



TOP NCHBA LEGISLATIVE ACCOMPLISHMENTS IN THE 2023 SESSION

“The 2023 legislative long session was one of the most productive and successful sessions in NCHBA’s history,” said Tim Minton, NCHBA Executive Vice President.

As usual, our legislative agenda was ambitious and obstacles to enacting legislation into law, not only for us but others, are more prominent than ever. Our task was made even more challenging this session by the Governor’s veto of three of our key bills. But, with bipartisan legislative support, we are pleased to report that the vetoes were overridden and these bills became law.

While housing affordability is always central to our advocacy efforts, the ongoing housing affordability crisis was recognized this session by legislators on both sides of the aisle as a critical issue. Consequently, with one major exception, this recognition assisted us getting our legislation to prevent or reduce unnecessary housing costs considered and enacted.

Among those efforts were those which paused unnecessary and expensive residential energy code changes and provisions providing regulatory relief on a number of land development fronts. These successes are outlined below.

A. Pro-Active Accomplishments and Successes Working with Others

1. ANNUAL NCHBA BUILDING CODE REGULATORY REFORM: [HB 488: \(Code Council Reorg. And Var. Code Amend\); Session Law 2023-108](#)

HB 488 was our top pro-active session priority and its enactment was one of NCHBA’s most significant legislative victories since the creation of the Association in 1963. While the bill has several important provisions, its most important is the creation of a Residential Building Code Council. This action was motivated by the failure of the existing North Carolina Building Code Council to prioritize housing affordability especially in light of the current housing affordability crisis. Their recent adoption of amendments to the residential energy code, which would add more than \$20,400 to a 2,400 sq. foot house, well illustrates this fact. One of the key provisions of the bill holds these proposed amendments in abeyance until 01/01/26 to give the new North Carolina Residential Code Council, to be appointed in 2025, the opportunity to review these proposed changes.

The provisions to create the new council and to hold the residential energy provisions in abeyance drew strong opposition from an unprecedented array of special interest groups seeking to kill the legislation. The bill also was strongly opposed by the Governor’s Office, the Commissioner of Insurance and the Department of Environmental Quality. Despite passing both chambers with wide bipartisan support, Governor Cooper chose to veto the legislation. However, NCHBA Director of Legislative Affairs Steven Webb and the entire NCHBA legislative team worked tirelessly to create an effective bipartisan coalition in the House, along with strong GOP support in the Senate, to ensure a successful veto override in August.

The bill contains the following 11 provisions which address various aspects of housing affordability and reform:

- **Creates a Residential Building Code Council**

This provision creates a new Residential Building Code Council consisting of 13 members focused on residential construction alone unlike the current 17-member NC Building Code Council (made up of all gubernatorial appointments) which also has commercial construction under its purview.

The appointments to the new residential code council will be made by the Governor (7), the Speaker of the House (3) and the President Pro Tempore of the Senate (3). The Governor designates the chair of the new council and his appointments are subject to legislative confirmation as well as are the legislative appointments. However, 9 members of the council will be required to establish a quorum and to adopt code changes.

[The Governor recently brought a lawsuit—Cooper v. Berger—which included a challenge to the 9-member “super majority” provisions as well as other provisions in another vetoed bill—SB 512 regarding changes to other boards (e.g., Board of Transportation, EMC, CRC, etc.)—which was likewise overridden claiming these provisions violate the state Constitution’s separation of powers clause. NCHBA is formally defending HB 488 in that lawsuit and recently successfully opposed the Governor’s attempt to preliminary enjoin the provisions of the act.]

- **Modify Building Permit Exemption and General Contractor’s license requirement**

This section raises the permit exemption threshold to \$40,000 (from \$20,000) for any construction, installation, repair, replacement or alteration not involving load bearing structures to better address inflationary pressures on construction. *Examples include: windows, doors, exterior siding, decking rails, and non-structural roofing.*

It also enacts a corresponding change to the contractor licensing law threshold—raising it to \$40,000 (from \$30,000). As of 10/01/23, a licensed general contractor is required for any project greater than \$40,000.

- **Authorize pavement design standards for private parking lots and driveways**

This provision prohibits a local regulation from requiring pavement design standards for private parking lots and driveway construction which are more stringent than the minimum roadway pavement design standards adopted by NCDOT.

- **Prohibits Exterior Sheathing Inspection; except in 140+ wind zones**

This provision prohibits the building code council or the residential code council from adding an additional required inspection for exterior sheathing, with the exception of 140+ wind zones. The bill also prohibits local governments from adopting an ordinance requiring an additional inspection for exterior sheathing, with the exception of 140+ wind zones. Those areas of the state include coastal counties and select counties in the far western portion of the state at

higher elevation which are subject to high winds.

- **Modify Appendix B Requirements**

This provision clarifies that a local government cannot require the completion of an Appendix B submission for plan review.

- **Amend Insulation Requirements for unvented attic and enclosed rafter assemblies**

This provision provides an option to add spray foam insulation to attic rafters in-lieu-of ceiling fiberglass insulation, and encloses all mechanical equipment within the thermal envelope of a home.

- **Prohibits modifications to various chapters within the Residential Code**

This provision preserves housing affordability through maintaining current standards in certain areas of the Residential Code by holding amendments adopted by the current building code council in abeyance until 01/01/26 (*i.e., mechanical, fuel gas, and energy efficiency standards*). However, this section allows for amendments to other areas of the Residential Code.

- **Amends the residential code to include three and four-family dwellings**

This provision would direct the Council to adopt rules to allow triplexes and quadplexes to be constructed under the residential code which are currently regulated by the commercial code making such dwellings unnecessarily expensive (e.g., sprinkler requirement, etc.). *[Several national commentators have favorably noted that while other states have legislated middle-housing reforms, NC is the first state to make this critical code change which provides greater affordability by making middle-housing construction more cost-effective.]*

- **Clarifies fee calculation for erosion and sedimentation control plan review**

This provision clarifies that the applicant can choose to pay the required Erosion Control Plan Review Fee on a per-acre or a per-lot basis.

- **Directs NC DEQ to seek approval from USEPA to streamline implementation of requirements of the Sedimentation Pollution Control Act and Federal requirements**

This provision seeks to remedy the need for the regulated community to receive two permits for the same regulatory field by consolidating state-level erosion control permitting with federally required NPDES construction stormwater permitting. It seeks to create permit efficiency while protecting our commonly shared environment.

- **Prohibit local governments from requiring payments to the local government from owners of privately-owned and maintained stormwater control systems for future maintenance or replacement costs of a system**

This reform removes an unnecessary barrier to housing affordability by limiting unreasonable development costs while providing local governments with an effective tool to preserve the proper operation and maintenance of private stormwater infrastructure without burdening local government taxpayers.

Key Legislators: Representatives Mark Brody (R-Union), Destin Hall (R-Caldwell), Tricia Cotham (R-Mecklenburg), Dennis Riddell (R-Alamance), Carla Cunningham (D-Mecklenburg); Senators Steve Jarvis (R-Davidson), Jim Perry (R-Lenoir), Tim Moffitt (R-Henderson)

2. RESTORES APPROPRIATE STATE WETLANDS REGULATION STANDARD: [SB 582: \(North Carolina Farm Act of 2023\); Session Law 2023-63](#)

For nearly three decades, wetland determinations in North Carolina were linked to the definition of federal “waters of the United States” (WOTUS). In 2019, dissatisfied with the Trump Administration’s changes to WOTUS rules at the federal level, the N.C. Environmental Management Commission (EMC), without legal justification, decoupled our state wetlands definition from WOTUS and instead imposed a new broad, all-encompassing definition of “state waters”. This revision greatly expanded the regulatory burden on North Carolina property owners already facing the federal wetlands permitting regime. The EMC’s action added uncertainty and unnecessary duplication to an already complicated and lengthy permitting process.

NCHBA led a business coalition including the NC Chamber and the North Carolina Farm Bureau to insert a provision in SB 582 that restores the state definition of wetlands to language consistent with what had remained in place for almost three decades in North Carolina. The provision tethers the state definition to the federal definition of wetlands. This action will help eliminate the regulatory uncertainty in the land development process engendered by the 2019 EMC change.

Our position was further supported by the NC Rules Review Commission (RRC) which objected last May to wetland rules proposed by the EMC/DEQ for violating G.S. 150B-19.3 which provides that state environmental rules cannot be more stringent than federal rules. NCHBA Director of Regulatory Affairs Chris Millis led the same business coalition in seeking to restore the link to WOTUS by defeating the new expansive rules at the Rules Review Commission and, subsequently, by successfully advocating for the insertion of the wetlands provision in SB 582.

During the session, opposition to this wetlands provision grew as a result of the recent US Supreme Court decision in the case of [Sackett v EPA](#) which held that the Clean Water Act only allows the assertion of federal jurisdiction over wetlands that have a continuous surface connection to bodies that are “waters of the United States” in their own right,’ so that they are ‘indistinguishable’ from those waters.”

Thus, the environmental special interests, and their friends in the media, led a full-scale effort to oppose our provision. They argued that the EMC’s action was necessary to preserve millions of wetland acres in the state. However, we countered that only the General Assembly could provide authority for that action and no effort had ever been made to obtain that authority.

Because of this opposition, and that of the Department of Environmental Quality, to this provision, the Governor vetoed the entire Farm Act. However, due to the outstanding leadership of Senator Jackson

and Representative Dixon, the veto was successfully overridden with bipartisan support in the House and a united GOP caucus in the Senate.

Key Legislators: Senator Brent Jackson (R-Sampson); Rep. Jimmy Dixon (R-Duplin)

3. WASTEWATER CAPACITY EXPANDED BY NEW DEFINITION: [SB 673: \(Wastewater Regulatory Relief Act\); Session Law 2023-55](#)

In a number of rapidly growing communities across the state, the lack of wastewater capacity has dampened the ability of many communities to grow. NCHBA recognized the problem and addressed it with this important legislation.

The bill substantially increases existing capacity by reducing the wastewater flow calculation for new residential construction from 120 gallons per day per bedroom to 75 gallons per day per bedroom to reflect current technology (e.g., low-flow toilets, etc.). Furthermore, the bill allows the local government utility to issue additional allocations where expanded treatment infrastructure is within 24 months of completion.

By adopting this new standard which reflects current technology, this act immediately increases capacity in high-growth counties and removes the threat of a moratorium which is required to build additional infrastructure. This act immediately benefits several jurisdictions which are not currently able to serve new development.

[After enactment of this bill, we learned that a couple of local jurisdictions were not complying with the permissive 75 gallon per day per bedroom language of SB 673 so we made the provision mandatory in a provision added to HB 600; see discussion of that provision below.]

Key Legislators: Senate Majority Leader Senator Paul Newton (R-Cabarrus); Representative Dean Arp (R-Union)

4. BUDGET BILL INCLUDES SEVERAL KEY NCHBA PROVISIONS: [HB 259: \(2023 Appropriations Act\); Session Law 2023-134](#)

The 2023-2024 budget process took longer than anyone expected. However, the final product was worth the wait for NCHBA. For months, Executive Vice President Tim Minton, and other members of the NCHBA legislative team, worked with budget writers on several provisions that were needed both in terms of policy and financial assistance. NCHBA was able to address those needs in the final budget that was passed in October. Here are those key NCHBA provisions:

- **Continued funding for the BE PRO BE PROUD INITIATIVE; approval and funding for the HBI PACT program**

The BE PRO BE PROUD program continues to draw strong support from the General Assembly. It funds a traveling exhibition of two custom-built tractor trailers designed to showcase careers in the trades for middle and high school students. The budget contained a \$750,000 appropriation for 2023 and an additional \$750,000 appropriation for 2024.

Another provision requires the NC Department of Public Instruction to allow local school systems to use the Pre-Apprenticeship Certificate Training (PACT) program designed by the Home Builders Institute, an affiliate of our national association.

This provision also includes an annual \$200,000 appropriation for both 2023 and 2024 to provide grants to assist public school units with program costs associated with CTE programs related to home building. This is a key piece in training the next generation of skilled workers that will be needed in our industry.

- **Legislative fix for wrongly-decided workers compensation court decisions**

NCHBA was one of the leaders in the successful reform of the workers' compensation laws enacted by the 2011 General Assembly. Perhaps the top reform enacted in that bill was the institution of a 500-week cap on temporary total disability benefits. Two recent decisions of the NC Court of Appeals (i.e., *Sturdivant* and *Betts*) effectively eliminate this cap which immediately produced undesirable consequences for employers in our state.

NCHBA Legal Counsel Mike Carpenter, along with his counterparts at the NC Retail Merchants Association and the NC Chamber, led a business coalition in an effort to legislatively reverse these decisions and restore the cap. We were able to successfully negotiate language with representatives of the plaintiff's bar to accomplish this goal and this language was inserted into the final budget conference report and became law. Senate President Pro Tempore Phil Berger and his staff were instrumental in making this happen.

- **OSHA Citation Time Limitation Restored**

Prior to 2022, the time period for the issuance of an OSHA citation was set out in the law as "six months following the occurrence of any violation." In last year's budget conference report, the language was altered, at the behest of the Department of Labor, to provide that this time period was "six months following the initiation of an inspection by the Director."

NCHBA and the NC Chamber led a successful effort to restore the prior language which was included in this bill. A special thanks to Senator Brent Jackson (R-Sampson), the Senate's chief budget writer, for restoring this language.

- **New Stormwater Permit Shot Clock and Other DEQ Permit Reforms**

One of the longstanding complaints we hear from our members is the length of time it often takes to obtain a stormwater permit from the Department of Environmental Quality (DEQ). In an effort to address these concerns, NCHBA Executive Vice President Tim Minton successfully negotiated with DEQ Secretary Elizabeth Biser for language creating a new "shot clock" in exchange for a reasonable increase in regular-track DEQ stormwater fees (which have not been increased since 2007).

A new "shot clock" procedure was needed because the existing 90-day review procedure reset each time DEQ asked for more information. As well, there was no requirement for DEQ to conduct a complete technical review so the initial 90-day period often was reset and there was no limit on the number of these "resets".

The new “shot clock” procedure requires DEQ to determine if an application is administratively complete within 10 working days of receipt. If administratively complete, DEQ has 60-calendar days to complete its technical review. If additional information is needed during that period, DEQ has an additional 30-calendar days to complete the review after submission of the requested material. As a result of this reform, DEQ asked to eliminate the “fast track stormwater permit option” in order to consolidate the department’s focus on the new review process which we agreed to do. However, eliminating this provision does NOT eliminate the express permitting program.

Other provisions supported by NCHBA prohibit DEQ from refusing to accept an application for a permit, authorization or certification or refuse to issue same “based solely on the failure of an applicant to obtain another permit, authorization or certificate required for the same project.” This language was also specifically included in the erosion and sedimentation control statutes applicable to both state and locally delegated programs.

- **Fix Major Loophole in Rulemaking Process**

As noted earlier, for nearly three decades wetland determinations in North Carolina were linked to the definition of federal “waters of the United States” (WOTUS). In 2019, dissatisfied with the Trump Administration’s changes to WOTUS rules at the federal level, the N.C. Environmental Management Commission (EMC), without legal justification, decoupled our state wetlands definition from WOTUS and instead coupled state wetland determinations to a broad, all-encompassing definition of “state waters”.

As noted earlier, NCHBA led other business groups in challenging this new rule before the Rules Review Commission (RRC) as being in conflict with a state law which prohibits state agencies from adopting environmental rules that are more restrictive than federal environmental laws. In May of 2022, the RRC agreed and struck down the EMC’s permanent rule for violating G.S. 150B-19.3 which provides that state environmental rules cannot be more stringent than federal rules.

However, the EMC refused to withdraw its rejected rule and kept its temporary rule (which is essentially the same as the permanent rule) in place. Thus, the EMC continued to impose restrictions which it didn’t have the legal authority to do.

Along with other business groups, NCHBA worked to include language in the budget conference report which now requires an agency to withdraw any rule which is objected to by the RRC which, by operation of law, will automatically end the temporary rule. Additional language specifically applies this requirement to the EMC’s refusal to withdraw its illegal wetland rule.

- **Appropriations for the NC Housing Finance Agency**

It is always an annual NCHBA priority to support the NC Housing Finance Agency in its funding requests of the General Assembly especially for the Housing Trust Fund. This year the agency received an appropriation of \$40,660,000 for each year of the biennium in excess of receipts of \$170,000,000 for a budget of \$201,660,000.

- **Commissioner of Insurance Will No Longer be the State Fire Marshal**

NC's existing Building Code Council and the new Residential Building Code Council (created by NCHBA in HB 488; SL 2023-108) are (and will be) staffed by members of the NC Department of Insurance's (DOI) Construction Engineering and Codes Section. This section is within the Office of State Fire Marshal of DOI and the Commissioner of Insurance has historically been the State Fire Marshal.

However, a provision in the final conference report makes the State Fire Marshal independent of the Commissioner, although that position will be appointed by the Commissioner but will be subject to confirmation by the General Assembly. Legislative confirmation of that nomination will allow us, and others, to play a role in that process. We believe the Engineering and Codes Section will remain under the jurisdiction of the State Fire Marshall but the details are yet to be determined.

Key Legislators: Representatives Dean Arp (R-Union), Jason Saine (R-Lincoln); Senators Phil Berger (R-Rockingham), Brent Jackson (R-Sampson)

- **5. Several NCHBA Provisions were included in the Regulatory Reform Act of 2023: [HB 600: \(Regulatory Reform Act of 2023\); Session Law 2023-137](#)**

Since the current GOP majority took control of the General Assembly in 2011, an annual regulatory reform bill has always been on the agenda. This year was no exception. HB 600 is an omnibus bill which contains several provisions requested and crafted by the staff of NCHBA. The bill became law in October despite the Governor's veto. The following are the impactful provisions impacting the home building industry.

- **Stormwater Reforms**

Clarifications to existing statutes in an effort to ensure that proper credit for existing impervious is received during development and redevelopment activities.

Restrain state stormwater permitting regulators from claiming that developers must capture and treat stormwater for public linear roadway projects within a state or a municipal right-of-way associated with their project.

Requires that state stormwater permitting regulators allow new applicants to be able to develop without being encumbered by an existing stormwater permit on an adjacent property and to allow state regulators to rescind a stormwater permit that has not been developed within 5 years.

- **Wastewater Demand Reduction Clarity for Dwellings**

As noted earlier, this provision mandates the permitting of new dwelling units by requiring utility providers to permit these units at 75 gallons per day per bedroom instead of 120 gallons per day per bedroom regardless of the number of bedrooms being constructed. The prior permissive language of SB 673 was made mandatory because a couple of jurisdictions refused to apply the new standard because it lowered their system capacity fee calculations.

- **Limits on Local Government Zoning Authority**

Forbids local governments requiring a parking space larger than 9 feet wide by 20 feet long

Limits local governments from requiring additional fire apparatus access roads into residential developments beyond that required by the Fire Code of the NC Residential Code for One- and Two-Family Dwellings.

- **Reducing Regulatory Overreach**

Requires Coastal Area Management Act (CAMA) regulations to be established in writing and directly tethered to existing law.

Establishes that the North Carolina Department of Environmental Quality cannot place a permit condition on the regulated public without statutory authority.

Reinforces that state regulators cannot enforce any policy or guideline upon the public that has not been properly adopted through the state rulemaking process.

Key Legislators: Representative Dennis Riddell (R-Alamance), Jeff Zenger (R-Forsyth); Senator Norm Sanderson (R-Pamlico)

6. Protecting Gas Appliances and Other Gas Units from Local Prohibition: [HB 130: \(Preserving Choices of Consumers\); Session Law 2023-58](#)

This legislation assures consumer choice in the selection of energy service. It responds to instances where municipalities in other states have mandated that new construction contain only all-electric heating and appliances. These mandates also prohibit the installation of natural gas connections. This strategy, designed to “decarbonize” the economy, is called “electrification” and is a darling of the environmental climate-change activists.

Similar legislation passed both the House and Senate in 2021 but was vetoed by the Governor. This year, in light of the strong bipartisan vote on both chambers which NCHBA and the NC Chamber worked hard to achieve, the Governor decided to let it become law without his signature.

Key Legislators: Representative Dean Arp (R-Union), Senator Paul Newton (R-Cabarrus)

7. Confirmations of Chairs of the NC Industrial Commission and the NC Board of Review: [SJR 220 \(Confirm Phil Baddour/Industrial Commission\); Resolution 2023-6; \[SJR 221 \\(Confirm Theresa Stephenson/Board of Review\\); Resolution 2023-7\]\(#\)](#)

NCHBA, in cooperation with the NC Chamber and the NC Retail Merchants Association, led a business coalition in support of the confirmation of Phillip Baddour for a new term as chairman of the NC Industrial Commission and Theresa Stephenson to a new term as chair of the Department of Employment Security (DES) Board of Review.

Legislative confirmation of gubernatorial appointments serves two important goals. First, it assures that those appointed are qualified. Second, it helps provide critical balance to the work of these important boards and commissions.

- **NC Industrial Commission**

In reform legislation enacted in 2011, NCHBA successfully inserted language which requires legislative confirmation of gubernatorial appointments to the NC Industrial Commission. Having a fair and balanced commission to administer NC's workers' compensation system is of critical importance to our industry specifically and the business community generally.

Prior to the 2011 reforms, the commission was significantly out of balance and employers were suffering as a result. Thus, it was important to restore balance to the commission and legislative confirmation was an important tool to produce that result.

After the business community successfully opposed two of the present Governor's nominees to the commission who were not confirmed, a new working relationship emerged between the Governor's office, the business community and the plaintiffs' bar which has produced cooperation and confirmations with all six of the current members of the commission.

Phillip Baddour was confirmed in 2018 as a product of this cooperative effort. He was re-nominated by the Governor for a new term as chair. He is a highly qualified attorney and has done an excellent job during his term as chair.

- **DES Board of Review**

Another agency of critical importance to our industry, and to the business community in general, is the Department of Employment Security. That agency administers the state's unemployment insurance (U/I) system. Employers in the state pay a monthly tax to support this system. NCHBA was also a leader (along with the NC Chamber and the NC Retail Merchants Association) in a major reform effort in 2013 which rescued our broken U/I system and paid back an almost \$3 billion debt which our U/I trust fund owed the federal government based on monies advanced to pay claims during the Great Recession.

One of the vital safeguards to guard against agency bias in the determination of U/I claims was the creation of the three-member DES Board of Review. This board reviews all appeals filed by both claimants and employers from decisions made by DES hearing officers. This board is designed to provide a fair and objective review of agency decisions. Thus, it is vital that the members of this board be both highly qualified and decide these appeals by fairly and faithfully following the law. This board reverses a significant percentage of prior agency decisions.

Despite the recent track record of success with the nomination and confirmation of gubernatorial appointees to the Industrial Commission, the Governor chose not to follow this path with nominees to the Board of Review. Last session, a total of six successive nominees failed to be confirmed within the 30-day statutory period. This was largely due to the fact that these nominees did not enjoy the active support of the business community. Finally, in his seventh nomination, the Governor nominated a qualified candidate we could support and Regina Adams was confirmed in a unanimous vote.

This year, the Governor coordinated with us prior to his renomination of Theresa Stephenson for a new term as chair of the Board of Review. We were delighted to support Theresa who, in addition to her

excellent qualifications, has done a remarkable job in disposing of more than 7,000 appeals over the past three years arising from the COVID lock-downs.

Both Theresa and Phillip were confirmed unanimously.

Key Legislators: Senator Bill Rabon (R-Brunswick); Rep. Destin Hall (R-Caldwell)

8. [Expedited Commercial Inspection Reform: SB 677 \(Surveyors Right of Entry/Exped. Comm. Bldg.\); Session Law 2023-142](#)

Senate Bill 677 was originally filed in April to allow a limited right of entry for professional land surveyors and to create a limited license for the same folks. When traversing the House in late September, the legislation picked up an important passenger. NCHBA assisted Rep. Jeff Zenger (R-Forsyth) and Senator Steve Jarvis (R-Davidson) in adding provisions which created statutory reforms to the commercial and multifamily building permit process administered through local governments.

These combined provisions became the final version and were agreed to by the Senate. The bill passed and was submitted to Governor Cooper for his review. He chose let it become law without his signature.

The reforms to the commercial and multifamily building permit process found in SB 677 include:

- An optional pre-submittal meeting that a local government must provide within 5 business days of the applicant's request to discuss the building project and to determine whether the applicant possesses the required plans and related information the local government would require for building permit plan review.
- A shot clock on local government commercial and multifamily plan review of 45 days with an additional 10 days if a request for additional information is made. *[Note: NCHBA was successful in enacting legislation in 2019 which sets a 15-day shot clock for jurisdictions who choose to perform residential building plan review.]*
- If the local government is unable to meet this timeframe, SB 677 allows it to contract with an independent third-party reviewer for assistance. In addition, if the local government fails to meet the shot clock, SB 677 gives the applicant the right to hire a licensed professional engineer or architect who is properly certified to perform an independent third-party plan review.
- An at-risk building permit option is created that allows an applicant to concurrently proceed with construction elements of the horizontal project while the vertical-related building plans are under local government plan review.

Lastly, important for residential development as well as commercial and multifamily projects, is a provision in SB 677 that makes it clear to local governments that they cannot deny a draft erosion and sedimentation control plan due to other outstanding development-related approvals and once approved that the local government must allow land disturbing activities to begin at the site. This provision is very important to allow for site clearing, grubbing, and grading while other development-related permits are pending.

A special thanks to Representative Jeff Zenger (R- Forsyth) and Senator Steve Jarvis (R-Davidson) for their advocacy and effort to provide these necessary permitting reforms. We are proud to note that both Representative Zenger and Senator Jarvis are members of NCHBA as can be seen through their knowledge and expertise when handling legislative matters sensitive to the home building industry.

Key Legislators: Representative Jeff Zenger (R-Forsyth); Senator Steve Jarvis (R-Davidson)

B. BILLS SPECIFICALLY AFFECTING OUR INDUSTRY WHICH NCHBA SUCCESSFULLY OPPOSED

Flying directly in the face of the current affordability crisis and NCHBA's efforts to increase housing opportunities in North Carolina, several unfavorable bills were introduced. NCHBA worked to ensure that these bills were not assigned to a substantive committee or, if assigned, not calendared to be heard in that committee.

- **Inclusionary Zoning**

A recurrent bad bill, [HB 645 \(Inclusionary Zoning/Workforce Housing Funds\)](#), was again introduced by Representative Terence Everitt (D-Wake) and, this year, with Rep. Deb Butler (D-New Hanover). While NCHBA fully supports an appropriation to the Workforce Housing Loan Program administered by the NC Housing Finance Agency, we strongly oppose the provision in the bill which would authorize all local governments in the state to impose mandatory inclusionary zoning requirements.

Mandatory inclusionary zoning requirements would force developers/builders to set aside a significant percentage of units/houses in a development/subdivision for below-market-rate sale. Of course, the result of that exaction produces the result that the remainder of the units/houses must be marked above-market-rate in order to pay for the subsidy. This is guaranteed to make housing even more unaffordable. Over the past three decades, NCHBA has successfully defeated several legislative efforts to authorize inclusionary zoning in North Carolina. Due to NCHBA efforts, this bill was not assigned to a substantive committee.

- **Misguided Home Ownership Rental Restriction**

Another bill which NCHBA successfully opposed was [HB 114 \(Home Ownership Market Manipulation\)](#). This bill was prompted by news articles in the Raleigh and Charlotte newspapers reporting that investors were purchasing homes for rental purposes outbidding, and thus depriving, prospective homebuyers of the opportunity to purchase. The bill sought to prohibit the purchase of single-family homes in "qualifying counties" (those with a population of greater than 150,000) by any entity who already owns 100 or more single-family homes used for rental purposes in those qualifying counties.

While well intentioned, this bill was misguided. Several of our national building members construct subdivisions of single-family homes for rent rather than sale. Frankly, renting is an option that some customers prefer and that housing choice should be preserved. The bill does not address the real cause of the problem which is lack of supply. This problem will disappear when the current housing imbalance between supply and demand is eventually corrected.

Speaker of the House Tim Moore agreed with our analysis and sent the bill back to the Rules Committee advising the sponsor that the bill would not be further considered this session.\

- **Undesirable Marketable Title Act Amendment**

In May, NCHBA General Counsel Mike Carpenter testified before the House Judiciary 2 Committee in opposition to [HB 642 \(Marketable Title Act-Restrictive Covenants\)](#). The bill proposed to add a new provision to the Marketable Title Act (MTA) which would revive old covenants and restrictions on land which have been extinguished and are no longer part of a landowner's chain of title. This provision was proposed by an attorney who represented a group of homeowners in a wealthy Charlotte neighborhood in an effort to legislatively reverse a recent decision of the Supreme Court of North Carolina which they litigated and lost. The court ruled that the neighbors could not enforce old restrictive covenants which had not been properly preserved under the MTA to prevent the construction of housing the neighbors didn't like.

Carpenter and speakers from the NC Association of REALTORS and the NC Land Title Association urged the committee not to approve HB 642 because it would cause significant negative impacts on property owners, lenders, builders, developers, title insurance companies, real estate attorneys, and others. Specifically, Carpenter pointed out that the state is in the midst of a housing affordability crisis in which the middle class can no longer afford to purchase a median priced home. He predicted that the result of the passage of this bill would be to dramatically increase the time and cost of title examination and delay closings which will only make the current affordability crisis worse.

The committee voted 6-4 in a roll call vote not to give the bill a favorable report and the bill did not advance. NCHBA remained vigilant through the session to ensure that the language did not appear in any other bill.

In the 2015 Session, NCHBA successfully sought legislation which reformed the performance guarantee system. Local governments were specifically given the authority to require security from developers to assure that subdivision infrastructure be properly constructed but under standards set forth in the statute which assured that developers could end such guarantees when the work is accepted. One of those standards allowed developers to choose what form the performance guarantee would be required (e.g., surety bond, letter of credit, other form of credit).

- **Preserve Developer Choice of Performance Guarantee**

[HB 310 \(Selection of Performance Guarantee Method\)](#), introduced by Rep. Frank Iler (R-Brunswick), would remove that choice from the developer and give it to the local government. The bill was referred to the House Local Government Committee on Land Use, Planning & Development where the chairman chose not to calendar the bill for further consideration.

- **Orphan Roads**

Related to this same issue is [SB 635 \(Orphan Roads\)](#), introduced by Senators Vickie Sawyer (R-Iredell), Tom McInnis (R-Moore) and Michael Lazzara (R-Onslow). As introduced, this bill would have authorized counties to require the posting of a "temporary maintenance guarantee" by the developer "for any publicly dedicated roadway to be transferred for public maintenance". Current law does not provide authority to require the posting of maintenance bonds after subdivision infrastructure (including roads) are accepted.

Modeled after our 2015 performance guarantee act, the bill has several good provisions designed to address the "orphan road problem" across the state. That problem arises when the state highway

system (NC Department of Transportation—DOT) does not timely accept subdivision roads which are built to their standards into its system and the roads subsequently deteriorate. Once that happens, the DOT will use that as an excuse not to accept the roads and the homeowners on that road have no real alternative other than to complain to their legislators. There are a lot of orphan roads across the state especially in rural areas and particularly in Eastern North Carolina.

NCHBA Executive Vice President Tim Minton has worked with the sponsors of SB 635 and other legislators during this and previous sessions to find an acceptable compromise. We are willing to allow temporary maintenance guarantees to be required ONLY if there are specific statutory requirements that DOT has to accept these subdivision roads into their system on a timely basis are imposed. To date, DOT has strongly resisted this compromise. Without a specific statutory requirement mandating a short timeline after construction for DOT to accept a subdivision road when built to its standards, a developer will be on the hook to maintain these guarantees for years and this unnecessary and uncertain cost will be borne by homebuilders and their customers. Negotiations on the bill are sure to continue in the upcoming short session.

- **Mandatory EV Charging Stations**

Another bad bill from last session reappeared this year. [HB 318 Building Code/EV Charging Station](#) was again introduced by Representatives Deb Butler (D-New Hanover), Julie von Haefen (D-Wake), Terry Brown (D-Mecklenburg), and Maria Cervania (D-Wake). The bill sought to direct the NC Building Code Council to amend the residential building code to require that charging stations be installed in all newly constructed homes. Last session, NCHBA suggested to the lead sponsor that this type of policy should be in the form of a tax credit for builders. However, the sponsor chose not to pursue our suggestion last session or again this year. Consequently, this bill was referred to the House Rules Committee where it remained for the session.

- **Abolish Rent Control Statute**

Senator Lisa Grafstein (D-Wake) introduced [SB 225 \(Act to Permit Local Gov. to Enact Rent Control\)](#). This bill would repeal G.S. 42-14.1 which prohibits local governments from enacting any ordinance or resolution “which regulates the amount of rent to be charged for privately-owned, single-family or multiple unit residential or commercial property.” In addition to its obvious application to rents, the statute forms the basis for the legal prohibition on local governments enacting inclusionary zoning ordinances which include limitations of sale of subsidized below-market-rate units. NCHBA, the NC Association of REALTORS and other groups opposed this bill and it remained in the Senate Rules Committee without referral to a substantive committee.

- **Town of Davidson Local Bills**

Senator Natasha Marcus (D-Mecklenburg) introduced [SB 243 \(Town of Davidson-Expedited Review Exemption\)](#) which, as the title suggests, would provide that the Town of Davidson would not be required to provide expedited review of certain subdivision approvals. NCHBA opposed this bill and it remained in the Rules Committee.

Senator Marcus also introduced [SB 240 \(Design Elem. Exempt. -Historic Downtown Davidson\)](#). This bill would exempt a portion of the Town of Davidson from NCHBA’s landmark 2015 legislation which clarified that local governments do not possess the authority to mandate the application of design and

aesthetic controls to any structure subject to the NC Residential Code for One- and Two-Family Dwellings. The law's limitations include "exterior color, type of style of exterior cladding material; style or materials of roof structure or porches; exterior non-structural ornamentation; location or architectural styling of windows or doors, including garage doors; the number and type of rooms; and the interior layout of rooms" in both existing and future ordinances.

Numerous cities objected to this legislation, including Davidson in 2015. NCHBA has successfully opposed all attempts, like this one, to exempt municipalities from its application. As material costs continue to rise, home buyers cannot afford to have their cities turn into costly HOAs.

- **Three-Year Building Code Adoption Cycle**

Finally, while no bill or provision ever appeared, an influential lobbying firm was retained to explore legislation to return North Carolina to a "three-year building code adoption cycle".

Prior to the 2013 Session, the *NC Residential Building Code for One- and Two-Family Dwellings* was adopted every three years corresponding to the International Code Council's (ICC) code adoption cycle. Frankly, that was too frequent and a six-year code cycle made more sense to our builders, local code officials and to the NC Building Code Council adoption process. Consequently, in the 2013 Session, our very first "Building Code Regulatory Reform Act" (although it did not carry that title) included a provision which put our state on a six-year code adoption cycle.

Not everyone was happy with that change including the ICC which is a private organization whose primary source of income is the code books they sell. The ICC hired a lobbyist to unsuccessfully oppose our bill then and it hired another lobbyist this year to unsuccessfully oppose HB 488. As well, the stated reason for the Department of Insurance's opposition to HB 488 was their desire to see the state return to a three-year code cycle although HB 488 did not address that requirement in any way.

While the National Electrical Manufacturers Association also retained this influential lobbying firm to oppose HB 488, there was no legislation introduced to attempt to return North Carolina to a three-year code adoption cycle. NCHBA remained vigilant throughout the session and was prepared to oppose any such attempt. We are pleased to report that no legislation on this topic was introduced.

C. UNFINISHED BUSINESS

North Carolina faces a critical housing crisis. We have yet to recover our pre-Great Recession construction level. More than one million new residents have come to our state over the past decade. Demand has far outstripped housing supply causing home prices to increase dramatically. Moreover, interest rates have doubled in the past year effectively closing the door on prospective home buyers in our state.

As a consequence, the American Dream of Home Ownership is simply out of reach for those who make our communities work — firefighters, law enforcement officers, teachers, nurses, first responders and other vital workers. In fact, the middle class is currently priced out of the marketplace across the state. We need to dramatically increase housing supply and we need to do it now.

- **Addressing the Workforce Housing Crisis**

The North Carolina Home Builders Association (NCHBA) and the NC Association of REALTORS collaborated with Senators Paul Newton (R-Cabarrus), Tim Moffitt (R-Henderson) and Paul Lowe (D-Forsyth) to produce [SB 317 \(Addressing the Workforce Housing Crisis\)](#). This bi-partisan effort is designed to harness the power of the free market to build more housing units quickly. The bill collected a total of 30 co-sponsors in the 50-member Senate in addition to the 3 primary sponsors.

In short, the bill creates a new type of subdivision — the workforce housing development. This subdivision would be required to make 20% of its housing units (single family, duplex or townhouses) available to prospective buyers who do not exceed certain income limits set by the federal Department of Housing and Urban Development. The remaining 80% of the subdivision's housing units would be market-driven free from the costly local regulations imposed on new housing.

As an incentive to builders and developers to create a workforce housing subdivision, certain local ordinances (e.g., density, setbacks, open space, etc.) would not apply thereby reducing the cost. However, all units constructed in the development will be built and inspected to assure compliance with the NC Residential Code and will be subject to the state's erosion, sedimentation and other state environmental laws. The development will also observe traditional subdivision road requirements and performance guarantee standards.

A workforce housing subdivision would have to be at least 10 acres, so it is unlikely to be built in an established neighborhood as tracts of that size are rare.

A couple of weeks later, NCHBA and the NC Association of REALTORS collaborated with Representatives John Bradford (R-Mecklenburg), Jeff Zenger (R-Forsyth) and Ashton Clemmons (D-Guilford) to introduce [HB 562 \(Addressing the Workforce Housing Crisis\)](#) into the House which is a companion bill to SB 317. The bill attracted a strong bipartisan list of co-sponsors (37 including the three principal sponsors).

The introduction of SB 317 and HB 562 produced considerable comments both positive and negative. On the positive side, the *Carolina Journal*, a publication of the John Locke Foundation, wrote a highly favorable article calling our effort “a creative solution to address critical workforce housing shortages for North Carolinians.”(See [link to article](#)). In addition to the Realtors, the bills were supported by the NC Chamber and the American Association of Retired Persons (AARP).

On the other hand, legislators began to hear from some local government officials concerned about their inability to impose some of their existing regulations on the workforce housing subdivisions which would be created if this legislation is enacted. Ironically, it is just these sorts of regulations which make the delivery of workforce housing impossible in their communities.

After hearing concerns from several members prompted by the strong opposition generated by the local government associations, the Senate leadership decided that the time was not right to move the bill. Consequently, the bill remained in the Senate Rules Committee despite a majority of both chamber caucus members signed on as co-sponsors of the bill. Given that the bill would not be heard in the Senate, we decided, in consultation with the House sponsors, not to seek to have HB 562 heard this year. However, it remains eligible for next year's short session.

Since land costs directly control what can be built and sold on a parcel, increasing density on a parcel is the most effective way to respond to the housing affordability crisis. Increasing density is a key objective in both SB 317 and HB 562. However, local governments, through zoning controls, mandate large lot density by requiring minimum lot sizes.

- **Provision to Increase Density**

Responding to this issue directly, the second edition of [SB 675 \(Land Use Clarification and Changes\)](#) introduced by Senator Michael Lee (R-New Hanover) included a prohibition on local governments setting a minimum lot size “greater than 8,700 square feet for structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings” and prohibited any regulation “which limited density in any district that allows for structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings below five structures per acre”. Facing strong opposition from the usual suspects, this provision was removed from later versions of the bill; however, Senator Lee is firmly committed to working with us on this concept in the short session.

- **HOA Reforms**

[HB 542 \(HOA Revisions\)](#), introduced by Rep. Ya Liu (D-Wake), began as an effort to restrict the ability of homeowners’ associations (HOAs) from being able to institute foreclosure procedures on assessments of less than \$2,500 or one year of unpaid assessments. Increased notice procedures to delinquent home owner association members were also included in the bill.

When the bill was considered by the Senate, several key Senators added provisions which caught our interest. Senators Todd Johnson (R-Union) and Benton Sawrey (R-Johnston) were receptive to our suggested modifications to their language which were added to the bill to preserve the ability of HOAs to utilize non-judicial foreclosure as well as to preserve the ability of developers to require capital contributions to fund HOAs. While the final conference report was not agreed to between the chambers, we fully expect this bill to be on the agenda for the short session.

On the same subject of HOAs, [HB 311 \(House Select Committee on HOAs\)](#), introduced by Rep. Frank Iler (R-Brunswick) began as an effort to create a “Community Association Oversight Division” within the Attorney General’s Office. That division’s mission would have been to assist HOA members with complaints against their HOAs including authorizing this division to take legal action against HOAs. Needless to say, this legislation generated strong opposition from HOAs and their management companies such that the bill was turned into a bill creating a House Select Committee HOAs. It is unclear if this committee will be appointed between the sessions but, if it is, we will be closely following its proceedings.

- **Storm Chasers: Roofers**

Finally, another issue which will return for the short session is related to [SB 622 \(Consumer Protection Against Storm Chasers\)](#) which is a bill introduced in the last several sessions without being formally considered. This bill, sought by the property and casualty insurance industry, would have created a cause of action for unfair and deceptive trade practices against any unlicensed roofing contractor who failed to provide a written contract for roof repair or replacement and allow a five-day cancellation period. At our request, this bill and its previous versions contained an exclusion for licensed general contractors.

Toward the end of this session, a new lobbyist for this issue contacted us about language taking the issue in a different direction. It would add those repairing or replacing residential roofs to the existing GS 14-401.13 which makes it a misdemeanor for any off-premises sellers who fail to furnish to the buyer a notice of cancellation. We suggested language to be included to exempt roofing performed by a licensed general contractor or performed by a person or subcontractor acting under the supervision of a licensed general contractor. This language was accepted but the sponsor was unable to locate a vehicle to attach this provision to in the waning days of the session. We expect that vehicle to be found in the short session.

Respectfully submitted, this the 30th day of November, 2023.

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