CHARLOTTE

CITY MANAGER'S OFFICE
M E M O R A N D U M

April 15, 2011

TO: Curt Walton, City Manager
Ron Kimble, Deputy City Manager

FROM: Dana Fenton, Intergovernmental Relations Manager

SUBJECT: **State Legislative Update**

Changes from the last report are shown in **bold face** type.

HOT TOPICS

State Budget

- **House Appropriations subcommittee chairs released their recommended amendments to Governor's proposed budget week of April 12; House amendments proposed for Transportation do not affect New Starts funding, which is source of State funding for Blue Line Extension; House amendment does propose remitting annual Powell Bill allocations in two equal installments on October 1 and May 1 instead of all being remitted on October 1; another House amendment moves all urban loop funding to Mobility Fund thereby forcing these projects to compete for funding**

- **House amendments to Governor's proposed budget did not include "tax policy" decisions that would impact City collection of business privilege license tax, utilities franchise tax and state-collected local taxes, nor State revenues from the corporate income tax and motor fuels excise tax; either such decisions will not be included in the House budget or these will be released by House leadership in the coming weeks**

- **Subcommittees must approve their amendments to the Governor's proposed budget by Thursday, April 21 and report these to the full House Appropriations Committee; afterwards, the subcommittee proposals will be considered by the full committee and the House of Representatives; staff will keep Council advised as the schedule for consideration is firmed up**

- **As proposed by Governor Perdue on February 18**, State faces a $2.4 billion deficit for FY 2012 and $2.0 billion for FY 2013, budget closes the gap by reducing spending $3.2 billion and netting additional $1.4 billion in "revenue changes"; among netted "revenue changes" is continuation of 0.75% of the 1% temporary state sales tax implemented in 2009 and reduction of the corporate income tax rate from 6.9% to 4.9%; included in the spending reductions is elimination of 10,000 state positions through a combination of attrition, layoffs, and early retirements; House and Senate Appropriations subcommittees have been hearing presentations from state staff on proposed budgets and will be considering ways to shift monies to address specific issues; Transportation subcommittees are examining how to fill $300 million maintenance funding shortfall including considering cancellation of two turnpike authority projects (Garden Parkway and Mid-Currituck Bridge) and shifting gap funding to maintenance accounts; other projects may be at risk; the North Carolina Department of Transportation Public Transportation Division presented its budgetary needs to the joint subcommittees on Wednesday, March 9 including information with respect to the Blue Line Extension

No High Speed Rail (HB 422 - Killian, Frye)

HB 422 is scheduled for hearing on Tuesday, April 19; bill was heard on March 29 and April 5; Mayor Foxx spoke in opposition to the bill on April 5; it is our understanding that the bill will be overhauled to require NCDOT to seek General Assembly approval for submitting grant applications of this magnitude in the future prior to submission; however, the funds already awarded by the federal government would be exempted from this requirement; **as introduced,** legislation prohibits North Carolina Department of Transportation (NCDOT) action to "… apply for, accept, or expend any grant funding from the federal government for any high-speed rail project unless the project has been approved through an act of the General Assembly." If HB 422 is enacted and authorization is not granted by the General Assembly, then the use of $566 million of High Speed and Intercity Passenger Rail funding previously awarded by the federal government to the State of North Carolina is imperiled. Major uses of the funds in the Charlotte area include:

1. $129 million NS/CSX Grade Separation Project, which primarily benefits freight and intercity passenger rail, but also provides secondary benefits to the proposed Red Line Commuter Rail
2. $23 million Phase 1 improvements at the Charlotte Maintenance Facility
3. $235 million double track between Charlotte and Greensboro
4. $22 million state match for the $42 million Sugar Creek Grade Separation project, which is proposed to be completed prior to the Blue Line Extension (BLE) bridge project at Sugar Creek; giving back the ARRA funds would require the project to be made part of the BLE project

Motor Fuels Excise Tax (aka "Gas" Tax)

Two bills introduced that would impact motor fuels excise tax (aka gas tax) collections are HB 399 (McElraft) and SB 235 (Rouzer); HB399 would cap the gas tax at 32.5 cents per gallon and according to NCDOT, would require reduction in expenditures over next ten years of $977 million; the impact to Mecklenburg County would be approximately $34 million, which includes $31 million for repaving state roads, $170,383 for secondary roads, and $2.3 million in Powell

bill funding for local governments; SB 235 would eliminate the motor gas tax and make up the difference by repealing various tax credits and other expenditures that are not yet identified in the legislation; no committee action has taken place on these bills but the possibility remains that the proposed budgets of the House and Senate could contain language capping or eliminating the gas tax

Highway Equity Formula (HB 635 – Murry)
Strikes language from statute related to completion of the intrastate system which has the effect of changing the equity distribution formula to 66% population and 33% equal share among the highway divisions; bill also removes the federal funds for metropolitan planning organizations over 200,000 in size (STP-DA funds) from the State's transportation equity formula; referred to House Rules Committee

DEVELOPING ISSUES

Municipal Broadband - Level Playing Field/Local Government Competition (HB 129 – Avila / SB 87 - Apodaca)
Bill imposes additional requirements for municipalities to follow when establishing broadband systems for use by the general public; section of bill exempts internal government broadband systems that work within the jurisdictional boundary; sponsor has agreed to Charlotte request to broaden exemption to regional systems so as to accommodate the public safety broadband system funded by the stimulus grant to serve regional public safety assets which will be operated by the City, which Representative Carney was instrumental in securing; bill was amended on March 16 and is expected to be reported out of committee on March 23; bill will require further amendment on March 23 to reflect all City concerns; bill reported out of House Finance and is on House calendar for final reading on March 28; sponsor agreed to work with City on remaining concerns while bill is in Senate Finance, as have Senators Rucho and Clodfelter; Senate Finance heard HB 129 on Wednesday, April 13, **and could take committee vote on April 20**

Billboards / Trees and Vegetation Removal (SB 183 – Brown / HB 309 LaRoque)
Billboard industry sponsored legislation that implements a set of statewide standards to maintain trees and other vegetation near billboards instead of the current practice of NCDOT enforcing local ordinances including the City's tree ordinance and zoning ordinance; proposed statewide standards enable the removal of trees and vegetation in state rights-of-way near billboards even though local ordinances may prohibit removal of such trees and vegetation; bill would also allow placement of billboards within one-hundred feet of other billboards whereas the current standard in the zoning ordinance is one-thousand feet; bill also allows non-conforming billboards to be replaced by digital billboards; bills referred to Transportation committees; SB 183 sponsor agreed to set up stakeholders group to address local government concerns; **sponsor will be requesting committee action week of April 19**

Roadside Campaign Signs (SB 315 – Daniel)
Bill enacts statewide standards for placement of campaign signs in state rights-of-way from 30 days before the election to 10 days after the campaign; referred to Senate Transportation

Government Transparency Act (SB 344 – Clary)
Bill requires disclosure of reasons for each employee promotion, demotion, transfer, suspension, separation, or other change in position classification, and performance evaluations**;** referred to Senate Judiciary I

Partisan Elections for Supreme Court, Court of Appeals, Superior and District Courts (HB - 64 – Sager / SB 47 – Tillman)
Bill would restore partisan elections for these judicial positions; referred to Senate and House Judiciary committees

Eminent Domain/Economic Development (HB 8 – Stam / SB 37 – Jackson)
Proposed constitutional amendment would ban the use of eminent domain for any and all economic development purposes, even those that are incidental to the project; referred to Judiciary committees; HB 8 amended to remove sentence containing reference to incidental purposes; bill also removes authority of public and private condemners' to condemn property for a public benefit, which is intended to go after the North Carolina Supreme Court decision in the Fed Ex case in Greensboro; reported out of House Judiciary; **scheduled for floor debate on April 20**

State Law to Provide for Acceptable ID's (HB 33 – Cleveland)
Specifies forms of identification that all governmental entities, including local governments are authorized to use to determine actual identity; reported favorably out of House Government and re-referred to House Judiciary; substitute version of bill prohibits only use of consular or embassy documents to prove identity; reported out of committee; passed House March 30; referred to Senate Rules

Public Contracts / E-Verify (HB 36 – Cleveland)
Legislation prohibits state and local government contracts with those companies that employ illegal immigrants and requires such contractors to use the federal E-Verify program to ensure that illegal immigrants are not hired; contractors are starting to lobby the General Assembly regarding the additional costs and liabilities this legislation would impose upon businesses.

Public Employees / Public Contracts / E-Verify (SB 204 – Allran)
Legislation requires counties and cities to use the federal E-Verify program to verify the work authorization of new employees; also requires that private entities contracting with counties and cities use the E-Verify program to verify the work authorization of its employees

Land Transfer Tax (HB 92 – Howard / SB 226 - Tucker)
Bills would repeal the local option land transfer tax enacted in 2007; HB 92 reported favorably out of House Finance and passed House; reported favorably out of Senate Finance; HB 92 passed Senate and presented to Governor; signed by Governor into law.

Firearms in Locked Vehicles (HB 63 – Shepard)
Handgun Permit Valid in Parks and Restaurants (HB 111 – Hilton)
HB 63 takes away privilege of most employers to regulate whether employees can store firearms in personal vehicles on employer owned premises; HB 111 extends right of concealed weapons

holder to carry concealed weapons into parks and restaurants; HB 111 amended to authorize owners of restaurants to ban carrying of concealed weapons on their premises; both bills referred to House Judiciary; HB 111 reported favorably out of committee; amendment adopted by full House authorizes local governments to prohibit the carrying of concealed weapons in recreational facilities which are defined as playgrounds, athletic fields, swimming pools, and athletic facilities; HB 111 passed House; **referred to Senate Judiciary II**

Filling Vacancies in Local Offices (SB 266 – Clodfelter)
Legislation would standardize how vacancies in offices of mayor and city council, board of commissioners, coroners, register of deeds would be filled; for city councils with partisan elections, council would be required to consult the county executive committee of that political party and seek recommendations, and appoint one of those recommended if they are one of three or more unranked nominations; if there are fewer than three nominations, then council could make selection as it is currently done; referred to Senate Judiciary I

Extraterritorial Jurisdiction Restrictions (HB 281 – LaRoque)
Bill appears to allow residents of ETJ areas to vote in municipal elections; this would require redrawing of council districts to include the ETJ; referred to House Government

Sunshine Amendment (HB 87 – LaRoque)
Bill would approve vote of the people to amend the North Carolina Constitution to make it more difficult for the General Assembly to amend public records and open meetings laws by requiring three-fifths vote for passage instead of majority vote; essentially this would make it much more difficult for local governments to successfully seek amendments to the public records and open meetings laws; referred to House Rules; passed House Rules and before full House; bill rereferred to House Rules committee

Taxpayer Information Act (HB 315 – Pridgen)
Requires information concerning estimated total amount of principal and interest of proposed general obligation bonds to be included in the ballot questions of local general obligation bond referenda

Fire Separation Allowance (SB 350 – Hartsell)
Legislation would require the Local Government Employees' Retirement System or an equivalent locally sponsored retirement plan such as Charlotte Firefighters' Retirement System to provide an annual separation allowance to eligible retired firefighters; this would be in addition to all other currently provided benefits; fiscal impact is being determined at this time; similar allowance for retired police officers costs the City approximately $3.9 million per year; referred to Senate Pensions & Retirement & Aging; it is understood this bill will be overhauled significantly

Property Owner's Protection Act (HB 652 – Moffitt)
Requires all statutes, rules, ordinances and regulations to be 'construed against the government' and 'liberally construed in favor of the property owner'; if a property owner is successful in challenging an ordinance, statute, rule or regulation, the municipality would be responsible for attorney's fees; **referred to Committee on Commerce and Job Development**

Municipal Abuse of Authority (HB 687 – Brawley)
Requires payment of attorneys fees when court finds municipality did not have statutory authority for any ordinance, resolution, or administrative action; referred to House Government

Additional Extraterritorial Jurisdiction Restrictions (HB 797 – Sager)
Proposes to restrict a city from including in its ETJ the environmental impact on watersheds; bill would restrict the current ETJ to include only land meeting the definition of "urban purposes" as used in the annexation statutes; the intent may be to address concerns regarding nutrient management

Law Enforcement Officers Bill of Rights (HB 602 – Justice)
Requires changes to the dismissal procedure for a municipal police officer, including just cause for dismissal, establishment of a review board, and other procedures; bill establishes the right for the police officer to be 'represented' but does not limit that representation in any way.

Workers Compensation (HB 709 – Folwell / SB 544 – Brown)
Proposes to reform current system by capping number of weeks injured workers may obtain compensation, defines suitable employment, and makes changes to the process of how the industrial commission decides cases

LEGISLATIVE AGENDA

Design-Build (SB 56 – Clodfelter)
SB 56 referred to Senate Finance

Nuisance Abatement (SB 170 – Hartsell / HB 433 - Bordsen)
SB 170 referred to Senate Judiciary II; HB 433 referred to House Judiciary Subcommittee B

E-Mail Subscribers (HB 543 – Samuelson)
Charlotte requested legislation, HB 543 referred to House Government; in addition Representative Samuelson has filed HB 544 to extend this exemption to al localities in the State; both bills would preserve privilege of public to inspect lists.

Business Privilege License Tax
Nothing to report at this time.

Annexation

- HB 9 – Dollar / SB 27 – Brock would impose moratorium on all involuntary annexations currently in process until July 1, 2012; City's proposed annexations effective June 30, 2011 would be impacted even though the City has already expended $5 million in support of annexation; purpose of moratorium is to get all parties to the table to arrive at mutually satisfactory bill to run in 2012 General Assembly; concern expressed by localities is that moratorium will merely be extended annually like what has repeatedly occurred in Virginia; SB 27 reported out of Senate State and Local Government and re-referred to

Senate Finance; Senator Clodfelter was able to get amendment in Senate Finance exempting Charlotte 2011 annexations from moratorium; however Senate Republican leadership received many complaints about "special treatment" for City from other cities and Senators and sent bill back to Senate Finance to strip out Charlotte amendment; bill amended to remove Charlotte exemption and passed Senate on Monday, March 7

- **HB 835 (LaRoque) is the House annexation reform package for the session expected to be heard in the House Rules Committee on Tuesday; proposed committee substitute with the full content of the bill is expected to be shared Tuesday; upon passage in the Rules Committee, the bill would then move to the House Finance Committee and on to the floor; staff anticipates fast movement of this bill; according to NCLM, bill is expected to include a requirement that municipalities pay the full cost of water and sewer to homes in the annexed area, and veto petition provision to allow annexed residents to decide whether they want the annexation to proceed; veto provision is very significant departure from current, long-standing annexation laws; while the bill is extremely restrictive, it is likely better than an extended moratorium that would of course allow for no annexations whatsoever**

- SB 548 (Davis) is North Carolina Association of County Commissioners bill that outlines NCACC legislative goals and includes: requirement for 'water and sewer' within two years, no annexation where county utility service exists unless full agreement on joint utility plans, a 'hold harmless' for the county for reduction of sales tax, annexation allowed only in 'primary county' unless County Commissioner approves, changes to qualifications of an area to be annexed, changes to the treatment of farms, Local Government Commission oversight and several other significant changes to existing law; staff understands a referendum provision will also be added to the bill

- Several bills have been filed to repeal involuntary annexations previously authorized and implemented by Rocky Mount, Lexington, Kinston, Wilmington, Goldsboro, Biltmore Lake, Roanoke Rapids and other cities; basis for exercising this power is Section 1 of Article VII of State Constitution giving the General Assembly the power to fix jurisdictional boundaries

Courts Funding
Nothing to report at this time.

Mobility Fund
Governor's proposed budget provides $31 million in FY 2012 and $45 million in FY 2013, the amounts envisioned for FY 2012 and FY 2013 when the fund was established in 2010; Mobility Fund was reviewed by joint subcommittees on Transportation on Wednesday, March 16; **see State Budget for more**

Local Revenue Sources for Roads and Transit
Nothing to report at this time.