



TOP 10 NCHBA LEGISLATIVE ACCOMPLISHMENTS IN THE 2020 SESSION

A. Pro-Active Accomplishments

1. [SB 720 \(GSC Confirming Amends/Land-Use Regulatory Changes\)](#); Session Law 2020-25

The enactment of this bill was one of NCHBA's top session priorities. It was necessary in order to preserve NCHBA's historic victory last year in enacting [SB 355 \(Land Use Regulatory Changes\)](#) which brought about significant and beneficial changes to local planning and land use laws. It was the final step in a five-year journey by NCHBA to reform the planning and zoning statutes.

SB 355 was enacted last year with strong bipartisan support and became effective upon the Governor's signature on July 11, 2019 ([Session Law 2019-111](#)). The bill contained two parts. Part 1 was our series of major land use changes which became law on that date and are in effect today. Part 2 of the bill was the result of a five-year effort by the Planning, Zoning, and Land Use Section of the NC Bar Association to consolidate and modernize the planning and land use provisions of Chapter 160A (cities) and Chapter 153A (counties) into a single new Chapter 160D. That bill provided that Part 2 would become effective on 01/01/21.

Since the version of Chapter 160, which was enacted by Part 2 did not contain the provisions of Part 1 (as well as two of our other NCHBA 2019 enactments which amended provisions of the city and county planning and land laws), SB 355 directed the General Statutes Commission (GSC) to integrate these enactments into an updated version of Chapter 160D.

The GSC accomplished this task over several months earlier this year with the cooperation of interested parties and SB 720 was the result. For the most part, SB 720 is a technical correction bill which integrates existing law into this updated version of Chapter 160D. While the bill does contain several substantive language changes, they were the result of consensus. Two of the primary sponsors of last session's bill, Senators Paul Newton (R-Cabarrus) and Sam Searcy (D-Wake) signed on as co-sponsors of SB 720. The amended Chapter 160D became effective upon the Governor's signature.

The key land-use reforms brought about by SB 355 include:

- *Integrates Permit Choice Law with Vesting and Extends Protections to Landowner*
- *Prohibits third party rezoning down zoning petition*
- *Allows certain claims to be filed directly in Superior Court without going to Board of Adjustment*
- *No estoppel effect when landowner challenges an unlawful development condition*
- *Change Standard for Mandatory Attorneys' Fees in Lawsuits Against Illegal Local Government Actions*
- *Limits Illegal Conditions on Conditional Zoning and in Special or Conditional Use Permits*
- *DOT Driveway Regulations Apply to City-Maintained State Roads*
- *Assure that State Building Code preempts inconsistent local definitions*

Key Legislators: Senators Chuck Edwards (R-Henderson), Andy Wells (R-Catawba), Don Davis (D-Pitt) and Representative Ted Davis (R-New Hanover)

2. [HB 873 \(System Development Fee/ADU Sewer Permit\)](#); Session Law 2020-61

Another of our top session priorities, HB 873 amends the law to move the time for the payment of system development fees for subdivisions from plat recordation to the later of building permit application or when the water and sewer service is committed. The current requirement for payment at plat recordation requires significant working capital to pay for the fees for all of the lots in the subdivision despite the fact that the water/sewer availability may not be provided for years in the future. This positive change will help keep housing affordable by reducing upfront major costs and appropriately moves those payment of those fees to when the service is provided.

It further requires that proof must be provided of payment of these fees if the local government which collects the fees is different than the local government that issues the building permit. Furthermore, it makes it clear that the system development fee cannot be collected if previously paid at plat recordation unless the amount of capacity needed for that property has increased.

A second provision allows a property owner the same option to connect a sewer line to a detached accessory dwelling unit (ADU) as is the case for an attached ADU's on the same lot. Currently, a special permit and engineer's seal are required in order to pursue this option for detached ADU's which is not required if the ADU is attached. Eliminating these requirements for detached ADUs will significantly reduce costs and thereby provide more affordable housing across the state. NCHBA worked closely with **Senator Mike Woodard (D-Durham)** on this important provision.

Key Legislators: Representatives Dean Arp (R-Union), Jamie Boles (R-Moore) and Alan McNeill (R-Randolph); Senator Tom McInnis (R-Richmond), Andy Wells (R-Catawba) and Mike Woodard (D-Durham)

3. [SB 704 \(COVID-19 Recovery Act\)](#); Session Law 2020-3

SB 704 was enacted during the so-called "COVID-19 Session" held April 28-May 2, 2020. This new law contains numerous provisions designed to respond to the COVID crisis including those specifically sought, or supported, by NCHBA. They are:

- *Extends the Effective Date of Chapter 160D* from January 1, 2021, until August 1, 2021, to allow sufficient time to enact legislation to incorporate provisions of current law contained in NCHBA's historic land-use regulatory legislation, and other NCHBA legislation, enacted during the 2019 session. This was accomplished by the subsequent passage of SB 720, as discussed above, thereby making Chapter 160D effective on June 19, 2020.
- *Extends Certain Local Government Development Approvals* for five (5) months for any development approval "that is current and valid at any point during the period beginning March 10, 2020, and ending April 28, 2020". These development approvals include building permits, erosion and sedimentation control plans, sketch plans, preliminary plats, plats, phased development plans or development agreements. This section expires on September 28, 2020.
- *Good Funds Settlement Act Revision* allows a settlement agent in a residential real estate transaction to disburse closing funds prior to recording the deed or deed of trust in the register of deeds office upon the written consent of all parties. This authority is limited to instances where there is a declared state of emergency and the register of deeds office is closed to the public. This section expires August 1, 2020, but was extended until March 1, 2021.
- *Allow Licensed Soil Scientists to Evaluate, Inspect and Approve On-Site Wastewater System Projects During the Coronavirus Emergency*. Allows licensed soil scientist to prepare signed and sealed soil and site evaluations, specifications, plans and reports for site layout, construction, operation and maintenance of a wastewater system without needing any further certification. Likewise, the soil scientist would be able to conduct all necessary inspections including a final inspection and report. This section expires August 1, 2020.

- *Directs State Agencies to Exercise Regulatory Flexibility During the Coronavirus Emergency.* Allows agencies to delay the collection of fines, renewal dates or other certifications if deemed advisable. Authority granted by this section expires August 1, 2020.
- *Provides Time-Limited Civil Liability Immunity to “Essential Businesses”* for injuries or death resulting from customers or employees contracting COVID-19 at the business. Immunity does not apply if the harm is caused by gross negligence, reckless misconduct or intentional infliction of harm. This section applies to claims filed on or after March 27, 2020, and ends when the Governor declares an end to the state of emergency.
- *Protected Employer Interests in Unemployment Compensation System.* An earlier version of SB 704 would have increased benefit amounts and changed the formula for computing compensation to the detriment of employers. This would have more quickly reduced the trust fund balance and caused an earlier trigger of a surcharge tax on employers. The final version did not contain this provision.

4. [HB 308 \(Regulatory Reform Act of 2020\)](#); Session Law 2020-74

Since the current GOP majority took control of the General Assembly, an annual regulatory reform bill has always been on the agenda. This year is no exception to the rule. HB 308 is an omnibus bill which contains several provisions of interest to NCHBA. Included is one that would clarify a NCHBA-inspired law passed several years ago which allows architects and engineers to inspect a component or element the construction of buildings. The clarification states that the engineer’s or architects seal may only be required by a local jurisdiction if it is otherwise required by the North Carolina State Building Code.

Another provision supported by NCHBA would allow the North Carolina On-site Wastewater Contractors and Inspectors Board to purchase and hold real property and to authorize a fee to defray costs for its authorization of “on-site wastewater evaluators” (licensed soil scientists).

A prior version of this bill included a provision which would have exempted local government entities (e.g., school boards) from paying system capacity fees. Exempting these entities from paying these fees would have increased the amount of fees paid by builders and developers. NCHBA worked with the provision’s sponsor to remove this provision which the sponsor graciously agreed to do.

Key Legislators: Representatives Mark Brody (R-Union) and Dennis Riddell (R-Alamance)

B. BILLS WHICH NCHBA WORKED WITH OTHERS TO ENACT, OPPOSE OR AMEND

5. [HB 118 \(COVID-19 Liability Safe Harbor\)](#); Session Law 2020-89

As discussed above, a provision very important to NCHBA was enacted during the so-called “COVID-19 Session”. In [Session Law 2020-3](#), the General Assembly provided time-limited civil immunity from lawsuits for injuries or death alleging that a customer or employee contracted COVID-19 from any business which the Governor had declared as “essential” (which includes the residential construction industry).

HB 118 extends this same civil immunity protections beyond just essential businesses to protect all businesses, non-profits, schools and universities, and individuals from unwarranted and excessive COVID-19 litigation. NCHBA worked closely with a broad coalition of business associations, college and universities and others to move this legislation forward. The bill passed both bodies with overwhelming bipartisan support.

Key Legislators: Senator Paul Newton (R-Cabarrus); Representatives Harry Warren (R-Rowan) and Destin Hall (R-Caldwell).

6. [HB 902 \(P&C Changes/Global Transp./Prison Pilot\)](#), Session Law 2020-90

HB 902 was amended to include language which limits the liability of owners and operators of community pools and their agents regarding the operation of these facilities during the pandemic. In light of COVID-19, many community pools have chosen to remain closed over concerns of liability over the spread of the virus. While the broad language of HB 118 likely covers this situation, the specific protection afforded to pool owners and operators is no doubt welcome.

Key Legislator: Senator Jim Perry (R-Lenoir)

7. [HB 1057 \(WC/COVID Front Line Coverage/Funds\)](#)

This legislation, primarily sponsored by House Minority Leader Darren Jackson (D-Wake), would have created a presumption that an employee who contracts COVID-19 did so on the job site. This burden shifting represented a serious threat to the viability of the workers' compensation system. While the bill had superficial appeal and appears to be an effort to assist frontline medical personnel and first responders, it also included workers from any industry which was designated by the Governor as "essential" during the pandemic (which includes residential construction).

NCHBA was a leader in the coalition of business and local government associations formed to oppose this bill. The coalition worked hard to educate legislators that current workers' compensation laws already allow workers to recover if they can prove it is more likely than not that they contracted COVID-19 at the worksite. Introduced during the "COVID-19 Session" the bill attracted almost a majority of the House as principal sponsors and co-sponsors. The coalition convinced 17 of the 20 GOP co-sponsors to remove their names from the bill and the bill was not calendared. Subsequently, Rep. Jackson attempted other unsuccessful efforts to attach this language to other bills.

Key Legislators: Representatives David Lewis (R-Harnett) and the House GOP Caucus

8. [HB 593 \(JCPC/Detention/CAA and Other Fees\)](#); Session Law 2020-83

This otherwise unrelated bill served as a vehicle for the NCHBA and the NC Retail Merchants Association to attach language which requires local governments who impose emergency declarations to conspicuously publish these declarations on their websites and to submit an executed copy of the declaration to the NC Department of Public Safety's WebEOC critical incident management system. During the COVID-19 crisis, both NCHBA and the Retail Merchants (and other business groups) had difficulty determining all of the local jurisdictions across the state who had adopted local emergency declarations, restrictions or curfews. This posting and notice requirement is designed to provide more effective public notice.

Key Legislators: Senator Chuck Edwards (R-Henderson) and Representative John Bell (R-Wayne)

9. [HB 920 \(Condominium Association Changes\)](#); Session Law 2020-52

This legislation was the product of a stakeholder group which included the bar association, title insurance companies, and other interested parties for the purpose of updating the condominium statutes. NCHBA identified a provision which needed to be eliminated and two others which needed to be amended. With the strong support of the bill's primary managers, these actions were taken and NCHBA signed off on the bill.

Key Legislators: Representative Destin Hall (R-Caldwell) and Senator Rob Bryan (R-Mecklenburg)

C. BILL WHICH NCHBA OPPOSED WAS NOT INTRODUCED AND A BILL WHICH NCHBA FAVORS IS STILL PENDING

10. Proposed amendment to NC's Marketable Title Act and [SJR 862 \(Confirm Wanda Taylor/Industrial Commission\)](#)

NCHBA became aware of a bill that was being circulated to interested groups prior to introduction which proposed to amend North Carolina's Marketable Title Act (Chapter 47B of the General Statutes). This act provides "...that if a person claims title to real property under a chain of title for 30 years, and no other person as filed a notice of any claim of interest in the real property during the 30-year period, then all conflicting claims based upon any title transaction prior to the 30-year period shall be extinguished."

This proposed amendment would have expanded an existing exception to this rule which limits the exception merely to residential use to include "all other terms and conditions related to or incorporated into the covenant." If enacted, this expansion would have created a major disruption on titles across the state in old developments where thousands of lots were encumbered by restrictions that are far outside the scope of current title examinations. Furthermore, it appeared that this amendment arose from ongoing litigation. After being made aware of these concerns, the legislator decided not to introduce this bill.

Regarding [SB 862](#), NCHBA has long been a leader of the business community on workers' compensation issues. In fact, one of NCHBA's major contributions to the historic workers' compensation reform effort enacted in 2011 was to subject gubernatorial appointments to the Industrial Commission to legislative confirmation. This process has resulted in the business community supporting some of the past nominees and opposing others.

During this session, we worked with representatives of the employee community to recommend a consensus candidate, Wanda Taylor, to Governor Cooper whom he nominated earlier this year to the commission. Wanda is highly qualified for this position having extensive experience over her career representing both employers and injured employees. She spent over twenty years with the commission as a deputy commissioner, the last six of which as Chief Deputy.

While the Senate unanimously approved her nomination, the House chose not to take up her confirmation in the waning days of the session. Since the consideration of nominations is one of two allowable subjects for the upcoming September 2, 2020, session, we are hopeful that Ms. Taylor will be confirmed at that time.