HOUSE BILL 44:
Local Government Regulatory Reform 2015

2015-2016 General Assembly

Committee:		**Date:**	June 16, 2015
Introduced by:	Reps. Conrad, Lambeth, Hanes, Terry	**Prepared by:**	R. Erika Churchill, Kelly Tornow, and Jeff Hudson, Staff Attorneys
Analysis of:	Third Edition		

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

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.

Section 3. Currently, 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. (See Section 5 for changes to this provision.) Section 3 would provide that if a land use planning ordinance applies to a development tract lying partly within municipal corporate limits and partly within the county and more than half of the tract is outside the municipal corporate limits, the owner of the development tract can either: (i) apply the county land use planning ordinances to the entire development tract, (ii) apply the city ordinance to the portion of the tract lying within the corporate limits of the municipality and that municipality's extraterritorial jurisdiction (ETJ) and apply the county ordinance to the remainder of the tract, or (iii) apply the city ordinance to the portion of the tract lying

within the corporate limits of the municipality and the county ordinance to the remainder of the tract, including that which lies within the ETJ of the municipality.

Section 3.5 would 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. This section would also provide that when a permit application is made for the construction of a new private drinking water well, before issuing a permit the local health department must determine whether the real property is within a jurisdictional area served by a public water system and do one of the following:

- If the property does not lie within the jurisdiction of any public water system, the local health department must act upon the construction permit in accordance with current law.
- If the property does lie within the jurisdiction of a public water system, the local health department must notify the property owner of the public water supply's existence and notify the public water system of the permit application. The public water system must then notify the property owner within 10 days as to whether connection to the public water system is required immediately or within the next 24 months. If the public water system fails to so notify the property owner and the local health department, or determines connection will not be required within the next 24 months, the local health department must act on the construction permit in accordance with current law after consulting the property owner.
- If the property lies within the jurisdiction of a public water system and the property owner and local health department are notified by the public water system that connection is required, the local health department may issue the construction permit in accordance with current law if the water from the well will used only for irrigation and other non-potable purposes.

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

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 36 months from the time the fence wrap was installed, whichever is shorter. After 36 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 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. Effective July 1, 2015, and applies to expenditures incurred on or after that date.

Section 7 would prohibit the reduction of travel lanes to accommodate the addition of bike lanes within the existing paved and marked travel lanes of any State highway system street or highway located within a municipality if either:

- The street or highway has an average daily traffic volume of 20,000 vehicles per day or greater.
- The action taken reduces the projected road capacity, for a 20-year period beginning at the time the bicycle lane is established, to below Level D, as defined by the Institute of Transportation Engineers Highway Capacity Manual.

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.

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 30 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 30 days' notice.

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

Section 13 would provide that, until the convening of the 2016 Regular Session of the 2015 General Assembly, the Environmental Management Commission (EMC) and the Department of Environment and Natural Resources (DENR) will implement the Neuse River Basin Riparian Buffer Rule, the Tar-Pamlico River Basin Buffer Rule, and the Jordan Lake Watershed Buffer Rule so that the riparian buffers would be 30 feet in width instead of 50 feet in width and the 30 foot riparian buffers could be cleared, graded, and replanted in any type of vegetation.

Section 14 would provide that for purposes of measuring riparian buffers under State law, coastal wetlands and marshlands will not be treated as part of the surface waters, but will be included in the measurement of the riparian buffer. This section would become effective October 1, 2015.

Section 15 would require the Environmental Review Commission (ERC), with the assistance of DENR, to study the use of riparian buffers by the State and local governments to protect water quality in the State. The ERC and DENR would specifically:

- Examine the circumstances under which local governments have created development buffers along waterways that are wider than those established by the EMC or DENR and provide an overview of the buffer, the purpose of the buffer, and whether the local government has the authority to establish, regulate, and enforce the extended buffer zone.
- Review recent and relevant scientific research and make a determination on whether these data justify additional buffers imposed by local governments beyond those established or regulated by the EMC or DENR.

The ERC would report the results of the study to the 2016 Regular Session of the 2015 General Assembly.

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 17. City (G.S. 160A-412) and county (G.S. 153A-352) inspection departments are authorized to enforce within their territorial jurisdiction State and local laws and local ordinances and regulations relating to the construction of buildings, installation of certain facilities such as plumbing and electrical systems, maintenance of buildings, and other matters specified by the governing board.

Section 17 would require a county or city to accept and approve, without further responsibility to inspect, a design or other proposal for a component or element in the construction of buildings from a licensed architect or licensed engineer provided that certain conditions are met. Upon the satisfaction of those conditions and acceptance and approval of a signed written document by the county or city, the county or city and its inspection department and inspectors would be discharged and released from any duties and responsibilities imposed with respect to the component or element in the construction of the building for which the signed written document was submitted.

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.

Section 20 contains a severability clause providing that if any provision of the act is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.