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1981 Planning Legislation in North Carolina and Other Southeastern States

Author's Note:
All of the legislation mentioned in this article was enacted prior to August 1, 1981, during a regular session of the state legislature in one of the five states. The regular legislative session in every state except South Carolina had adjourned by that date. The article does not refer to any legislation considered in any special session.

State legislatures convened this spring in North Carolina and four neighboring states--Virginia, Tennessee, South Carolina, and Georgia. This article outlines some of the legislation enacted in these five states that will affect planning practice or be of interest to planners.

The 1981 North Carolina General Assembly departed from the state's traditional policy of noninterference in local government land-use regulation by providing a means to override local zoning restrictions on group care homes and hazardous waste disposal sites. In other significant legislation it authorized cities to participate in the federal Urban Development Action Grant prgram; improved the state's coastal, environmental, and historic preservation laws; placed renewed emphasis on housing; and authorized fire protection requirements for existing high-rise buildings.

The Virginia General Assembly moved to preserve farming and protect farm and forestry land. It also extended the influence of the Uniform Statewide Building Code and began regulating time-share developments. The Tennessee legislature enacted a new permitting process for major energy projects and new legislation concerning conservation easements. It also amended statutes that affect state housing, industrial development, mining, hazardous waste, and energy conservation programs. The South Carolina legislature dealt with the disposal of radioactive wastes and amended South Carolina's zoning enabling legislation. Georgia passed a new Downtown Development Authorities Law.

HAZARDOUS AND RADIOACTIVE WASTE

For the second straight year, the North Carolina General Assembly gave substantial attention to waste management legislation. Last year, after a legislative study commission held preliminary hearings on waste disposal, the Governor's Task Force on Hazardous Waste Management was created to make recommendations on state policy. Chapter 704 of the North Carolina Session Laws[1] adopts most of the governor's waste disposal proposals as developed by the Task Force in 1980. One purpose of the law is to help commercial operators develop landfills and facilities for storing, transporting, processing, treating, recovering and disposing of hazardous and low-level radioactive wastes.

The Waste Management Act requires all hazardous and low-level radioactive waste disposal sites to be owned by the state, and authorizes the use of eminent domain to acquire such sites. The state may in turn lease the property to a waste disposal firm for the life of the disposal facility.

To attract private operators to the hazardous and low-level radioactive waste disposal business, an assortment of incentives and subsidies have been made available to licensed commercial operators. Operators may now enjoy accelerated depreciation, special corporate

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[1] Throughout the article, "Chapter" or "Ch." refer to the Chapter number of acts as they appear in the 1981 North Carolina Session Laws, the 1981 Tennessee Public Acts, or the 1981 Virginia Acts. Similarly, "P." refers to the Page number of acts as they appear in the 1981 Georgia Laws. "No." refers to the ratification number of acts. Where acts had not been compiled or assigned numbers at the time of my research, I have referred to them by the appropriate bill number.

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franchise tax deductions, and use of industrial revenue bonds on certain waste facilities.

During the public discussions before the Act was passed, some local governments were concerned that if a disposal facility were located nearby, they would face heavy costs of providing emergency services and conducting environmental monitoring. As a result of this concern, the Act permits local governments to impose privilege license taxes on disposal operators to recover these costs.

One of the Act's most important provisions grants the state authority to override any local ordinance that prohibits or has the effect of prohibiting the establishment or operation of a hazardous or low-level radioactive disposal facility. The decision whether to override exclusionary local ordinance provisions will be made by the governor after hearing the recommendations of the Waste Management Board. Both the governor's decision and the board's recommendation must be based on findings of fact that establish the public necessity of the facility. The governor's order will not necessarily invalidate all local ordinance provisions governing site development and disposal-facility operating standards. Rather, the Act appears to leave room for requirements imposed by local ordinance that are not incompatible with comparable state rules, regulations and permit conditions.

"NORTH CAROLINA'S HAZARDOUS WASTE LEGISLATION, VIRGINIA'S FARM PROTECTION LAWS, GEORGIA'S DOWNTOWN DEVELOPMENT AUTHORITIES ACT, AND TENNESSEE'S ENERGY LEGISLATION ALL BREAK SOME NEW GROUND."

The emphasis in South Carolina this spring was on the control of radioactive wastes. Legislative interest had been sparked by the increasing use of a site in Barnwell, South Carolina to dispose of low-level radioactive wastes. Until recently this site was accepting 85% of the nation's low-level radioactive wastes, prompting the governor in 1979 to announce a 50% reduction in the amount of wastes accepted at Barnwell. Consistent with this theme, the South Carolina General Assembly this spring passed House Resolution 3011. This announced the state's intention to encourage the distribution of disposal burdens more uniformly among the states, by participating in the federal Low-Level Radioactive Waste Policy Act. The federal Act provides that beginning in 1986, a disposal site may refuse to accept wastes from any state that is not a party to an interstate compact governing the distribution of low-level radioactive wastes.

Other South Carolina legislation (No. 46) provides for state officials to consult with the federal government on the establishment of an away-from-reactor (off-site) storage facility for high-level radioactive wastes, particularly spent nuclear fuels produced by out-of-state utilities. The Act also provides that any storage facility located in South Carolina must be approved by a joint resolution passed by both houses of the General Assembly.

FAMILY CARE HOMES

In North Carolina the passage of Chapter 565 capped a long struggle by health care interests to free "family care" or "group" homes from the exclusionary effects of local zoning ordinances. Although the principle of "deinstitutionalization" has enjoyed broad support, community family care and group homes have often encountered stiff neighborhood opposition, which has been reflected in restrictive zoning provisions. Chapter 565 makes a family care home a residential use of property for zoning purposes and a permissible use in all districts that allow residences. These homes may not be required to secure a conditional-use permit, a special-use permit, or a use varinace. But local governments may prohibit these homes within a half-mile of one another. Chapter 565 voids private deed restrictions and similar instruments that would forbid family care homes in residential subdivisions.

Further, Chapter 565 restricts the number of handicapped residents in a family care home to six, exclusive of support and supervisory personnel. The Act defines handicapped persons to include those with physical, emotional, or mental disabilities, excluding mentally ill persons who are dangerous to others. The definition does not appear to include convicted criminals, juvenile delinquents or runaways.

North Carolina's family care legislation contrasts with that of Virginia. In Virginia "group homes" need not be treated as single-family residences; rather, local zoning regulations must "provide for the dispersion of group homes in an appropriate zoning district or districts." (Va. Code Sec. 15.1-486.2 (1980).)Chapter 611, enacted this spring, adds the underlined words above. The statutes now suggest that the dispersion requirement may be met by allowing group homes in a single zoning district. Virginia legislation also permits conditions not required of other single-family dwellings to be imposed on group homes in certain circumstances.

ECONOMIC DEVELOPMENT AND DOWNTOWN REVITALIZATION

One of the few current federal programs designed specifically to stimulate urban economic development is the Urban Development Action Grant Program (UDAG). Relatively few North Carolina cities have participated in the program, in part because of questions about whether

they have statutory and constitutional authority to participate in and package the wide variety of development projects that the UDAG program funds. This year's legislation modestly broadens cities' power in this regard (Chapter 865). It authorizes cities to make loans or grants to developers to carry out the economic development purposes of UDAG with federal or local funds. It also permits cities to dispose of UDAG projects by private sale.

For certain downtown revitalization and economic development purposes, however, the authority granted by the North Carolina General Statutes (which typically apply statewide) and the North Carolina Constitution remains inadequate. In contrast to some states' laws, North Carolina law does not sanction the establishment of local public nonprofit development corporations or development authorities with power to issue tax-exempt revenue bonds. In other states, such corporations may finance the construction of shell buildings and the development of industrial parks, buy and and sell land free of public bidding requirements and narrow public purpose restrictions, and generally assume a partnership role with private enterprise.

In Georgia, local public nonprofit development authorities play a major role in local economic development and enjoy broad authority to undertake and manage development projects of an entrepreneurial nature where the public interest is thought to warrant it. These authorities are deemed organized for charitable purposes; are exempt from a variety of federal, state, and local taxes; and are authorized to issue tax-exempt bonds to finance various development projects.

In an important action, the Georgia General Assembly expanded the role of these development authorities, adding to their powers under existing enabling legislation and establishing a new form of development authority designed to operate in central business areas. The "Downtown Development Authorities Law" (P. 1744) is intended to enhance development in a downtown development area designated by a city council. The Act contrasts with existing legislation in its specific geographic focus. It is also the first statewide law that permits the tax-exempt financing of private retail and office facilities, a critical power in influencing downtown redevelopment. The legislation further provides streamlined procedures for establishing and managing the development authority.

Comparatively little emphasis is placed on accountability to the public. Without holding a public hearing, a city or town council may establish a downtown development authority by resolution. No planning study or economic assessment is required before a central business district in which the authority operates is designated. Of the seven directors appointed by the city or town council, at least four must have an economic interest in the redevelopment or revitalization of the downtown area. The municipal governing board has the right to disapprove any revenue bonds, notes, or other financial obligations proposed for issuance by the development authority within 60 days after it receives notice of the proposal. Under the new law, municipalities may not pledge their general taxing power to guarantee the repayment of obligations assumed by the downtown development authority.

ENERGY

One important legislative action was Tennessee's Major Energy Project Act of 1981 (Ch. 131). This Act simplifies and shortens the permitting process for major development projects and works to ensure that federal, state and local administrative agencies cooperate in eliminating duplicate procedures and requirements. Supported by the state's major utilities, the Act is reminiscent of power plant-siting legislation that first appeared in some states in the 1970s. Though it does not provide for one-stop permitting, it takes a major step in that direction.

Chapter 131 defines a "major energy project" as a project that is in the state's interest, costs at least $100 million, and is likely to reduce the state's dependence on imported energy products. The governor formally designates such a project by executive order and selects a "joint review team" to review it. The team may include representatives from each federal, state, and local agency that must approve some feature of the development project. An agency that participates on the review team retains its authority to approve or disapprove the project on its merits. But all governmental agencies are bound by the terms of the Act to abide by a "project decision schedule" developed by the project review team.

One unusual feature of the Act is that the project review schedule may be used to shorten or change procedural requirements specified by state statute, administrative regulation, or local ordinance. Thus the project decision schedule as developed by agency representatives assumes the force of law for agencies that are a party to the review process.

The Act also provides for expedited review of legal actions taken with respect to the Act. If a state or local agency fails to comply with a project decision schedule, the review team leader may bring an enforcement action against the agency. Such actions take precedence over all other court docket matters. The Act also imposes limitations on the jurisdiction of the reviewing court to grant injunctive relief against the project.

In other Tennessee energy-related legislation, Chapter 142 enhances the powers of the Tennessee Energy Authority, and makes it responsible for conducting a cost-benefit analysis of solar hot water heating in each new state building. Chapter 280 amends the Tennessee Surface Coal Mining Act of 1980, making it less restrictive for strip mine operators.

The Virginia Geothermal Resources Conservation Act, enacted as Chapter 506, establishes a permitting system for geothermal exploration, drilling, and development activities. It also clarifies the nature of the property rights in geothermal energy, placing the ownership of these rights in the owner of the surface property.

ZONING

In addition to the mandatory zoning treatment of family care homes, several other changes were made this spring in North Carolina zoning law. Chapters 891 and 705 require all actions challenging the validity of a local zoning ordinance or amendment to be brought within nine months of enactment of the local ordinance. Challenges to zoning ordinances enacted before the effective dates of these laws (county, June 26, 1981; city, September 1, 1981) must be brought within nine months of those dates.

In 1979 the minimum period for giving notice of a public hearing concerning a proposed municipal zoning ordinance or amendment was reduced from fifteen days to ten days. Chapter 891 applies the same time reduction to notices of hearings concerning county and airport zoning matters.

Chapters 891 and 705 clarify the provisions setting the 30-day period within which an appeal of a board of adjustment decision must be filed with the clerk of the superior court. Now written copies of the board's decision need be delivered only to those aggrieved parties who make a written request to the chairman or secretary of the board when the case is heard.

"THE SOUTH CAROLINA GENERAL ASSEMBLY ENACTED LEGISLATION WHICH SPECIFICALLY AUTHORIZES CITIES AND COUNTIES TO GRANT SPECIAL EXCEPTIONS PURSUANT TO A LOCAL ZONING ORDINANCE."

North Carolina city and county governing boards, and boards of adjustment, have long had authority to grant special-use permits, conditional use permits, or special exceptions, but the zoning enabling statutes have not spelled out the applicable procedures for each to use. The courts have generally held that governing boards must follow the same rules and procedures as the boards of adjustment. Chapter 891 confirms this, but it allows governing boards to grant such permits by a simple majority instead of the four-fifths vote required of the board of adjustment.

In South Carolina special-use permits, conditional-use permits, and special exceptions have never been explicitly permitted. This spring, in a move of potential importance, the South Carolina General Assembly enacted legislation which specifically authorizes cities and counties to grant special exceptions pursuant to a local zoning ordinance (No. 211). Special exceptions may be issued by the governing board itself, by the local board of zoning appeals, or by "another body."

House Joint Resolution 270, passed by both houses of the Virginia General Assembly, extols the virtues of solar energy and encourages flexibility in zoning and subdivision ordinances so as to facilitate the construction of solar-heated housing.

HOUSING

Enactments in North Carolina and Tennessee indicate the expanding role of state housing finance and development agencies in state housing programs. The North Carolina General Assembly created a commission that is directed to study the state's housing programs and report its findings no later than February 1, 1983 (Ch. 950). The legislators also transferred the North Carolina Housing Finance Agency from the Department of Natural Resources and Community Development to the Office of State Budget and Management, and gave it independent operating status (Ch. 895). Two minor acts expanded the agency's power. Chapter 343 increases the maximum allowed maturity of housing bonds from forty to forty-three years. Chapter 344 allows the agency to make rehabilitation mortgage loans for home improvements by low- and moderate-income home owners. In a related action, local redevelopment commissions are now allowed to make housing rehabilitation loans in redevelopment areas and to conduct private bond sales (Ch. 907).

Several legislative changes in Tennessee and North Carolina resulted from amendments to federal income tax legislation that limit the amount of tax-exempt residential mortgage subsidy bonds that may be issued in each state. In North Carolina the full permissible amount was allocated to the state Housing Finance Agency (Ch. 280). However, a portion of this amount was later reserved for notes issued by municipalities, redevelopment commissions, and housing authorities for use in their urban redevelopment and community development programs. This reservation will take effect, however, only if the U.S. Treasury determines that such notes qualify as mortgage bonds under federal legislation (Ch. 907).

In Tennessee the full amount of the state's allocation went to the Tennessee Housing Development Agency, which in turn divided this maximum among the counties on a per capita basis (Ch. 505). Proceeds of the bonds issued by the Housing Development Agency are distributed to local jurisdictions that do not issue mortgage subsidy bonds of their own. Anticipating the expanded use of the program, the Tennessee legislature also increased the debt ceiling for agency obligations from $692 million to $892 million. It increased the debt ceiling for obligations used to finance multi-family rental housing from $28 million to $43 million.

The Tennessee Home Mortgage Act of 1979 allows some local units of government to issue their own tax-exempt mortgage subsidy bonds. Chapter 504 strips all cities of this power, leaving the authority solely with counties and metropolitan governments. The Act requires these governments to give preference in their lending to properties that incorporate energy-conserving features. A certain percentage of the loans are to be reserved for homes with solar water heating units. The Act also enables eligible governments to make home improvement loans not to exceed $15,000 per dwelling unit.

BUILDING CODES

This year most southeastern state legislatures dealt with the applicability of building codes. In North Carolina the General Assembly expanded the coverage of the State Building Code by authorizing special fire protection regulations for existing high-rise buildings (Ch. 713). In 1976, the State Building Code Council adopted a new set of fire protection requirements for both new and existing buildings. Although the regulations that applied to existing buildings were less restrictive than those that applied to new structures, they were challenged in court by an association of owners of existing high-rises.

In Carolinas-Virginias Association v. Ingram [39 N.C. App. 688 (1979), rev. den., 297 N.C. 299 (1979)], the North Carolina Court of Appeals held that the enabling legislation for the State Building Code did not authorize this type of regulation of existing buildings. Chapter 713, supported by the Building Code Council, enacts the necessary authorization to reinstate most of the regulations, but provides a partial exemption for office buildings. Owners of office buildings must, however, now install smoke detectors and prepare evacuation plans. The legislature also indicated its intention to study whether further safety measures for office buildings are required.

The Virginia General Assembly extended the influence of its Uniform Statewide Building Code. Chapter 325 makes the Code apply to all

state-owned buildings. Chapter 498 permits local governing boards to require periodic inspections of certain buildings after completion to ensure continued compliance with Building Code standards. Another Act (Ch. 324) allows any city, town, or county to require smoke detectors to be installed in certain buildings constructed before the Building was adopted.

South Carolina's Building Energy Efficiency Standard Act of 1979 was amended this spring to establish mandatory minimum thermal resistance ratings (R-values) for ceilings and certain walls and floors in one-and two-family dwellings. In localities lacking local building codes, enforcement of the new requirements may be performed by a local official, or if desired by the local government, by the South Carolina Residential Home Builders' Commission, a licensing agency (No. 176).

TIME-SHARING AND CONDOMINIUMS

The increasing use of time-sharing arrangements or interval ownership in resort-area developments was recognized this year by the Virginia and Tennessee legislatures. Both the Virginia Real Estate Time-Share Act (Ch. 462) and the Tennessee Time-Share Act of 1981 (Ch. 372) define the legal interest involved in time-sharing schemes, provide terms to be included in title documents, and establish minimum requirements for public offering statements, which must

be registered with the state real estate commissioner. Both acts also address the handling of purchaser deposits,and provide a limited right for the purchaser to cancel a contract. Both acts stipulate that zoning, subdivision, or other local ordinance requirements may not discriminate against the creation of time-share intervals, or impose any requirement on a time-share project that would not be imposed on a similar development under a different form of ownership.

Chapters 455 and 503 amend Virginia's condominium-conversion legislation. They provide that the public-offering statement filed with the state real estate commissioner to convert existing buildings must include a notice of the price and an estimate of all condominium fees for each unit to be converted. Details of the investment company's tenant relocation plan, if it has one, must also be provided in the statement.

COASTAL LANDS

The North Carolina legislature was less damaging to legislation affecting coastal lands than expected. When the spring session began, the linchpin of the state's coastal program, the Coastal Area Management Act (CAMA), was scheduled to expire on July 1, 1983, unless explicitly re-enacted pursuant to the "sunset" provisions of state law. But to avoid a major time-consuming legislative battle over the re-enactment of this law, legislative leaders supported legislation that eliminated the automatic repeal feature of the former sunset law. The General Assembly did give itself more extensive authority over rules and regulations issued by state agencies, and authorized the Legislative Research Commission to study CAMA rules and regulations in particular (Resolution 61).

Chapter 913 made minor substantive and procedural amendments to CAMA. Chapter 925 enabled the state to purchase and maintain coastal properties subject to natural hazards for public beach access and use.

AGRICULTURAL LAND PRESERVATION AND RURAL LAND USE

Since 1973, a North Carolina tax-relief program for owners of agricultural, horticultural, and forest land has permitted partial deferral of property taxes on those lands. The property owner pays taxes only on the use value of his land, and taxes on the difference between the property's use value and its market value are deferred until the land is no longer eligible for the program. Under prior law, when the land lost its eligibility, the property owner had to immediately pay any taxes deferred in the five preceding years. With passage of Chapter 835, owners of such property will have to pay deferred taxes for only the preceding three years.

North Carolina planners and environmentalists should note two bills introduced this year that may portend things to follow. House Bill 1066, the Governor's agricultural land preservation bill, was endorsed by both local and state soil conservationists, but not the Department of Agriculture. It died in the House Agriculture Committee. It would have required that "prime" and "locally important" agricultural and forestal lands be identified, and that local soil and water conservation districts be allowed to comment on government plans and permit applications that affect such lands.

Virginia passed more elaborate measures to preserve agricultural and forestal lands, thus protecting or benefiting farmers. In Chapter 635 the state legislature found that the conversion of prime agricultural land in Virginia is undermining Virginia's food and forest production capabilities. The Act requires all state agencies, in promulgating regulations and undertaking capital projects, to encourage the preservation of farm land. It names six major state agencies that must prepare implementation plans analyzing the effect of each agency's own regulations on the conversion of prime agricultural land. The Act defines "prime agricultural land" as "land that has historically produced or

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is producing agricultural or forestal products and is of a soil classified as a class 1 or class 2 soil by the National Cooperative Survey." It also directs the chairman of the state Council on the Environment to appoint the state agricultural commissioner to chair a subcommittee on the preservation of prime agricultural land with responsibility for reviewing and evaluating the effect of agency plans for preservation of farm land. The subcommittee must report its findings annually to the governor and the General Assembly.

Finally, the legislation requires all state agencies that submit environmental impact reports on major state projects to include in them an assessment of the project's impact on prime agricultural land, alternatives to the project, and measures for mitigation of agricultural loss. In reviewing each major state project subject to an impact statement, the Council on the Environment must determine if such consideration has been demonstrated and incorporate its evaluation in comments to the governor.

In Virginia, land located within a specially designated agricultural or forestal district pursuant to the Agricultural and Forestal Dis-

tricts Act of 1977 enjoys favored status in several respects. Agricultural property is assessed at its use value rather than its market value. Local development regulations may not unreasonably restrict or regulate forestry, farm structures, or farming practices. Also, state agencies' authority to purchase large amounts of land in such a district for their own public purposes is restricted. Chapter 54 now permits towns as well as cities and counties to establish these agricultural and forestal districts. The legislature also acted to stem the voluntary conversion of land within these districts to nonagrarian use. Chapter 54 allows a governing body that establishes such a district to prevent conversion of any district parcel to a more intensive use without prior approval of the governing body.

In a related action, Virginia's Chapter 418 added agricultural and forestal land preservation to the list of objectives to be attained by community planning, and directed that zoning ordinances and zoning districts be drawn with reasonable consideration for such objectives. It also requires local planning commissions to survey and study the preservation of agricultural and forestal land in preparing a comprehensive plan.

"NORTH CAROLINA PLANNERS AND ENVIRONMENTALISTS SHOULD NOTE TWO BILLS INTRODUCED THIS YEAR THAT MAY PORTEND THINGS TO FOLLOW."

Virginia farmers will enjoy another type of protection under the Right-to-Farm Act (Ch. 384). Similar to legislation passed in North Carolina in 1979, the Act provides that no agricultural operation shall be deemed a public or private nuisance because of changed conditions in its vicinity if the operation has existed for more than one year. It also voids all ordinances currently in effect or adopted after its effective date that would make such an agricultural operation a nuisance or provide for its abatement. However, these prohibitions do not apply if a nuisance results from negligent operation or if the operation changes significantly.

CONSERVATION EASEMENTS AND OPEN SPACE

Enactments in both South Carolina and Tennessee clarify the legal status of conservation easements. The Tennessee Conservation Easement Act of 1981 provides that conservation easements may be acquired on behalf of the people of Tennessee by governmental and certain nonprofit organizations. Restrictions on the use of land may be used to preserve, protect, or enhance the land, water, geological, biological, historical, architectural, archeological, cultural, or scenic resources of the state. Planners should reread that list to appreciate its breadth of purpose. The Act also establishes certain statutory rights held by holders of conservation easements, in order to overcome the restrictions and limitations of the common law which limit the use of these easements (Ch. 361).

"THE TENNESSEE LEGISLATURE ENACTED A NEW PERMITTING PROCESS FOR MAJOR ENERGY PROJECTS AND NEW LEGISLATION CONCERNING CONSERVATION EASEMENTS."

South Carolina amended existing conservation easement legislation to provide that these easement rights and obligations may be passed on to others by will, by assignment, or by sale, regardless of whether they are held by public or private interests (No. 187).

In related legislation, Virginia amended its "Open-Space Land Act," permitting local governments to acquire property interests (including easements) to preserve open-space for periods as short as five years (Ch. 64). Prior law required open-space interests to be acquired for at least 30 years.

CONCLUSION

1981 will not be remembered as a banner year for planning, environmental and housing legislation in the five southeastern states treated in this article. Given the current public emphasis on fiscal austerity and "deregulation," that should come as no surprise. Nevertheless, North Carolina's hazardous waste legislation, Virginia's farm protection laws, Georgia's Downtown Development Authorities Act, and Tennessee's energy legislation all break some new ground. All of these laws indicate new directions for planning, present additional challenges, and offer new roles for planners in the eighties.