

On Wednesday September 30, 2015 at approximately 4:17 a.m., the “long” session of the North Carolina General Assembly ended for the year. The session, which began on January 14 and was first projected to end in July, became protracted due to disagreements over the state budget bill, Medicaid reform, economic incentives, and other issues. The primary focus of the session was passing the state’s budget. On September 18, 2015, the legislature passed the \$21.74 billion state budget bill. The budget bill was signed by Governor McCrory on September 18, 2015.

The legislature passed 313 new laws during this session, based on 1,666 bills introduced. The legislature passed a number of significant pieces of legislation this session, including a bill to increase teacher pay, enact tax reform, economic incentives, and regulatory reform. Governor McCrory has until October 31, 2015 to review and sign bills passed in the last few days of the legislative session. If he does not sign or veto a particular bill by that date, it will become law without his signature.

The legislature enacted bills that affect appellate court elections. Supreme Court justices, beginning with Justice Edmonds election in 2016, will stand for retention elections. The Court of Appeals candidates will continue with the current election process, except the races will be partisan, with each candidate listing their political party affiliation with their filing.

The legislature restored the historic preservation tax credit in the state budget enacted this year. The tax credits expired last year as part of a broader Republican-led tax reform plan. Without them, many historic preservationists said renovating old buildings would not be financially feasible. The credits will cost the state about \$8 million a year. The new version of the tax credit is not as generous as the program in place from 1997 to 2014. The old credit gave property owners back 20 percent of the cost of improvements to income-producing properties and 30 percent for home restorations. Now the credit is equal to 10 or 15 percent of the cost of improvements to income-producing properties, depending on the total cost of the project. For homes, the credit is 15 percent of the cost, up to \$22,500. Property owners can now receive the entire credit at once, instead of spacing it out over several tax years as required in the old program.

The 2016 “short session” is scheduled to begin on Monday April 25, 2016. The legislature did not adopt a studies bill this session. The President Pro Tem of the Senate and Speaker of the House have the inherent authority, including through the Legislative Research Commission and Courts Commission, to study issues, and I understand that there will be formal studies before the 2016 legislative session convenes.

This final legislative report contains a summary of the legislation of interest from the 2015 Legislative Session. The first section contains bills enacted into law, and the second

section includes bills that have not been enacted into law. For more information about legislation described in this legislative report, feel free to contact me at dferrell@vanblk.com or (919) 754-1171. Information is also available on the General Assembly's website: [www.ncga.state.nc.us](http://www.ncga.state.nc.us).

## **BILLS OF INTEREST ENACTED INTO LAW**

**House Bill 168, Exempt Builders' Inventory**, exempts from property tax the increase in value of real property held for sale by a builder, to the extent the increase is attributable to subdivision or improvements by the builder, as long as the builder continues to hold the property for sale. The bill provides that in no event shall this exclusion extend for more than five (5) years from the time the improved property was first subject to being listed for taxation by the builder. **Effective for taxes imposed for taxable years beginning on or after July 1, 2016, and applies to subdivision of or other improvements made on or after July 1, 2015. Session Law 2015-223.**

**House Bill 204, Caswell Beach/Quick Take Eminent Domain**, authorizes the Town of Caswell Beach to have "quick take" authority to take immediate possession of property condemned for a public services facility where a fire department or other emergency services provider will be located. **Effective: May 14, 2015. Session Law 2015-14.**

**House Bill 272, Appointments Bill 2015**, contains the Speaker of the House and the President Pro Tem of the Senate's appointments to various state boards and commissions. President Pro Tem Phil Berger appoints former Representative Fern Shubert of Guilford County to the North Carolina Appraisal Board to a term expiring in 2018; and Margaret Sandrock of Harnett County to the Appraisal Board for a term expiring on June 30, 2017, to fill the unexpired term of David Goldberg. **Effective September 29, 2015. Session Law 2015-254.**

Governor McCrory made the following appointments to the North Carolina Appraisal Board: Hector Ingram of New Hanover County and Christie L. Standish of Cherokee County.

**House Bill 346, Counties/Public Trust Areas**, clarifies that counties may enforce ordinances within the State's public trust areas and regulate, restrict, or prohibit the placement, maintenance, location, or use of equipment, personal property, or debris upon the State's ocean beaches. The bill allows cities and counties to adopt ordinances to regulate these topics. **Effective: June 11, 2015. Session Law 2015-70.**

**House Bill 651, Appraisal Bd. Recordkeeping & Bkgrd. Checks**, bars civil actions against appraisers filed after the period of record retention established under the uniform standards of professional appraisal practice (USPAP) or five (5) years, whichever is greater. The bill requires appraisal management companies that require criminal background checks to accept criminal background checks performed within the preceding twelve (12) months. **Effective: October 1, 2015. Session Law 2015-200.**

**House Bill 765, Regulatory Reform Act of 2015**. Current law exempts partnerships, corporations, limited liability companies and other similar business entities from the real estate broker licensing law regarding selling or leasing property owned or leased by them when the acts are performed in the regular course of or as incident to the management of that property and the investment therein. This bill amends this exemption to clarify that managers, manager-members

and employees of these business entities can perform the sales or lease activities. The bill also allows owners of closely held businesses (two or fewer owners) to sell or lease entity-owned real estate without a real estate broker license.

When a person conducts a real estate transaction pursuant to an exemption described above, the person shall disclose, in writing, to all parties to the transaction (i) that the person is not licensed as a real estate broker or salesperson, (ii) the specific exemption that applies, and (iii) the legal name and physical address of the owner of the subject property and of the closely held business entity, if applicable. This disclosure may be included on the face of a lease or contract executed in compliance with this exemption. **Effective October 31, 2015.** Governor McCrory has until October 31, 2015 to review and sign this bill into law.

**Senate Bill 119, GSC Technical Corrections 2015,** amends the reciprocal attorneys' fees provision in business contracts in current law to provide that electronic signatures of business contracts with such provisions are enforceable.

The bill prohibits local governments from adopting ordinances that prohibit oil and gas exploration and related activities, and provides additional provisions affecting such local government regulations.

The bill requires the NC Department of Transportation ("the Department") to conduct a survey of the paved and unpaved roads in this State that are open to the public, but are not currently a part of the State system. The Department shall report its findings from the survey to the Joint Legislative Transportation Oversight Committee by June 30, 2016.

**Effective: October 1, 2015. Session Law 2015-264.**

**Senate Bill 123, Uniform Fraudulent Transfer Act,** amends the Uniform Fraudulent Transfer Act to adopt the amendments approved by the Uniform Law Commission in 2014 and to make related conforming and technical amendments to the statute. The bill would change the title of the Act from "Uniform Fraudulent Transfer Act" to the "Uniform Voidable Transactions Act." The bill makes various changes to acknowledge and account for electronic records and electronic signatures. The bill requires a creditor establishing a claim under this Act to prove the elements by a preponderance of the evidence

The bill amends §39-23.8, Defenses, liability, and protection transferee or obligee, to establish the rules that apply to the extent a transfer is avoidable in an action by a creditor under G.S. 39-23.7. The bill appears to continue to protect a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferor or obligee. **Effective October 1, 2015. Session Law 2015-23.**

**Senate Bill 159, Corrected Reval/Minimum Refunds/Prop. Taxes,** provides Mecklenburg County property owners who owe more than \$1,000 in back property taxes from 2011 to 2014 three (3) years to pay the debt off without interest. The bill also provides that for parcels that were transferred in a tax year for which errors requiring reappraisals under this Act resulted in an underpayment of taxes, the following apply:

- (1) The taxes for each tax year prior to and in the fiscal year in which the transfer occurred shall be collected from the owner of record as of January 1 of each tax year for

which unpaid taxes exist. Only the remedies available in G.S. 105-367 and G.S. 105-368 may be used to collect against the owner of record as of January 1 of each tax year for which unpaid taxes exist.

(2) Notwithstanding G.S. 105-355(a), there shall be no lien on the real property for underpaid taxes that arose in a year in which the property is owned by a person other than the current owner as of January 1 of that year. The current owner shall not be held personally responsible for such underpaid taxes.

(3) If an owner not responsible for underpaid taxes pursuant to this section paid the underpaid taxes, the owner may assert a valid defense for a refund pursuant to G.S. 105-381, as a tax imposed through clerical error. Interest on the refund shall be calculated at a rate of five percent (5%) per annum from the date the owner asserting the defense paid the underpaid taxes until the date the refund is issued."

The bill allows local governments to deal with small underpayments and overpayments, including allowing the local government to adopt a resolution to not mail refunds of overpayments of less than \$15. **Effective: October 1, 2015. Session Law 2015-266.**

**Senate Bill 311, Register of Deeds/Filing False Marriage Docs,** provides that prior to recording a document or instrument that (i) purports to impact an official record of marriage and (ii) is not a marriage license, a return, or an amendment or correction of a marriage license, the register of deeds shall conspicuously mark the first page of the document or instrument with the following statement: "THIS DOCUMENT IS NOT AN OFFICIAL MARRIAGE DOCUMENT." The bill does not apply to instruments or documents that are attached as exhibits to land records, orders or judgments issued by a court of this State or another state, or separation agreements presented for registration. **Effective: June 4, 2015. Session Law 2015-53.**

**Senate Bill 332, Register of Deeds - POA Indexing Fees,** enables Registers of Deeds to collect additional fees for indexing instruments that contain exhibits with multiple enterable parties. The bill provides that for an instrument that contains excessive recording data, the fee would be an additional \$2.00 for each entity listed in the instrument. The bill states that an instrument contains excessive recording data when there are more than 20 distinct entities listed in the instrument, including any attachments and exhibits that require indexing. **Effective: October 1, 2015. Session Law 2015-227.**

**Senate Bill 386, Register of Deeds/UCC Recording Fees,** establishes the following filing fees for UCC financing statements or other records: (a) for filing and indexing financing statements or records with two or fewer pages - \$38; (b) for filing and indexing financing statements or records with more than two pages - \$45 for the first 10 pages, \$2 for each additional page; (c) for responding to an information request, including a communication with respect to requests for financing statement information for a particular debtor - \$38. This provision does not apply to the recording or satisfaction of deeds of trust or mortgages that act as a fixture filing, or as a financing statement covering as-extracted collateral or timber to be cut as provided under G.S. 25-9-502(c). The Register of Deeds Association reports that the bill does not raise any fee, just clarifies that the filing fee for UCC financing statements filed electronically are the same as the fee for filing a physical copy. **Effective October 1, 2015. Session Law 2015-206.**

**Senate Bill 513, North Carolina Farm Act of 2015**, establishes marking and notice requirements for the construction of meteorological towers located on real property in North Carolina. The bill requires certain requirements for meteorological towers, including those over 50 feet to be marked and painted. The bill requires the NC Department of Transportation to adopt rules to require a person proposing to construct a meteorological tower on real property to register with NCDOT. NCDOT will maintain an electronic database that contains the location of all meteorological towers in the state.

The bill enacts a new G.S. 121-39A to provide a procedure for termination or modification of certain conservation agreements and easements. The bill provides that easements secured by the Agricultural Development and Farmland Preservation Trust Fund, including perpetual agricultural conservation easements and forest land easements, military base protection and flyway easements regardless of funding source, or any other agricultural conservation easement that has been secured, in whole or in part, with federal funds and where at least one party to the agreement is a public body of this State, shall not be terminated or modified for the purpose of economic development.

Prior to any modification or termination of a conservation agreement where at least one party to the agreement is a public body of this State, the agency requesting the conservation agreement modification or termination shall conduct a conservation benefit analysis. The criteria for the conservation benefit analysis shall be established by the agency requesting the conservation agreement modification or termination. Conservation agreements may only be modified or terminated if the conservation benefit analysis concludes that the modification or termination results in a greater benefit to conservation purposes. The Council of State must approved any modification or termination agreement involving the State. Parties to a conservation agreement may include a provision at the time an agreement is executed requiring the consent of the grantor or the grantor's successors in interest to terminate or modify the agreement for any purpose. The provisions of this bill do not apply to a condemnation action brought under Article 6 of Chapter 40A, Condemnation of Property Encumbered by a Conservation Easement. **Effective: September 30, 2015. Session Law 2015-263.**

**Senate Bill 654, Map Act/Clarifications**, clarifies certain provisions of the Transportation Corridor Official Map Act ("Map Act"). The bill adds the Wilmington Urban Area Metropolitan Planning Organization to the list of entities that have authority and responsibility for notification and petition requirements, as well as the authority to make advanced acquisition of specified parcels of property in regards to filed transportation corridor official maps. **Effective July 16, 2015. Session Law 2015-151.**

#### **BILLS OF INTEREST NOT ENACTED INTO LAW**

**House Bill 3, Eminent Domain**, would amend the North Carolina constitution to prohibit condemnation of private property except for a public use (deletes reference to public benefit), to provide for the payment of just compensation with right of trial by jury in all condemnation cases, and to make similar statutory changes. House Bill 3 passed the House but was not enacted this session.

**House Bill 127, DOT Condemnation Changes**, would modify the measure of damages in a condemnation action initiated by the Department of Transportation ("DOT"). This bill would

remove the ability to offset benefits to the property due to the project against the just compensation award. The bill provides that interest on a DOT condemnation award shall be paid from the date of taking until the date the judgment is paid. The bill would authorize a defendant in a DOT action to recover attorneys' fees and costs if the judgment exceeds the deposit by 25% or more. The bill provides that DOT shall send any relocation notice required by federal law within a specified period of time.

This bill passed the House and was referred to the Senate where it received an unfavorable report in committee and was tabled. House Bill 127 was not enacted this session.

**House Bill 156, Legal Notices/Require Internet Publication**, would require Internet website publication of legal notices in addition to continuing to require newspaper publication. The bill contains additional procedures and protections for posting these online legal notices. House Bill 156 was not enacted this session.

**House Bill 183, Repeal Map Act**, would repeal the Transportation Corridor Official Map Act ("Map Act"). The bill would require the Department of Transportation to study the development of a process for acquiring land for future highway construction that is in accordance with holding of the North Carolina Court of Appeals in *Kirby v. North Carolina Department of Transportation*, No. COA14-184 (N.C. Ct. App. 2015). This bill would require the Department to report its findings and recommendations, including any legislative proposals, to the Joint Legislative Transportation Oversight Committee no later than six months after this act becomes law. House Bill 183 passed the House but was not enacted this session.

**House Bill 418, Displaced Residential Land Tax Deferral**, would create a property tax deferral program for permanent residences that are subsequently rezoned for nonresidential uses. The bill provides that displaced residential land is designated as a special class of property under Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed in accordance with this section. For purposes of this section, "displaced residential land" would mean a person's legal residence, including the dwelling, the welling site, and related improvements. The dwelling may be a single family residence, a unit in a multifamily residential complex, or a manufactured home.

The bill provides that an owner may defer a portion of tax imposed on displaced residential land as it is currently zoned and the value of the displaced residential land as if it were zoned for residential use. House Bill 418 was not enacted this session.

**House Bill 477, LEO Privacy Protection**. The original version of House Bill 477 would have required cities and counties to remove personal information, including address and telephone number, from records available on internet web sites maintained by counties and cities, including local tax records, when requested by certain law enforcement personnel, prosecutors, and judicial officers. The original bill was substantially similar to the bill introduced but not enacted in 2014.

I spoke with the bill sponsor and expressed NCAI's concern. He said he would remove the Register of Deeds from the bill, which is a good development but did not cure the concerns NCAI had with the bill. I spoke with other members of the committee regarding the bill and NCAI's concerns. When the bill was considered in the House Judiciary II Committee, a number

of members raised concerns. As a result, it was suggested that the bill be turned into a mandatory study so the issues can receive further examination.

Ultimately, the bill sponsor worked with Senator McKissick (D-Durham) to have a provision protecting a law enforcement officer's cellular telephone number added to Senate Bill 699. House Bill 477 was not enacted this session.

**House Bill 577, Reasonable & Customary Appraisal Fees**, would allow the North Carolina Appraisal Board to establish and enforce the payment of reasonable and customary fees for real estate appraisals. The bill would enact new G.S. 93E-1-9.1, Customary and reasonable rate; periodic review, to provide that the Board shall determine and publish, at least every three years, a schedule of customary and reasonable rates of compensation for appraisals based upon the market area where the real property is situated. Evidence for such rates would be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. The bill provides that fee studies shall exclude assignments ordered by known appraisal management companies. The customary and reasonable rate of compensation for appraisals would be measured by the net compensation amount received by the appraiser. The bill provides that the above-described fee provisions would only apply to appraisals of one- to four-family residential properties. House Bill 577 was not enacted this session.

**House Bill 633, Occ.Lic./Professional Designation-Appraisers**, would recognize licensed and certified real estate appraisers as providers of professional services. This bill would amend GS 93E-1-7 concerning real estate appraiser registration and licensing, adding a new subsection (e) to declare that real estate appraisers that are properly licensed and certified in accordance with GS 93E providing professional services, and as such are subject to the provisions of GS 105-41, concerning privilege taxes for professionals. Appraisers are already listed in GS 105-41, listing occupations recognized as "professions" in North Carolina. House Bill 633 was not enacted this session.

**Senate Bill 29, DOB Redaction Requests For Public Documents**, would allow Registers of Deeds and Clerks of Court to redact certain identifying information from certain public records to protect the public from identity theft. Senate Bill 29 was not enacted this session.

**Senate Bill 282, Statewide Submerged Lands Inventory**, would require the Department of Environment and Natural Resources, Division of Water Resources, in conjunction with the Department of Administration and the Office of the Attorney General, to inventory all State-owned submerged lands in non-coastal counties and to determine the validity of the claims submitted under this section. In evaluating claims registered pursuant to this section, the Division would favor public ownership of submerged lands and public trust rights. The bill provides that the provisions of this section would not apply to the land lying under any private fish pond, irrigation pond, or other waterway not owned by the State.

The bill would require every person claiming any interest in any part of the bed lying under navigable waters of any non-coastal county of North Carolina to register the grant, charter, or other authorization under which the person claims with the Department of Environment and Natural Resources, Division of Water Resources, and provide a survey of the claimed area. The

bill provides that registering any claim with the Division in no way implies recognition by the State of the validity of the claim.

The bill provides that all rights and titles not registered in accordance with this section on or before December 31, 2017, would be declared null and void. Senate Bill 282 was not enacted this session.

**Senate Bill 425, DOT Condemnation Changes**, would modify the measure of damages in a condemnation action initiated by the Department of Transportation (“DOT”), to provide that interest on a DOT condemnation award shall be paid from the date of taking until the date the judgment is paid; to authorize a defendant in such an action to recover attorneys’ fees and costs if the judgment exceeds the deposit by twenty-five percent or more; to provide that a property owner is entitled to compensation for partial control of access; and to provide that the DOT shall send any relocation notice required by federal law within a specified period of time. Senate Bill 425 was not enacted this session.

**Senate Bill 482, LLC Act Clarification**, would act to make a technical and clarifying change to the Limited Liability Company Act. Senate Bill 482 was not enacted this session.

**Senate Bill 575, NC/SC Original Boarder Confirmation**, would make legislative changes to facilitate the work of the boundary commission in confirming and re-establishing the original boundary existing between the states of North and South Carolina. This bill did not pass the Senate or the House this session, but the bill sponsors in the House and Senate appear interested in moving this bill in the 2016 legislative session.

The bill provides that title to real property previously treated as being subject to the jurisdiction South Carolina, but that is recognized as being within the boundaries of North Carolina as a result of the certification of the boundary shall remain in full force, effect, and priority as if the title had been originally registered in North Carolina. Notwithstanding G.S. 161-14, for any portion of real property that is recognized as being within the boundaries of North Carolina as a result of certification of the boundary, and that previously has not been registered and indexed in North Carolina, the register of deeds shall register, index, and cross-index any instruments presented for registration retroactive to the effective registration date and time, as reflected by an original or certified copy of an instrument duly registered in South Carolina. In lieu of assigning a retroactive registration date and time in the index, the register of deeds may affix a statement, on a separate sheet of paper, immediately preceding the instrument presented for registration that cites this act and provides notice that the instrument shall have full force and effect as of the date of registration assigned by the South Carolina registry. The bill provides that notwithstanding any other provision of law, the register of deeds shall not collect any fees or taxes for instruments registered, indexed, or cross-indexed pursuant to this act.

The bill provides that foreclosure actions initiated on real property encumbered by a lien recorded in South Carolina wherein the real property is situated, in whole or in part, within the certified North Carolina boundaries shall be governed by the terms of the security instrument sought to be enforced. If the security instrument contains a power of sale clause, the party seeking to enforce the terms of the security instrument may initiate a foreclosure action in the county where the real property is situated pursuant to Chapter 45 of the General Statutes. A party seeking to enforce the terms of the security instrument may also resort to judicial foreclosure,



pursuant to Article 29A of Chapter 1 of the General Statutes, in accordance with the terms within the security interest. Judgments or orders of foreclosure entered by courts of North Carolina are binding and effective only with respect to the portion of real property situated within North Carolina. Prior to initiating an action to enforce a security instrument, the security instrument shall be recorded in the office of the register of deeds for the county where the subject property is situated.

The bill contains various other provisions to address tax liability, licenses, permits, school enrollment, and other issues that may affect citizens who will shift into another state due to the re-establishment of the North Carolina/South Carolina boundary. Senate Bill 575 was not enacted this session.

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