CHARLOTTE

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

May 27, 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 TOPIC

State Budget

- **Senate Appropriations Committee approved budget will head to floor of Senate for procedural vote on May 31 and final vote on June 1; budget proposal includes proviso prohibiting NCDOT from committing state share of funding for Blue Line Extension and Red Line Commuter Rail projects**

- **Goal of the House and Senate leadership is to send budget bill to the Governor the first week of June; the Governor must sign or veto the bill within ten days after presentation or the budget bill will become law**

- **If the Governor vetoes the budget bill, then the bill will be returned to the House of Representatives where 3/5 of present and voting members can vote to override the veto; if the House votes to override the veto, the bill will then be sent to the Senate where 3/5 of present and voting members must also vote to override the veto before the bill can become law**

- **Issues of interest in the House and Senate budget proposals include:**
    - **House requires Powell Bill funds to be paid to cities in two equal installments on October 1 and January 1 instead of one payment on October 1; Senate concurred**
    - **House reduces funding for CATS Statewide Maintenance Assistance Program (SMAP) payments by 4%; Senate reduces SMAP by 6%**

- **House requires NCDOT to consult with the Joint Legislative Commission on Governmental Operations before accepting federal rail funds if the required state matching funds or future annual maintenance costs are reasonably expected to exceed $3 million, and seek approval of the General Assembly if costs are expected to exceed $5 million; caveat allows NCDOT to accept funds if 60 days have passed since consultation with the Joint Legislative Commission on Governmental Operations and General Assembly has not acted upon request; Senate requires NCDOT to return to the General Assembly if the annual costs exceed $20 million**
- **House provides method for judicial districts to retain their Trial Court Administrator positions through identification of other positions or sources of funding within that district to fund such position; Senate funds positions in 10 districts including Mecklenburg**

- As proposed by Governor Perdue on February 18, proposed FY 12 and FY 13 budgets close $2.4 billion deficit for FY 2012 and $2.0 billion for FY 2013; accomplished 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

DEVELOPING ISSUES

Technical Changes to 2010 Personnel Records Law (SB 554 – Brunstetter)
Brings clarity to the issue of the effective date of the 2010 personnel records law requiring release of detailed employee records; only notices of dismissal, suspensions and demotions for disciplinary reasons that took effect on or after October 1, 2010 would be subject to disclosure; information on changes to salary and disclosure of promotions, demotions, transfers, suspensions, separations and changes in position classification taken on and after October 1, 2007 would have to be released; referred to Senate Judiciary I

Water Use Restrictions (HB 787 – McGrady / SB 427 – Clodfelter)
HB 787 would impose 45 gallon/person/day residential water use limitation in 2035 while SB 427 would impose same limit for both residential and commercial uses; both bills establish intermediate goals of 100 and 75 gallons per day, respectively in 2016 and 2025; referred to Environment committees

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; SB 183 substitute legislation reported out of Senate Transportation Committee on April 27 extends view zones for billboards in cities and their ETJs from 250 feet to 340 feet along interstate and limited access highways, and supersedes tree ordinances regulating removal of vegetation and trees; referred to Senate Finance where discussion occurred on May 10; Senate Finance committee reported bill on May 17; **May 24**

floor amendment attempts to address requirement for nexus between location of selective vegetation removal and replanting; proposed amendment to protect landscaping in areas under Section 106 of the National Historic Preservation Act was not needed as NCDOT believes it has sufficient authority to require outdoor advertisers to replant landscaping; passed Senate

Zoning / Aesthetic Controls (SB 731 – Clodfelter)
Prohibits certain "building design elements" from being applied in either traditional zoning districts or parallel conditional districts; "building design elements" means "exterior building color, type of style, or exterior cladding material, exterior nonstructural architectural ornamentation, architectural styling of windows and doors, the number and types of rooms, and interior layout of rooms; phrase does not include buffering or screening of development to minimize visual impacts or impacts of light and noise on surrounding, parking and loading areas, or signage of buildings or collections of buildings"; local historic districts and areas listed on the National Register of Historic Places are exempt as well as the application of elements related to requirements of fire and life safety codes; legislation is an outgrowth of concerns raised by the development industry to building design elements promulgated by several NC cities and towns, and which are being discussed by the City of Charlotte at this time; passed Senate

Out of State Law Enforcement Officers / Special Events (SB 600 – Clodfelter)
Authorizes the City of Charlotte to secure law enforcement resources from outside of state for the DNC; bill was requested by CMPD to ensure that the right types of skills needed to successfully provide security at the DNC are available, regardless of whether or not such resources are from North Carolina; reported out of Senate Judiciary I and passed Senate

Ecosystem Enhancement Program Changes (SB 425 – Hunt)
Makes a number of changes to the Ecosystem Enhancement Program (EEP) administered by the Department of Environmental and Natural Resources (DENR); among the changes is a provision that appears to favor the purchase of wetland mitigation credits from privately owned mitigation banks over publicly owned mitigation banks, such as the one owned by the City of Charlotte; referred to Senate Agriculture / Environment / Natural Resources

Temporary Family Health Care Structures (HB 887 – Moffitt)
Legislation would allow on a by-right basis in any single family detached residential district zone, the placement of temporary family health care structures; the purpose of a temporary family health care structure is to provide shelter for a mentally or physically impaired person to live in adjacent to the home of their caregiver, who must be a blood relative; structure can be no more than 300 gross square feet; must be moved within 30 days after the person no longer needs the care; similar to legislation passed in Virginia in 2010, and introduced in 2011 in several other states; referred to House Government

County Law Enforcement Service Districts (HB 280 – Brawley)
Legislation amends the statute authorizing Mecklenburg County to contract with Charlotte-Mecklenburg Police Department to provide law enforcement services in the unincorporated areas of the County by allowing the county to contract with more than one law enforcement agency; passed House and referred to Senate State and Local Government; reported out of committee and

passed Senate

Residential Building Inspections (HB 554 – Committee Bill / SB 683 - Hunt)
Legislation would place restrictions on how cities and counties may conduct rental inspection programs including prohibiting required registration of rental properties; periodic inspections of all rental properties; and levying of special taxes and fees on owners of residential rental properties not also levied against other commercial and residential properties; referred to House Commerce and Job Development.

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

Attorneys Fees (HB 687 – Brawley)
Allows courts to require payment of reasonable attorneys fees when it finds municipality acted outside of its legal authority for any ordinance, resolution, or administrative action; reported out of House Judiciary Subcommittee A; **passed House**

Electronic Notices (HB 472 – McGrady / SB 773 - Brock)
Legislation allows municipalities to adopt ordinances to move selected newspaper notices to electronic notice; referred to House Government; HB 472 failed to report

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; HB 129 includes 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; passed Senate and House concurred with changes; sent to Governor; **signed into law by Governor**

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; passed House on April 28; referred to Senate Judiciary I

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 II

Extraterritorial Jurisdiction / Farms (HB 168 – Cleveland / SB 380 - Jackson)
Similar legislation would alter long-standing land use control authority over bona fide farms, and create significant zoning loopholes under existing statutes; NCLM working with bill sponsors to address these issues; concepts in the bills have broad legislative support; HB 168 passed House; SB 380 reported out of Senate Agriculture / Environment / Natural Resources, passed Senate and referred to House Agriculture

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

Additional Extraterritorial Jurisdiction Restrictions (HB 797 – Sager / SB 622 – Rouzer)
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

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; referred to House Select Committee on Tort Reform; **HB 709 PCS reported out of committee**

Capping Motor Fuels Excise Tax, aka "Gas" Tax (HB 399 – McElraft / SB 666 – Forrester)
Similar bills would cap motor fuels excise tax (aka gas tax) collections at 32.5 cents per gallon and according to NCDOT, would require reduction in expenditures over next ten years of $1.2 billion; Metropolitan Transit Commission adopted position of opposition to both bills

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; legislation would provide significantly more funds for urban areas

No High Speed Rail (HB 422 - Killian, Frye)
HB 422 is the legislation that would require NCDOT to consult with the Joint Legislative Commission on Governmental Operations before accepting federal rail funds if the required state matching funds or future annual maintenance costs are reasonably expected to exceed $3 million, and seek approval of the General Assembly if costs are expected to exceed $5 million; caveat allows NCDOT to accept funds if 60 days have passed since consultation with the Joint

Legislative Commission on Governmental Operations has occurred and General Assembly has not acted upon request; HB 422 is retroactive to April 1, 2011 and does not impact rail funds already accepted by State including the $566 million accepted prior to April 1, 2011; passed House and referred to Senate Transportation

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; while SB 170 was reported out of Judiciary II, it will be returned to committee to consider further amendments

E-Mail Subscribers (SB 182 - Jenkins)
Statewide legislation extending exemption to all localities in the State, while preserving privilege of public to inspect lists; signed into law by Governor on April 28

Business Privilege License Tax (SB 658 – Clodfelter)
Local business privilege license taxes would be abolished effective July 1, 2014 under a comprehensive tax reform measure; such revenues would be replaced by other revenues collected by the State and dedicated statutorily for local governments; referred to Senate Finance

Annexation

- HB 845 (LaRoque) is the House annexation reform package; according to NCLM, bill includes language requiring local governments to pay the full cost of water and sewer hook-ups to every residence, if more than 50% of the area property owners 'opt-in'; bill also includes a veto petition which is a very significant departure from current, long-standing annexation laws; upon the gathering of 60% of the property owners' signatures, the annexation would be stopped; municipality would have the opportunity to adopt a resolution of consideration after 24 months; while the bill is extremely restrictive, it is likely better than an extended moratorium that would of course allow for no annexations whatsoever; bill would take effect on July 1, 2011 allowing 2011 annexations to take effect on June 30**;** reported out of House rules on May 2, and reported out of House Finance on May 11; passed House on May 16

- 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; legislation is on hold pending outcome of HB 845

- SB 548 (Davis) is North Carolina Association of County Commissioners bill that outlines NCACC legislative goals; legislation is on hold pending outcome of HB 845

- No Annexation of Bona Fide Farms (SB 530 - Jackson) would prohibit any land used for bona fide farm purposes from involuntary annexation without the written consent of the owner; passed Senate and referred to House Government

- 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; legislation is on hold pending outcome of HB 845

Courts Funding
Budget passed by House provides method for judicial districts to retain their position from existing resources, while Senate budget to be considered on May 31 funds positions in ten districts including Mecklenburg

Mobility Fund
House budget transfers funding for urban loops projects to the Mobility Fund with the proviso that such funds must be used for urban loops projects; $50 million in unencumbered gap funds for Garden Parkway and Currituck Bridge project reallocated to the Mobility Fund; **Senate budget transfers some of the gap funding for the Mid-Currituck Bridge to the mobility fund**

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

OTHER BILLS BEING WATCHED

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; proposed committee substitute reported on May 18; local governments requesting amendment to allow cities to exempt themselves from this bill due to confusion over common boundaries of state and city rights-of-way; **re-referred to Senate Finance**

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

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; proposed committee substitute includes contractor and subcontractor language of original bill and requirement for cities and counties to use E-Verify in their employment processes; reported out of committee; re-referred to Judiciary Subcommittee A

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

Support Law Enforcement / Safe Neighborhoods (HB 343 – Cleveland)
Comprehensive legislation that prohibits local policies limiting enforcement of federal immigration laws, including adoption of so-called "Sanctuary" policies; requires use of federal E-Verify program for local government and public contractor employment; cites specific forms of identification governments can accept to receive public benefits; and prohibits admission of students who are not lawfully present in the United States from enrollment at community colleges and state universities; referred to Judiciary Subcommittee A

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 and referred to Senate Judiciary II

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; **failed to report out of 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

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

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

Law Enforcement Officers Fairness Act (HB 602 – Justice / SB 664 - Rouzer)
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.