectively serve our citizens and manage our growth locally.
- Clearly, annexation remains a very valuable tool for North Carolina. If urbanized areas do not become part of the town, we would have a patchwork of problems (water/sewer, under-served areas with lack of proper fire and police protection, poor bond ratings, etc.) across the state. Also, our towns and cities could suffer from urban decay, becoming a place where people do not want to live or visit.
- Economic development and jobs have never been more critical to us. If we don't have strong communities, we can't attract corporate and small business investment. Annexation is one very important tool for economic development. Cities and towns are our job centers, with 85 percent of all jobs in North Carolina. (Use examples from your town.)
- **HB 845** is extremely restrictive and puts a huge cost burden on towns due to water/sewer cost responsibilities for all properties. However, it is better than being totally unable to annex. We believe a moratorium would get extended and would be very difficult to reverse. Plus, if we don't address the issue now, it could become much more politically and economically difficult to address it in the future.
- **HB 845** is only slightly better than no annexations at all. It cannot get any tougher or our cities and towns will die under the weight of it.
- Do you feel comfortable voting for it? What concerns do you have? Do you believe it will pass the House/Senate substantially intact?
- We are concerned about changes impacting the ability of our cities and towns to effectively regulate property within our ETJ. (Provide an example — i.e., hog farms.) Proper zoning and building code enforcement is crucial to well-managed communities that are livable and can be enjoyed by all residents.

Action/Next Steps

We expect **HB 845** to be heard in House Rules, House Finance and then go to the floor within the next two weeks.

In case of questions or feedback from legislators requiring follow up:

Kelli Kukura – 919-889-9040
Paul Meyer – 919-413-2901
Kim Hibbard – 919-931-9784

Extraterritorial Jurisdiction

SB 380 – ETJ/Clarify Definition of Bona Fide Farm (Jackson)
HB 195 – ETJ/Clarification of Bona Fide Farm (McCormick, Hill, Dixon, Brubaker)
HB 168 – Farms Exempt from City Annexation/ETJ/Zoning (Cleveland, Sanderson, Hill)
HB 281 – ETJ Restrictions (LaRoque)
SB 622 – Limit ETJ (Rouzer, Jackson)
HB 797 – Limit ETJ (Sagar, Dixon, Hill, Langdon)

Current Status

All of the above bills attempt to restrict city authority to regulate in the extraterritorial jurisdiction (ETJ) and all will create significant land use problems in the process of doing so. The most damaging of these is **HB 281**, which basically eliminates the ETJ when counties exercise zoning powers outside of the ETJ, and allows residents of the ETJ to vote and run for city council (likely unconstitutional) in counties where the county is not exercising its zoning powers. This bill has not yet been heard in the House Government Committee. **SB 380** eliminates municipal zoning and code enforcement of bona fide farms within certain limits, in the ETJ and will likely be on the Senate floor this week. **HB 168** recklessly creates land use loopholes by removing bona fide farms from the ETJ, irrespective of the proposed use — this bill has passed the House and awaits a hearing in the Senate. **SB 622** and **HB 797** both increase the degree of urbanization required to be in the ETJ and limits the municipality from including the land as part of its environmental impact on any watershed for regulatory or statutory purposes — neither have been heard in committee at this point.

Core Statement

These bills do significant harm to cities working to manage growth. Furthermore, these bills make involuntary annexations more challenging into the future by creating a patchwork quilt of land use practices in a given jurisdiction. In changing long-standing rules of land use controls in ETJs and within cities, these proposed bills will create inequity with existing landowners and lead to disputes between landowners over conflicts created by problematic land use practices.

Member Talking Points

- We are concerned that bills changing the rules in ETJs will allow landowners to skirt the law and set up problematic land uses in the ETJ, and the city would be unable to stop them — much to the regret of local citizens.
- The ETJ is key for our city to balance and manage growth in the local area. By shredding it with exceptions, we will see a mix of substandard development bordering on better development within the city limit, reducing property values generally.

Action/Next Steps

These bills will continue to move unless the leadership in both chambers begin to understand the real world impact of these ideas.

In case of questions or feedback from legislators requiring follow up:

Paul Meyer – 919-413-2901
Kelli Kukura – 919-889-9040

Billboards

SB 183/HB 309 – Selective Vegetation Removal/State Highways

Current Status

SB 183 (Brown) and **HB 309** (LaRoque, T. Moore, Crawford, Bell) are this year's version of the continued attempt by the billboard industry to eliminate all regulations which prevent drivers from viewing their signs more fully. The League has led a coalition opposing these bills. A significantly different, and much improved, version of **SB 183 – Selective Vegetation Removal/State Highways** (Brown) was approved by the Senate Transportation Committee on Wednesday. The conversion of existing signs to digital billboards by right is no longer in the bill; however, the bill intrudes on local interests by expanding the tree cut zone around billboards as follows:

(1) 380 feet on all state highways outside of the ETJ/city limits;
(2) 340 feet on interstate highways/controlled access routes within city/ETJ; and
(3) 250 feet on all other roads within city/ETJ.

Local tree preservation ordinances are preempted within the tree cut zones. Additionally, the bill allows billboard owners to clear cut, overriding current requirements to "picture frame" cut around billboards. The League continues to oppose the bill and is working to further improve the bill when it will be considered by the Senate Finance Committee next week.

HB 309 has not been heard in committee.

Core Statement

The League opposes **SB 183/HB 309** and has been working with Senator Harry Brown to negotiate improvements to the bill. The legislation is much-improved, but improvements are still needed regarding issues such as replanting after clear-cutting and "picture framing" of billboards.

Member Talking Points

- We are concerned that **SB 183** will reduce the tree canopies within and destruct the beautiful gateways to North Carolina's cities. The state-imposed tree cutting will hurt tourism and impedes our ability as locally-elected officials to increase quality of life for the citizens in our towns by trumping local authority to control the look and feel of our community on the state roads which pass through it.
- We are concerned that **SB 183** tells citizens that the interests of billboard owners are more important than their wishes. Your constituents don't want clear cutting in front of billboards near their homes or in nearby neighborhoods.

Action/Next Steps

Should the bill pass the Senate, it will make its way to the House, where we expect continued opposition.

In case of questions or feedback from legislators requiring follow up:

Paul Meyer – 919-413-2901
Kelli Kukura – 919-889-9040
Julie White – 919-800-1518

Natural Resources/Water Efficiency

HB 787 – NC Water Efficiency Act
SB 427 – NC Water Security Act

Current Situation

Municipalities throughout North Carolina continue to display environmental stewardship through the wise use of water resources. **HB 787 – NC Water Efficiency Act** (McGrady, Samuelson, Stam, Harrison) proposes a one-size-fits-all mandate for all public water systems to attain progressively lower levels of residential (and commercial: **SB 427 – NC Water Security Act** (Clodfelter)) water use. In addition to required water supply plans, each unit of local government that provides public water service would be forced to submit a revised plan that includes local water efficiency policies to be enacted in order to reach three discrete residential use targets.

Beginning in 2016, municipalities whose water resources are allocated beyond 80% (or 90% of seasonal demand) would be required to reduce per capita residential water use to levels not exceeding 100 gallons per day. In 2025, this residential threshold is reduced to 75 gallons/person/day. Finally, and of most consequence, a reduction of residential water use to 45 gallons/person/day would be required by 2035.

Water supply plan data has been provided by the Division of Water Resources to legislators, which was used in drafting the current legislation. Definitional issues have been noted in the classification of residential water use in these plans, with municipalities reporting classification variance in both multi-family housing and separately metered irrigation. Notwithstanding the fact that a universal water use restriction fails to address the capabilities of individual water systems, the lack of a common definition for "residential" or "commercial" use results in inaccurate data. Water policy as such should not be predicated on minimal stakeholder input or quickly determined without full appreciation for the sweeping nature of such legislation.

Core Statement

For municipalities to be successful partners in environmental protection, environmental laws, practices and regulations must be science-based, feasible and equitable, with flexibility to comply in the most cost-effective manner. As advocates for the wise use of natural resources, the League supports reasonable measures to ensure continued water supply for all of North Carolina. However, aggressive goals such as the 2035 requirement will mandate massive infrastructure investment and dictate widespread societal limitations on the use of potable water, which will be primarily financed at the expense of municipal water customers.

Member Message Points

- Serving more than two-thirds of North Carolina, cities and towns reflect a diverse array of water and sewer systems.
- We fully support reasonable measures allowing local governments to implement policy that allows efficient use of natural resources, but do not support sweeping mandates that fail to address the diverse needs of individual areas.
- Measures needed to actualize usage reduction in the latter requirements of **HB 787** would require massive infrastructure projects with extreme costs, primarily funded at the expense of municipal customers.
- For many areas, the use of potable water for irrigation or landscaping would no longer be an option under the most aggressive residential use restrictions.
- As with water rights issues, significant water policy changes should be fully vetted through a process inclusive of all stakeholders and not hastily determined.
- Derived from numerous municipal responses, we feel the 45 gallons/person/day residential use restriction represents stretch goals unattainable for a significant portion of municipalities.

OVER

Action/Next Steps

HB 787 has been introduced and awaits hearing in the House Environment Committee. Please contact your legislators and let them know that, although concerned with the wise use of natural resources, you strongly oppose mandating extreme efficiency restrictions at the expense of municipal water customers. Water policy that will affect North Carolinians for generations to come should be developed through judicious consideration of all costs and benefits to the diverse group of stakeholders affected by such legislation. We welcome the opportunity to fully consider the issue through the legislative study process in the upcoming interim.

In case of questions or feedback from legislators requiring follow up:

Daniel Amburn – 919-810-1259
Kelli Kukura – 919-889-9040

Natural Resources / Water Rights

SB 676: Clarify Water & Well Rights/Private Property
HB 621/SB 492: Protect Landowner Water Rights

Current Situation

Water rights issues are beginning to garner attention at the General Assembly, with numerous bills in the queue for committee hearing. Legislation has been introduced, **SB 676 – Clarify Water & Well Rights/Private Property** (Rouzer, Jackson, East), that initially removed mandatory water and sewer connection requirements for residential and commercial properties within municipal boundaries, eliminates local authority to prohibit drilling of new wells inside municipal jurisdiction and allows properties to continue to use wells for non-potable uses even after connection to city systems. Senate bill sponsors have recently modified the bill and restored mandatory connection requirements in the bill language.

Additionally, water rights are addressed in **SB 492/HB 621 – Protect Landowner Water Rights** , which is a broad bill that draws debate on current riparian rights in North Carolina. Under current Common Law principles of riparian ownership, water use must be conducted in a "reasonable" manner and must be returned by the owner to the water body in good condition and in appropriate quantities for downstream use. Portions of this bill impact, and potentially usurp, the reasonable use and return requirements for landowners. Movement away from current Common Law principles has the potential to allow water rights owners to sell these rights to others and apply such rights to block downstream users. Additionally, this bill specifically exempts limitation of water use for agricultural purposes in times of water emergencies and removes agricultural impoundments from the Dam Safety Act.

Core Statement

The League recognizes that vibrant, well-planned cities are the economic engines of the state, attracting new businesses and industries, while providing the quality of life expected by residents in and around municipalities. Municipal authority must be maintained with respect to land use decisions; and authority that provides the capability to protect and plan for water and sewer infrastructure while preserving the public health, safety and welfare of citizens.

Member Message Points

- North Carolina municipalities own and operate approximately 375 water systems and 450 wastewater systems and serve around 67 percent of customers in North Carolina.
- In order to provide water and sewer services, cities and towns depend on a customer base to financially support these systems. Maintenance, improvement and extension of such services throughout municipalities is a capital intensive endeavor and necessitates a reliable revenue stream.
- The provision of water and sewer is widely accepted as drawing business and industry. As our state and nation slowly emerge from this recessionary period, economic development tools as such provide a platform for business and job creation.
- Wise use of natural resources is an important part of ensuring water quality and quantity and all users should abide by the same reasonable use protocol.
- Significant water policy changes should be fully vetted through a process inclusive of all stakeholders.

OVER

Action/Next Steps

SB 676 is beginning to move through the Senate committee process, having first had consideration yesterday. Please let your legislators know that these vital water and sewer systems need dependable customer bases to maintain and improve current infrastructure. Let your legislators know you support retaining a mandatory connection requirement along with the retention of local authority on land-use decisions within municipal boundaries.

Both **SB 492** and **HB 621** have the potential to undermine the Common Law principles of reasonable use for water resources. All water users should be good stewards of this precious resource and abide by the same regulations, ensuring the quality and quantity of present and future water supplies. Please let your legislators know that you oppose **SB 492/HB 621** in current fashion and respectfully request their consideration of the aforementioned issues with the legislation.

In case of questions or feedback from legislators requiring follow up:

Daniel Amburn – 919-810-1259
Kelli Kukura – 919-889-9040

High Speed Rail

HB 422 Federal Rail Money/Report, Consult, Approve

Current Status

HB 422 (Killian) requires the N.C. Department of Transportation (NCDOT) to seek approval of the General Assembly prior to accepting federal rail grant money. The stated purpose for the proposed legislation is to be sure maintenance and other ongoing commitments related to rail projects built with federal grants have been taken into consideration prior to accepting the money. The receipt of $500 million for high speed rail between Charlotte and Raleigh appears to be the trigger for the bill.

After much debate, the bill now requires the NCDOT to report projected maintenance costs and state matching obligations, related to rail projects to be built with federal grants, to either the General Assembly's transportation appropriations subcommittees, if they are in session, or the transportation appropriations subcommittees' Joint Legislative Commission on Governmental Operations if the General Assembly is out of session. If the projected costs exceed $3 million, the money cannot be accepted unless the Department consults with the appropriate oversight committees. If the projected costs exceed $5 million, the General Assembly must approve the acceptance of the grant money, with the provison that if the General Assembly fails to take action, the Department may move forward and accept the federal grant.

The bill has passed the House, and duplicate language exists in the state budget bill (**HB 200**).

Member Talking Points

- We are concerned that General Assembly oversight of the receipt of federal rail grant money will jeopardize our state's ability to compete for rail grants by making each potential project subject to political whim. Will we start the same process with federal road grants?
- In a time where economic development should be our goal, we are very concerned that we would consider turning away federal money which could put our people back to work and stabilize local economies.

Action/Next Steps

HB 422 will make its way over to the Senate, but we would expect action in the budget bill to control the outcome of this issue.

In case of questions or feedback from legislators requiring follow up:

Paul Meyer – 919-413-2901
Julie White – 919-800-1518

League LINC

2011 TOWN HALL DAY

Other Bills/Issues of Interest (Not All-Inclusive)

Sweepstakes Reform: Several bills have been introduced to strengthen the law banning sweepstakes cafes. Bills have also been introduced to allow for "profit sharing" by government. None of the bills have seen action yet in committee. However, the issue is continuing to be discussed. The League's position, as approved by its Board of Directors, is to oppose sweepstakes cafes due to the negative impact they have on our communities.

Eminent Domain: HB 8 – Eminent Domain (Stam, Lewis, McGrady) has passed the House and has been sent to the Senate. The bill requires a question on the 2012 ballot allowing for a constitutional amendment stating that, "Private property shall not be taken by eminent domain except for a public use. Just compensation shall be paid, and shall be determined by a jury at the request of any party." The bill is expected to pass the Senate. The League staff worked with Rep. Paul Stam to improve the bill and we appreciate his willingness to listen to our concerns.

Local Government Retirement: A handful of bills have been introduced to amend the Local Government Employees' Retirement System (LGERS). Most notably, **SB 538 – Local Retirement COLA Authority** (Hartsell), which authorizes the LGERS Board of Trustees to grant retiree COLAs up to 4 percent annually, as long as actuarial gains are available in the system to do so, irrespective of CPI. **SB 350 – Fire and Rescue Separation Allowances** (Hartsell) extends law enforcement Special Separation Allowance benefits to fire and rescue squad workers. And while not directly impacting LGERS, **SB 687 – State Retirement Changes** (Apodaca, Brunstetter) makes significant prospective (new employees) changes to the Teachers' and State Employees' Retirement System (TSERS), which could very well bleed over to LGERS. Under this proposal, retirement ages are increased substantially and final compensation averages are calculated over longer periods of time (reducing the amount).

Open Government/Personnel Records: As an extension of last year's open government initiatives, through which more access to public employee personnel records was granted, a new series of government transparency bills are in play. **HB 87** (LaRoque)/**SB 67** (Clary, Tucker, Goolsby) — **Sunshine Amendment** — calls for a constitutional amendment, bolstering existing statutory provisions regarding public records and open meetings. **SB 344 – Government Transparency Act of 2011** (Clary, Tucker, Goolsby) opens public employee personnel records completely, irrespective of any protections otherwise available to the employee, and eviscerating the goal of open and honest employee/employer communications on job performance. The League opposes these proposals.

Guns in Parks and Restaurants: HB 111 – Handgun Permit Valid in Parks and Restaurants (Hilton, Barnhart, Steen, Hastings) passed the House and is now in Senate Judiciary II. The bill allows holders of concealed handgun permits to carry guns into public parks. However, the House did pass an amendment offered by Rep. David Guice that bans concealed weapons from "recreational facilities" as specified by local ordinance. The bill further allows permitted concealed weapons in restaurants, unless the owner has a conspicuous sign banning them.

Electric Cities/Use of Rate Revenue: The House Public Utilities committee assigned a subcommittee to study the transfer of money between utility and general funds. Representatives Collins, Alexander and Setzer are subcommittee members.

Law Enforcement Officer Fairness Act: HB 602 – Law Enforcement Officer Fairness Act (Justice, Dollar, Stevens, Glazier) standardizes the dismissal of municipal law enforcement officers. The bill includes a provision allowing for 'representation' for the police officer by a third party. There is not wide support for the bill.

ABC Privatization/Safety/Local Govt Authority: After the Governor announced prior to session that she was opposed to privatization of the ABC system, it has not been addressed by the General Assembly. It is doubtful that the issue will be addressed this session. The League remains committed to gaining additional local input into the ABC permitting process and to addressing safety issues in and around bars and private clubs. **SB 540/HB 189 – Require ABC Permittees to be Tax Compliant** provides that a person renewing an ABC permit be current with all tax obligations. **SB 439 – ABC Permit Issuance** (Brock, Pate) requires that any person issued an ABC permit be lawfully present in the U.S. and no one-time permits be issued less than 10 days before the event. It also requires notification to ALE no later than three days after issuance. **SB 277 – ABC Board Sunday Sales** (Jenkins) allows Sunday sales of liquor to be a local option.

In case of questions or feedback from legislators requiring follow up:

Kelli Kukura – 919-889-9040 Paul Meyer – 919-413-2901
Daniel Amburn – 919-810-1259

NC LEAGUE OF MUNICIPALITIES
Good government. Great hometowns

State Budget (HB 200)

Current Situation

The House Appropriations Committee approved its FY 2011-12 budget bill (**HB 200**) on Wednesday. The House budget makes no changes to municipal revenue sources. It does not change the policy of providing tuition waivers for community college classes taken by municipal public safety employees. The House proposal balances the budget with significant cuts to state spending and includes several provisions that affect municipalities, including:

(1) Reduction in the time over which Powell Bill funds can be accumulated from 10 years to five years;

(2) Elimination of Powell Bill funding for the seven municipalities that do not maintain any of their own public streets;

(3) Division of Powell Bill payments into two installments (October 1 and January 1);

(4) A 4 percent cut to most public transportation grant funds;

(5) Elimination of funding for state inmate work crews that aid local governments;

(6) A reduction in the Clean Water Management Trust Fund appropriation from $50 million to $10 million;

(7) A $4 million reduction in grants for local parks and recreation programs; and

(8) A 15 percent reduction in state aid to libraries.

Core Statement

The League supports preservation and enhancement of the existing municipal tax and revenue structure. The League opposes eliminating inmate work crews that serve local governments and decreasing the number of years for which municipalities may accumulate Powell Bill balances.

Member Message Points

- Thank House members for preserving municipal revenue sources and encourage Senate members to do the same.
- Small municipalities receive as little as a few thousand dollars each year in Powell Bill allocations and road projects are expensive. This forces small municipalities to save Powell Bill funds for several years in order to afford road projects. Five years is not always sufficient time to accumulate funds.
- State inmate work crews provide a valuable service to small towns and should remain available to them. Give examples from your town if you can. Towns are willing to pay a fee for their use, but only a few have been provided with crews, and those have not been charged.

Action/Next Steps

HB 200 is expected to be passed this week and will then go to the Senate.

In case of questions or feedback from legislators requiring follow up:

Kelli Kukura – 919-889-9040
Karl Knapp – 919-699-0363

Powell Bill Changes in the State Budget

HB 200 – Budget/Powell Bill

Current Situation

The House Budget made a few changes to the Powell Bill. First, it splits the Powell Bill into two allocations; the first allocation is in October and the second is in January. The budget reduces from 10 years to five years the amount of time a municipality can carry its Powell Bill balance forward. Lastly, the budget changes Powell Bill so that cities without city roads no longer receive an allocation.

Core Statement

The League supports allowing cities to carry forward their Powell Bill balances for 10 years due to the need to save small amounts of funding for larger projects.

Member Message Points

- Small municipalities receive as little as a few thousand dollars each year in Powell Bill allocations.
- Road projects are expensive and require multiple years of saving Powell Bill funds in order to afford to execute the project.

Action/Next Steps:

Please ask legislators to amend the budget to allow cities to continue to carry up to 10 years (20 allocations) of Powell Bill allocations forward.

In case of questions or feedback from legislators requiring follow up:

Julie White – 919-800-1518
Paul Meyer – 919-413-2901

Municipal Broadband

HB 129/SB 87 – Level Playing Field/Local Gov't Competition

Current Status

Authority to deploy and operate municipal broadband systems was solidified in a 2005 decision, *BellSouth Telecommunications, Inc. v. City of Laurinburg* (168 N.C. App 75, 2005; cert denied, 359 N.C. 629), when municipal authority to operate "cable television services" under the municipal public enterprise statutes was determined to include broadband systems that extended beyond government-owned fiber rings. Since then, a number of cities, after extensive study and consideration, determined it was in the best interest of their communities to build and operate robust fiber to the premises broadband systems to enhance economic development opportunities and quality of life. Existing telecommunication and cable television companies, threatened by what they viewed as competition from the municipal broadband systems, had legislation introduced by members of the N.C. General Assembly in both 2007 and 2009/10, that was designed to choke municipal broadband deployments. These efforts were repelled, but such legislation was introduced again in 2011 at the behest of Time Warner Cable and other incumbent providers.

The bill has passed the House and Senate; the House is likely to concur with Senate changes and the bill will be send to the Governor. At its core, **HB 129** does the following:

- Requires all cities wishing to provide communication services to pursue public private partnerships (PPP) with incumbent providers
- If no PPP can be formed, future city providers are harmed financially (voted debt, payment of property taxes, accounting requirements, no cross subsidization), making it virtually impossible to provide these services in a fiscally sound manner
- Grandfathering of existing municipal systems versus total exemptions – systems limited geographically to prevent their growth and prosperity

Member Talking Points

- We are concerned that **HB 129** will harm the ability of our city to provide high-speed broadband as essential infrastructure. It is a key ingredient for attracting, retaining and growing businesses in a modern global economy. It is an option we need for the future.
- We are very concerned that the spirit and tone of **HB 129** will carry over to other key municipal services. **HB 129** fails to grasp the importance of municipal services and instead seeks to eliminate city service provision if there is the slightest chance a private provider might come along someday.
- This is not how we should be setting policy to help our communities grow and our citizens prosper.

Action/Next Steps

Should the bill pass the Senate, it will make its way to the House to be approved by concurrence in the changed bill.

In case of questions or feedback from legislators requiring follow up:

Paul Meyer – 919-413-2901
Kelli Kukura – 919-889-9040

Electronic Notices in Lieu of Newspaper Notices/ Protection of Email Lists

HB 472/SB 774 – City/County Electronic Notices
SB 182 – Email Lists

Current Situation

HB 472 – City/County Electronic Notices (McGrady, Stam, Owens, Jackson) and its sister, **SB 774 – City/County Electronic Notices** (Brock), provide for all municipalities and counties to adopt ordinances allowing them to give notices electronically versus via newspaper. The bills allow for any notice required by law to be included. HB 472 is likely to be the first bill to move and it is expected to be before the House Government committee in the next two weeks. The bill faces extreme opposition from the North Carolina Press Association, primarily because it is a revenue loss for newspapers. Further, when the League worked with legislators last session to pass a similar bill, the Press Association brought in other citizen groups to oppose it. League staff has determined that required newspaper notices cost municipalities at least $4 million per year. This bill is one of the League's 2011-12 Advocacy Goals.

Protection of Email Lists

SB 182 – Email Lists was amended on the House floor by Rep. Ruth Samuelson and became a statewide bill to protect the lists of email addresses of people subscribing to local government email. The bill, which has passed the General Assembly and was presented to the Governor last week, requires review but not copying of the email lists and requires they be used only for their intended purpose. This was a League Advocacy Goal item. Please thank Rep. Samuelson and your legislators for passing it.

Core Statement: Electronic Notices

In today's world, website and email notice is much more effective in reaching a greater majority of residents than notices in a local newspaper. Newspaper subscribership has declined dramatically in recent years. Further, residents have much greater access to electronic notices, whether from home computers or library computers. Taxpayer cost savings are significant — municipalities spend at least $4 million and counties spend at least $2.5 million every year. This is taxpayer money that could be used more effectively serving citizens.

Member Message Points

- We know our towns and our citizens. We would be judicious in adopting ordinances and would consider the various notices and how they are best communicated.
- **Share any data you have about use of your municipality's website. Share data (anecdotal or otherwise) on the increased use of Internet by your citizens.**
- Our taxpayers benefit from this legislation. Municipalities spend at least $4 million per year on notices in newspapers. This is money that could be put to better use for our citizens.
- Thank you for passing **SB 182** so we can protect our email lists from being used in any way other than municipal government business.

Action/Next Steps

HB 472, sponsored by Rep. Chuck McGrady will run in House Government in the next few weeks. The League is asking all municipalities to discuss this issue with their legislators and help overcome the significant opposition from the Press Association.

In case of questions or feedback from legislators requiring follow up:

Kelli Kukura – 919-889-9040
Paul Meyer – 919-413-2901

Gas Tax Cap

SB 751 – Statutory Cap
SB 666 – Cap Motor Fuel Tax
HB 399 – Cap Motor Fuel Excise Tax

Current Situation

SB 751 – Statutory Cap for Motor Fuel Excise Tax Rate (Rouzer, Rabon, Harrington), **SB 666 – Cap Motor Fuel Tax at Current Rate** (Forrester) and **HB 399 – Cap Motor Fuel Excise Tax Rate** (McElraft, Killian, Hager, Stone) have all been introduced this session to address the rising price of gas. Pressure is mounting on elected leaders at all levels of government to intervene and take action to reverse the trend. North Carolina is fairly unique in that the state maintains the second highest amount of road miles in the United States and the motor fuels tax is the major funding source for our transportation system. The tax is scheduled to rise again on July 1 by about 2 cents.

Core Statement

The League opposes capping the gas tax because of the critical need for improved transportation infrastructure in North Carolina.

Member Message Points

- Capping the gas tax will have serious and detrimental consequences in North Carolina including unsafe roads and bridges, congested roads and jobs lost.
- Capping the gas tax will reduce the state's transportation budget — eliminating an estimated $250 million from the biennium budget currently being debated.
- Capping the gas tax saves only about 25 cents for the average driver per week.
- Capping the gax tax will stop 18,335 miles of pavement statewide from being resurfaced.
- The North Carolina General Assembly should not consider changing the gas tax formula unless it is part of a comprehensive transportation funding plan.

Action/Next Steps

As July 1st draws closer, the gas cap bills become more likely to move in committees. Please contact your legislators and ask them to oppose capping the gas tax.

In case of questions or feedback from legislators requiring follow up:

Julie White – 919-800-1518
Paul Meyer – 919-413-2901

Property Owners Protection Act/ Local Abuse of Authority Attorneys' Fees

HB 687 – Local Abuse of Authority Attorneys' Fees
HB 652 – Property Owners Protection Act

Current Situation

HB 687 – Local Abuse of Authority Attorneys' Fees (Brawley, Moffit, LaRoque, Brubaker) stems from what the sponsors say were abuses of authority by local governments. The bill provides that when a city or county enacts and ordinance, or takes administrative action for which "there is no statutory authority and the ordinance or action is an abuse of authority," the plaintiff in a lawsuit would recover attorneys' fees. The bill is expected to be heard this week in House Government.

HB 652 – Property Owners Protection Act (Moffitt, Brubaker, Brawley, McComas and 23 co-sponsors) includes payment of attorneys' fees by the municipality, county or state if the court finds the government failed to fairly investigate or provide an inexpensive way to establish the vested right if a person is entitled to it. The bill further forbids a state or local government from issuing a penalty or fine against a property owner if the act was not committed by the property owner. It requires all statutes, ordinances, rules and regulations affecting free use of land be strictly construed in favor of the property owner.

Core Statement

HB 687 and **HB 652** have the potential to create a number of problems for citizens because they will put a chilling effect on local governments' reasonable interpretation of ordinances. This is true not only for the banning or denial of certain activities, but also in allowing activities or particular uses. They could dramatically increase frivolous lawsuits for municipalities and counties, costing taxpayers more money.

Member Message Points

- **HB 687 – Local Abuse of Authority** and **HB 652 – Property Owners Protection Act** will restrict our ability to use our best judgment in interpreting ordinances and setting policy to best address the needs of our citizens and businesses.
- As duly elected officials, this is part of our responsibility, both in our decisions as well as those we direct our staffs to make.
- We currently interpret zoning ordinances more in favor of owners and developers. Local government planning staff understands that zoning ordinances should favor freedom of land us. We are able to give land owners the benefit of the doubt. Under these laws, we will be forced to strictly interpret the ordinances. The bills will have the opposite effect they are intended to have.

Action/Next Steps

HB 687 is expected to be heard in House Government this week. Please work with your municipal attorney to develop examples from your town and get them to your legislators.

In case of questions or feedback from legislators requiring follow up:

Kelli Kukura – 919-889-9040
Paul Meyer– 919-413-2901

Residential Rental Property Inspections

HB 554 – Residential Building Inspections (Rules Committee)
SB 683 – Residential Building Inspections (Hunt)

Current Status

HB 554 and **SB 683** do the following:

– Restrict city inspection authority over residential rental real estate to a "reasonable cause" standard. Reasonable cause includes history of noncompliance with unsafe building ordinances, complaints regarding unsafe conditions or actual knowledge by city employees of unsafe conditions.

– Eliminate rental property registration programs and all fees required under such programs. **HB 554** goes a bit further in this area, and eliminates landlord permitting and any requirement that a landlord be permitted in order to receive a Certificate of Occupancy from the unit of local government.

– It is through these programs that cities work with landlords to more closely monitor activities of their tenants in order to improve quality of life in neighborhoods and increase safety in their units themselves.

Member Talking Points

- We are concerned that **HB 554/SB 683** restricts the ability of city governments to improve the behavior of tenants by putting pressure on landlords to be more responsible for activities that take place at their properties by eliminating all the landlord programs statewide.
- The "reasonable cause" standard will increase the number of tenants living in unsafe buildings, as fewer properties will be inspected.

Action/Next Steps

HB 554 will be heard in the House Commerce and Job Development Committee in the near future. **SB 683** will likely be heard in the Senate Commerce Committee in the next few weeks.

In case of questions or feedback from legislators requiring follow up:

Paul Meyer – 919-413-2901
Kelli Kukura – 919-889-9040