HOUSE BILL 44:
Local Government Regulatory Reform 2015

2015-2016 General Assembly

Committee:		**Date:**	September 16, 2015
Introduced by:	Reps. Conrad, Lambeth, Hanes, Terry	**Prepared by:**	R. Erika Churchill, Kelly Tornow, Jeffrey Hudson, Staff Attorneys
Analysis of:	Conference Report H44-PCCS40511-ST-8		

SUMMARY: House Bill 44 would amend various laws related to local government.

[As introduced, this bill was identical to S53, as introduced by Sens. Krawiec, Lowe, which is currently in House Local Government, if favorable, Regulatory Reform.]

CURRENT LAW AND BILL ANALYSIS:

Section 1 would consolidate G.S. 160A-200, which gives municipalities the authority to give a chronic violator of the municipality's overgrown vegetation ordinance notice on an annual basis, and G.S. 160A-200.1, which gives municipalities the same authority for chronic violators of the municipality's public nuisance ordinance. Under each statute, the municipality can charge a chronic violator of the ordinance for the expense of remedying violations, and collect the cost of remedying violations in the same manner as collection of unpaid property taxes. A chronic violator is defined as a person who owns property on which, in the previous calendar year, the city gave notice of violation at least three times.

Section 1.5 would authorize a city to regulate, restrict, or prohibit the placement, maintenance, location or use, of structures that are uninhabitable and without water and sewer service for more than 120 days on the State's ocean beaches, upon notification of the owner of record by certified mail.

Section 2 would prohibit cities and counties from requiring compliance with rules or regulations that a State department or agency declares to be voluntary, unless the State department or agency mandates its enforcement as authorized by applicable general law.

Section 2.5 would repeal G.S. 130A-34.4(a)(2), which requires that in order for a local health department to be eligible to receive State and federal public health funding from the Division of Public Health, the county or counties comprising the local health department must maintain operating appropriations to local health departments from local property tax receipts at levels equal to amounts appropriated in State fiscal year 2010-2011.

This section would become effective July 1, 2016.

Section 3 would provide that if a city's land use planning ordinance applies to property lying outside the territorial limits of the city, the city and the property owner must certify that the application of those land use planning ordinances is not under coercion or otherwise based upon any representation by the city that the city would withhold approval for land use planning without the property owner's consent to the application of the land use planning ordinance(s).

Section 3.5 would do all of the following:

- Clarify that when a well contractor obtains a permit to drill a well, that permit includes authorization for the electrical work needed to install the well that the well contractor is licensed to perform. Effective December 1, 2015.
- Require the Well Contractors Certification Commission to allow well contractors with valid licenses from other states to sit, without delay, for licensure in this State upon satisfactory proof that the qualifications of the other state are equal to holders of similar licenses in this State. Effective December 1, 2015.
- Allow any property owner to request and receive a permit for an irrigation water well to be used for irrigation or other non-potable purposes, which may not be interconnected to the plumbing connected to any public water system, unless the public water system is being assisted by the Local Government Commission. Effective August 1, 2016.
- Effective August 1, 2016, for undeveloped and unimproved property, allow a property owner to obtain a permit for a private drinking water well to serve the property and for as long as that well is operational, the property may not be required to connect to a public water system, unless one of the following apply:
    - The private drinking water well has failed and cannot be repaired.
    - The water is contaminated.
    - The public water system is being assisted by the Local Government Commission.
    - The public water system is in the process of expanding or repairing the public water system and is actively making progress to having water lines installed directly available to provide water service to that property within the 24 months. (Expires July 1, 2017.)

Section 4 would amend the zoning and regulation of development statutes for cities and counties to provide that fence wraps displaying signage are exempt from zoning regulation pertaining to signage when they are affixed to perimeter fencing at a construction site until the certificate of occupancy is issued for the final portion of any construction at that site or 24 months from the time the fence wrap was installed, whichever is shorter. After 24 months, cities and counties can regulate the signage but must continue to allow fence wrapping materials to be affixed to the perimeter fencing. Fence wraps would be prohibited from displaying any advertising other than advertising sponsored by a person directly involved in the construction project and from displaying any paid advertising.

Section 5. Currently under G.S. 143-755, if a permit applicant submits a permit for any type of development, and a rule or ordinance changes between the time the application was submitted and the time the decision on the application is made, the applicant may choose which version of the rule or ordinance will apply to the permit. This provision applies to all development permits issued by the State and by local governments, except zoning permits. Section 5 would amend G.S. 143-755 to apply to zoning permits as well.

Section 6. Currently, obligations incurred by a local government subject to the Local Government Budget and Fiscal Control Act and by a local board of education subject to the School Budget and Fiscal Control Act accounted for in a fund included in the budget ordinance may not be incurred unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains sufficient to pay in the current fiscal year for that amount. For written contracts, each must be certified by the finance officer, or a duly appointed deputy finance officer, to that effect, and is often called a "preaudit" certification. Section 6 would update that statutory requirement to reflect advances in technology that allow for credit cards, gas cards, procurement cards, and other means of remitting

payment for obligations. Section 6 would become effective October 1, 2015, and would apply to expenditures incurred on or after that date.

Section 7 would authorize the State Treasurer to utilize any and all reliable external data, including electronic databases, in verifying an escheated property.

Section 8 would prevent a county, city, or other political subdivision of the State from adopting or continuing to enforce any ordinance or resolution that prohibits any person or entity from owning or possessing five or fewer beehives. A city could require that the hive be placed at ground level or securely attached to an anchor or stand, regulate of placement of the hive on the parcel, and require removal of the hive if the owner no longer maintains the hive or if removal is necessary to protect the health, safety, and welfare of the public.

Section 9. Under current law, counties and cities are authorized by G.S. 160A-272 to lease property owned by counties and cities for up to 10 years. Leases for terms of more than 10 years are treated as a sale of real property. G.S. 160A-272(c) authorizes the lease of property for the siting and operation of a renewable energy facility for up to 25 years. Section 9 would amend the statute to do both of the following:

- Increase the public notice of a proposed lease from 10 days to 30 days.
- Allow leases of property owned by the county or city for the siting and operation of a tower for a term of up to 25 years. A "tower" would be any new or existing structure that is designed to support or is capable of supporting equipment used in the transmission or receipt of television broadcast signals, radio wave signals, or electromagnetic radio signals used in the provision of wireless communication service.

Section 10. G.S. 130A-248 requires the Commission for Public Health to adopt rules governing the sanitation of establishments that prepare or serve drink or food for pay. All food establishments must obtain a permit from the Department of Health and Human Services, and no permit is issued until an evaluation by the regulatory authority shows that the establishment is in compliance. In addition to the permit fee, under G.S. 130A-248(e) the Department can charge a $250.00 fee for review of plans for prototype franchised or chain facilities for food establishments.

Section 10 would provide that if the Department has reviewed and approved the plan for a prototype franchised or chain facility for food establishment, that approved plan may be used in any county of the State without further approval. Upon request of the owner or operator, the local health department may review and suggest revisions, but any proposed revisions could not be used as a condition of receiving any permit from the local health department, county, or city in which the facility is to be located.

Section 12 would require counties and cities to notify the property owners and adjacent property owners before the county or city begins any construction project. Notice must be in writing at least 15 days prior to beginning construction, except in any of the following circumstances:

- If the construction is an emergency repair, notice may be given by any means, including verbal.
- The property owner requests action of the county or city that requires construction activity.
- The property owner consents to less than 15 days' notice.
- The notice is given in an open meeting of the county or city prior to the beginning of construction.

This section would become effective October 1, 2015, and would apply to construction commenced on or after that date.

Section 13.1 would provide that, except as otherwise noted in this section, a local government may not enact, implement, or enforce a riparian buffer requirement that exceeds riparian buffer requirements necessary to comply with or implement federal or State law. This limitation would not apply to certain riparian buffer requirements established prior to August 1, 1997, and would not apply if the Environmental Management Commission (EMC) found that scientific evidence presented by the local government supports the necessity of the riparian buffer requirement for the protection of water quality. Existing riparian buffer requirements that exceed federal and State requirements can remain in effect until January 1, 2017, and may remain in effect beyond January 1, 2017 if the EMC approves the requirements as necessary for the protection of water quality. Section 13.1 also clarifies how the State and its political subdivisions may treat land within riparian buffers.

Section 13.2 would direct the EMC, with the assistance of the Department of Environment and Natural Resources, to examine ways to provide regulatory relief from the impacts of riparian buffer rules for parcels of land that were platted on or before the effective date of the applicable riparian buffer rule. The EMC would report the results of the study to the Environmental Review Commission no later than April 1, 2016.

Section 13.3 would provide that, for purposes of measuring riparian buffers for coastal wetlands, the riparian buffer will begin at the most landward limit of the normal high water level or the normal water level, as appropriate.

Section 13.4 would direct the EMC to allow for case-by-case modification of buffer requirements upon a showing by a landowner that alternative measures will provide equal or greater water quality protection.

Section 16. G.S. 160A-381(a) authorizes cities to adopt zoning and development regulation ordinances. Currently, zoning ordinances may provide density credits or severable development rights for dedicated rights-of-way. Section 16 would require zoning ordinances to do so.

Section 18 would prohibit counties and cities from adopting zoning regulations that use a more expansive definition of dwelling unit, bedroom, or sleeping unit than any definition in general law or in a rule adopted by a State agency.

Section 19. Under current law, local governments are authorized to enter into development agreements with developers if the property is at least 25 acres or more of developable property and the agreement is for a term of 20 years or less. An exception to the minimum size is granted for brownfields properties. A development agreement must be approved by the governing body of a local government by ordinance. Section 19 would remove the current size requirements and maximum term, and instead would require that the agreement be for a reasonable term specified in the agreement. Section 19 would also allow the development agreement to be incorporated into any planning, zoning, or subdivision ordinance adopted by the local government.

This section would become effective October 1, 2015, and would apply to development agreements entered into on or after that date.

EFFECTIVE DATE: Except as otherwise noted, effective when it becomes law.