



Legislative Bulletin

NCLM.ORG NORTH CAROLINA LEAGUE OF MUNICIPALITIES

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Bulletin No. 1

March 14, 2006

Action—packed short session is on the way

The 2006 session of the General Assembly will officially convene on May 9. This is a "short" session year, so matters that can be raised are limited by the eligibility rules. Generally speaking, eligible bills will include those affecting the state budget, bills that passed one house in 2005, study recommendations, non-controversial local bills, and retirement bills.

Nonetheless, we anticipate a busy session with quite a few municipal issues on the table. Things happen fast in a short session, so now is the time to be contacting your legislators to let them know your concerns.

Below are some of the key issues that need your attention before the session begins.

Video Franchising Battle Heating Up

Telephone companies are seeking to expand their business by offering the video programming services traditionally provided by cable companies. In doing so, they view local franchise requirements as an impediment to their entry into the market. Based on what we've seen in other states, we anticipate legislation this session that would create a state franchise for video programming and eliminate existing local franchising authority. This is a nationwide push by the telephone industry that is under discussion in Congress and a number of state legislatures.

State franchising raises serious revenue implications for local governments. Cities currently collect franchise fees (up to 5% of gross receipts on cable services) to help compensate the taxpayers for use of the

publicly-owned street right-of-way. Even if the proposed legislation maintains the existing levels of revenue for local governments, there are many issues of concern beyond the purely financial:

- o City street rights-of-way are owned by the municipal citizens and the municipal council serves as trustee for this citizen-owned property. The citizens have a right to expect that their local elected representatives retain the authority to regulate their use (digging, line placement, pavement repair, traffic control, etc.).
- o Local cable franchise agreements typically include "build-out" requirements to ensure that service is available to all citizens within a reasonable timeframe. The benefits of video competition should not be limited to a privileged few, and phone companies should not be allowed to provide video service only in the neighborhoods they view as most desirable.
- o Local cable franchise agreements typically require adequate public, educational and local government channels and other community benefits. If phone companies want to enter the video business, they too should have community obligations.
- o Cities should be able to enforce the FCC video customer service standards, just as under current law applicable to cable companies.

The local franchising process has been open to telephone companies for years. Municipal officials are very willing to offer the same franchise terms to any video programming provider, whether cable company, telephone company, or otherwise. All would be treated equally under the existing franchising authority. However, it appears the telephone companies want preferential treatment, and a competitive advantage over cable, rather than a level playing field. We welcome competition,

NC General Assembly Information	
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www.ncga.state.nc.us	(NC General Assembly Website)
www.nclm.org	(NC League of Municipalities Website)

and the law should not allow a situation in which only one side enjoys the benefits of that competition.

The League has long-standing policy to oppose preemption of existing local authority. We also operate under a basic principle of protecting local funding sources. Furthermore, we have an obligation to support local governments' ability to protect the publicly-owned rights-of-way and to provide video programming and broadband as municipal enterprise services if that is to the benefit of the citizens. This is also an issue of fairness—the benefits of competition should not be enjoyed by residents of only a few select neighborhoods.

Action: *The issue is now before the General Assembly's Revenue Laws Study Committee, and the committee will be considering draft legislation soon. The telephone companies' television ad campaign has already begun. Please talk to your legislators immediately. Ask them not to preempt local government franchising authority but rather to preserve our right to issue franchises to new entrants into the video programming market. Ask them to continue to allow local governments to protect the interests of the public by ensuring equity in the provision of service (regardless of income or neighborhood demographics), getting compensation for the use of the public rights-of-way, and requiring providers to meet public information and community benefit requirements.*

*Revenue Laws Study Committee
Co-chairs: Sen. John Kerr & Rep. Paul Luebke;
Members: Sen. Dan Clodfelter, Sen. Walter Dalton, Sen. Fletcher Hartsell, Sen. David Hoyle, Sen. Hugh Webster, Mr. Leonard W. Jones, Mr. J. Micah Pate III, Rep. Harold Brubaker, Rep. Becky Carney, Rep. Walter Church, Rep. Dewey Hill, Rep. Danny McComas, Rep. William Wainwright, Rep. Winkie Wilkins*

Eminent Domain Discussion on a Fast Track

In the aftermath of the *Kelo v. New London* case (in which the U.S. Supreme Court upheld a Connecticut city's ability to take residential property and transfer it to a private developer for economic revitalization), many states are looking at restricting authority to condemn land for economic development purposes. In North Carolina, the House Select Committee on Eminent Domain Powers has been meeting regularly, and the Senate leadership has

signaled its intention to consider legislation as well.

North Carolina's eminent domain statutes (G.S. Chapter 40A) do not allow local governments to use that power for economic development in the manner it was used in *Kelo*. The *Kelo* case changes nothing in North Carolina. For that reason, the focus has shifted away from the *Kelo* case to various other issues, now that the door has been opened. These include attorneys' fees and relocation costs for property owners and valuation for the purposes of just compensation under the existing statutes, including how to compensate for business losses. Since the urban redevelopment statutes (G.S. Chapter 160A, Article 22) authorize the use of eminent domain for the purpose of redeveloping blighted areas, the possibility of narrowing the definition of blight has also been discussed.

The League membership has neither sought nor endorsed the authority to use eminent domain for general economic development purposes, and we have no intention of doing so. What happened in Connecticut cannot happen here.

The House Select Committee has begun discussion of a draft bill that would expressly limit the use of eminent domain to the purposes listed in G.S. Chapter 40A. It would repeal any local acts allowing eminent domain for other purposes. The draft would also compensate property owners for business losses (broadly defined) that result from the condemnation of property interests, and it would award attorneys' fees and other expenses to property owners when the amount awarded to the owner is more than 25% greater than the amount the condemnor offered.

Action: *Please contact your legislators to let them know that the League will not oppose legislation to make it crystal clear that eminent domain cannot be used for general economic development purposes. However, it is crucial to ensure that any statutory changes do not limit local government authority to use eminent domain to build roads and schools, provide water and sewer, and perform other essential governmental functions. Amendments must not make condemnation for these public purposes unreasonably expensive to the taxpayers. The draft under consideration by the House Committee goes too far in expanding*

compensation to property owners and would effectively curtail many necessary public works and infrastructure projects.

House Select Committee on Eminent Domain Powers

Co-chairs: Rep. Bruce Goforth & Rep. Wilma Sherrill; Members: Reps. Lucy Allen, David Almond, Nelson Cole, Robert Grady, Julia Howard, Edward Jones, Mickey Michaux, Deborah Ross, Drew Saunders, Alice Graham Underhill

Medicaid Relief Could Have Sales Tax Implications

North Carolina is the only state that still requires counties to pay a fixed percentage of the state's share of the federal Medicaid program. In FY 2005-06, the county share of Medicaid is expected to exceed \$470 million, and costs are expected to increase in the range of \$75 million per year. The N.C. Association of County Commissioners has identified Medicaid relief for counties as its highest legislative priority. Finding a way to fund such relief has an impact on municipalities as well.

A subcommittee of the House Select Committee on Health Care is looking at Medicaid relief. The Association of County Commissioners' Medicaid Relief Task Force has outlined a proposal that would surrender the proceeds of the existing one-cent local sales tax (the Article 39 tax) to the state in exchange for the state assuming full Medicaid responsibility. Counties would then be authorized to levy a new additional one-cent local option sales tax. If a county chose not to levy the new tax, it would be required to hold cities harmless for their loss of sales tax revenue (presumably through some type of reimbursement). The Association's board of directors has deferred action on the proposal to allow further study.

The League membership shares concern about the ever-growing Medicaid burden on our county partners. We will support sound approaches to providing relief that will not cause harm to the municipal revenue stream. However, the repeal of an existing local option sales tax, with reliance on reimbursements for losses, would make municipal revenues far less secure. We'll continue to discuss reasonable alternative proposals with our counterparts at the Association of County Commissioners.

Builders Seek Property Tax Exemption

In the 2005 session, developers sought legislation that would erode the local property tax base by exempting their "inventory." Under their proposal, the increase in value attributable to subdividing or improving real property held for resale would be excluded from the ad valorem tax. The N.C. Homebuilders Association attempted to draw a false parallel between the property tax paid on improved land held for resale and the manufacturers' and retailers' inventory tax (which was repealed in 1987, with reimbursement to local governments for their losses, later replaced by authority for additional local option sales tax). Following strong city and county opposition, the legislation failed to advance. However, the Senate sponsor suggested narrowing the exemption, and the issue is likely to reappear in the short session.

Action: Let your legislators know that you vigorously oppose such efforts to further erode the tax base. This exemption is unacceptable in any form.

Solid Waste Bill Lingers

Legislation that would hinder the ability of local governments to provide solid waste collection and recycling services at a competitive price remains eligible in the 2006 session. SB 951 – Public-Private Solid Waste Collection passed the Senate and was in the House Commerce Committee at the end of the 2005 session. It would require cities or counties that "displace" a private collection company to allow it to continue its service for 18 months after displacement or pay the company up to 12 months of gross receipts as compensation. "Displacement" could occur even if a town uses a competitive process—for example, if an existing provider is not the lowest bidder and the contract is awarded to someone else, the existing provider must either be compensated or the new contract delayed for 18 months.

Action: Please contact your House members to let them know that SB 951 in its current form drastically impedes local governments' ability to provide solid waste services. The League is open to further negotiation, but the existing bill is unacceptable.

Infrastructure Funding Dilemma

The N.C. Rural Economic Development Center recently released its findings that North Carolina has about \$7 billion in water, sewer, and stormwater infrastructure needs over the next five years (nearly \$17 billion over the next 25 years). In doing so, the Rural Center has called for a \$1 billion state bond issue.

Meanwhile, a coalition of environmental groups and land trusts known as Land for Tomorrow is building support for a \$1 billion bond issue for land conservation and preservation of open space. As these proposals are considered, other groups are likely to weigh in on additional infrastructure needs, including transportation and school construction, that should not be overlooked in the funding debate.

The State Treasurer recently indicated that North Carolina can take on more than \$2.14 billion in new debt annually for the next ten years and remain financially sound. Whether a bond referendum is the best approach at this time remains to be seen. With many needs competing for limited funding, the state and our membership will have to set some clear priorities. We need the General Assembly's help on clean water as well as on growing transportation needs. We have long advocated for a reliable, dedicated funding source for infrastructure and will continue to explore that option. We need a long-term solution to this growing problem.

Give Us Feedback

As you discuss these issues with your legislators, please contact League staff to let us know of significant concerns or comments by your legislators so that we can respond to them promptly or follow up with additional information.

Local bill deadlines:

May 17 - legislator submits to bill drafting

May 24 - bill introduced or filed for introduction

Ellis Hankins
Executive Director

Andrew L. Romanet, Jr.
General Counsel

The NCLM Legislative Bulletin is going electronic!

Up until now, you have been receiving this *NCLM Legislative Bulletin* by regular mail and, if we have your e-mail address, you have received a shorter electronic version by e-mail.

Beginning with the 2006 Session of the General Assembly, we will be streamlining the process and moving to electronic (e-mail) distribution of the full *NCLM Legislative Bulletin*. We will no longer send individual hard copies by regular mail unless specifically requested to do so (see below). We are making this change to save on printing and postage costs and to speed up the distribution of important legislative information.

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