

# 2014 Legislative Session Summary

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The 2013-14 biennium has wrapped. On August 20, state legislators adjourned and will return January 14 for the start of the 2015-16 biennium. There was consideration of a different adjournment resolution, which would have brought them back on November 17 for Medicaid reform. However, the House would not agree to return.

State lawmakers filed 2,162 bills during the 2013-2014 session and passed about 26 percent. Governor Pat McCrory could veto any of the bills that remain on his desk prior to September 20, which would call them back to Raleigh. The number of new laws and resolutions chaptered or awaiting his approval currently stands at **564, or 26 percent, including 516 session laws, 31 chaptered resolutions and 17 bills** on his desk.

The filing numbers are similar to those of 2011-2012, when Republicans gained control of both chambers and adopted rules limiting the number of bills that each legislator could file. During that session, 2,195 bills were filed and 646, or 29 percent, passed. This is low in comparison to years when no filing limits existed. During the 2009-2010 session, 3,547 bills were filed and 837 became law. In 2007-2008, legislators filed 4,980 bills, leading to 880 new laws and resolutions.

## State Budget

### Non-Commercial Leaking Underground Storage Tank Fund

NCAR participated in a work group to secure dollars in this year's state budget for this fund. The work group included NCAR staff and members, the [NC Department of Environment and Natural Resources](#), the [NC Bankers Association](#) and the [NC Farm Bureau](#). Our joint effort secured \$3.5 million for the fund. Almost \$2 million is recurring and will assist homeowners with the costs of cleaning up petroleum releases from home heating oil tanks and small farm tanks.

### Housing Trust Fund

NCAR again worked with the [NC Housing Finance Agency](#) and our allies to keep the majority of the funds allocated to the Housing Trust Fund in the 2013 budget. We were successful--only losing \$140,000 of the previously allocated money in [the Appropriations Act of 2014, SB 744](#). This was only a 2 percent reduction in funding, which was minimal compared to how many other agencies fared.

### Low Income Housing Tax Credit

This credit received a name change and a revamp in the budgeting process. As "credit" is a nasty word in the Senate, it was changed to a grant program and the name was changed to the Workforce Housing Loan Program. The budget appropriated \$10 million to the Housing Trust Fund to create a program to assist in developing low-income housing units throughout the state. While NCAR and our allies would have preferred a continuation of the current credit program, we were grateful for this provision.

## Film Incentives

The film incentives were another credit that changed to a grant program—the Film and Entertainment Grant Fund. The budget allocated \$10 million to the [NC Department of Commerce](#) to encourage the production of motion pictures, television shows, and commercials and to develop the filmmaking industry in North Carolina.

While supporters of the credits do not believe this is enough to keep the industry here long-term, they are hopeful this will allow current productions to continue through the first six months of 2015 while they work toward a better solution. NCAR appreciates the support that the film incentives received from [Reps. Ted Davis \(New Hanover\)](#), [Susi Hamilton \(New Hanover\)](#) and [Senator Bill Rabon \(Brunswick\)](#). We will continue to support these efforts in 2015.

## Historic Preservation and Mill Rehabilitation Tax Credits

The credits that had the wildest ride of the year were the historic and mill rehabilitation credits. The [Governor Pat McCrory's](#) budget originally included them at a reduced amount, but the Senate removed them. In the House, [Rep. Dean Arp \(Union\)](#) introduced and passed an amendment, supported by NCAR, to reinsert the credits into the budget. Throughout the conference committee discussions, NCAR and our allies received numerous assurances from Senators and Representatives of their support for the credits.

In the end, the credits were removed from the budget in conference. A study was placed into a contentious bill, [HB 1224](#), a Christmas tree of sorts with lots of issues that did not really go together. The House debated this bill at length, but because of other provisions, the bill was not concurred upon and there will be no study. NCAR will work with our allies to develop a retroactive grant program for consideration in the 2015 legislative session.

## Tax Law Change

### Local Privilege License Taxes

NCAR backed a proposal to eliminate local privilege license taxes that was included in the omnibus tax bill, [HB 1050](#). NCAR surveyed Brokers-In-Charge before the session and found that 40 percent of real estate firms pay this tax to their local government as a flat fee or percentage of gross receipts. The bill passed both chambers and was signed into law on May 29, 2014. Local privilege license taxes are prohibited effective July 1, 2015.

### Accommodations Taxes

The NC Department of Revenue issued an [Important Notice](#) on May 30 regarding the rental of private residences, cottages, or similar accommodations. Due to confusing wording, the Notice created an impression that the General Assembly created a new tax on rental accommodations. This is not the case.

For 30 years, North Carolina has applied the state sales tax to the gross receipts derived from the rental of accommodations. The law requires real estate brokers who act as rental agents for accommodations

subject to the tax to be liable for collecting and remitting the tax, unless the rental is long-term (i.e., rented to the same person for a period of 90 days or more). Brokers are also responsible for collecting and remitting applicable local sales and occupancy taxes.

Private residences or cottages rented by the property owner for fewer than 15 days in a calendar year are excluded from the sales tax, unless:

- The residence or cottage is generally and routinely made available by the owner for rental; or
- The property is listed with a broker acting as a rental agent.

In June 2012, the Department issued an [Important Notice](#) that was later determined to be an erroneous interpretation of the law. The notice excluded from the sales tax private residences that are rented for fewer than 15 days in a calendar year even when the property is listed with a broker acting as a rental agent.

Earlier this year, the Department concluded that the June 2012 notice did not reflect the intent of the law and requested that the General Assembly provide clarifying legislation.

On May 29, Governor McCrory signed into law [HB 1050](#). The new law includes a provision that more accurately states what had already been longstanding law in North Carolina: Real estate brokers acting as rental agents for private residences or cottages rented for fewer than 15 days in a calendar year are required to collect and remit the state sales tax as well as local sales and occupancy taxes. HB 1050 became effective on June 1, 2014, and applies to accommodation rentals occupied after that date.

## Regulatory Reform

One of the most hotly contested items of the session was the issue of regulatory reform. Both chambers included elements of regulatory reform in multiple bills, primarily [SB 734](#), [SB 38](#) and [HB 761](#).

The House adopted SB 734, but the Senate failed to concur. The House adopted SB 38, but the Senate held the bill on the clerk's desk and took no further action. HB 761 was slated for a floor vote in the Senate, but it was sent back to the [Committee on Rules and Operations of the Senate](#) (Senate Rules).

Finally, the bodies agreed to a conference report on SB 734 in which NCAR successfully negotiated for several issues of importance to our members and the industry and against the most egregious provisions that originally were included.

## Exemptions from Real Estate Licensing Requirements

When the Senate originally adopted [SB 734](#), the bill included a provision to expand the law that allows certain exemptions from real estate licensure requirements. The bill would have allowed unlicensed employees of LLCs and partnerships to engage in brokerage activities for properties owned by their employers as well as those owned by other closely-held business entities.

NCAR and the NC Real Estate Commission opposed this provision because of the tremendous potential for harm to consumers. Consumers harmed by unlicensed, untrained employees would have no access to the NCREC Recovery Fund and little to no opportunity for relief in the court system.

The House adopted SB 734 after stripping it of this provision and adding several other reform provisions. The Senate failed to concur in the House changes. The final regulatory reform conference report was agreed upon and passed without this provision. [Senator Rick Gunn \(Alamance\)](#) advocated strongly for our position on this matter and deserves a round of applause!

During the final weeks of the legislative session, the Senate Rules added a slightly altered version of this provision as part of a rewrite of **HB 761**. However, the bill was referred to Senate Rules, where it remained at the end of session.

### **Disclosure of Oil, Gas, and Mineral Rights (SB 38, SB 734)**

When the House Regulatory Reform Committee rewrote SB 734, it stripped all of the provisions related to environmental laws and placed them within **SB 38**. The House added one provision that was language from NCAR and the [NC Real Estate Commission \(NCREC\)](#) to improve the timeliness of property disclosure requirements regarding mineral, oil, and gas rights. Current law requires disclosure of oil and gas rights in the contract, but the new provision would require disclosure in a separate form prior to an offer.

[Rep. Mike Hager \(Rutherford\)](#) included this provision in the regulatory reform process, and it was ultimately in the final version of SB 734 and has an effective date of January 1, 2015. Our Forms Committee is already working with the NCREC to prepare the disclosure form.

## **Protecting Property Rights**

### **Mechanics Liens and Leasehold Improvements**

Intense lobbying by NCAR defeated a proposal to allow mechanics liens on leasehold interests to be extended to include the fee interest of the property owner. If adopted, the proposal could have violated the property rights of landlords and owners by making them financially liable for unauthorized improvements made by their tenants. The proposal was excluded from the final findings and recommendations of the [House Study Committee on Mechanics Liens and Leasehold Improvements](#) prior to the beginning of the short session.

### **Architectural Design and Aesthetic Controls (HB 150, SB 734)**

**HB 150** would prohibit local governments from regulating the aesthetic design elements of single-family residential structures. The bill includes exceptions for historic districts, landmarks, restrictive covenants, and structural safety. The House adopted the bill in 2013, but the Senate Rules Committee has held it since.

In May, the House added the text of the bill to **SB 734**, an omnibus bill containing dozens of other regulatory reform provisions. The House adopted SB 734, but the Senate failed to concur. The final regulatory reform conference report was agreed upon and passed without this provision. [Rep. Nelson](#)

[Dollar \(Wake\)](#) and [Rep. Tim Moffitt \(Buncombe\)](#) worked very hard on this legislation, and we are disappointed the Senate would not pass the bipartisan legislation.

## Rental Registration and Inspections

[HB 773](#) would make several changes to a 2011 law that establishes guidelines for local governments' inspection and registration of residential rental properties. These changes include defining “verified violation”; prohibiting the use of registration programs, permits, or fees as a condition of operating rental housing; and prohibiting the designation of an entire jurisdiction as blighted.

After the House passed the bill in 2013, the Senate referred it to the [Senate Commerce Committee](#), where it has remained. Co-Chairman Rick Gunn (Alamance) was willing and eager to hear the bill, but his [Co-Chair Wesley Meredith \(Cumberland\)](#) did not agree. The bill sponsor, [Rep. Bill Brawley \(Mecklenburg\)](#), has pledged to introduce similar legislation in 2015.

## Protecting Our Members

### Patent Abuse

As the real estate industry becomes more dependent upon technology, expensive and time-consuming lawsuits by “patent trolls” against MLSs and brokers put all REALTORS® at risk. NCAR supported several bills that would protect REALTORS® and other businesses by making bad-faith claims of patent infringement unlawful. [Rep. Tom Murry \(Wake\)](#) introduced [HB 1032](#) and the House unanimously approved it in June, but the Senate took no action on the bill.

The House added anti-patent troll language to [SB 648](#) which was a contentious and large tort reform bill. As the House simultaneously stripped away several Senate-approved tort reform provisions, the Senate refused to concur in the amended bill, and a conference committee was appointed. The provision was included in the legislation ultimately agreed upon and was sent to Governor McCrory, who signed the law on August 6.

### Title Searches

NCAR successfully lobbied to amend a bill that could have created numerous problems with title searches. [SB 78](#) would have allowed law enforcement personnel, prosecutors, and judicial officers to request that their name and address be removed from any website that cities or counties maintain. This redaction of personal information would have applied to property records maintained by the Register of Deeds as well as tax records. REALTORS® and our coalition partners expressed concern that redacting this information could have the unintended consequence of clouding title searches.

The sponsor agreed to our suggestion to amend the bill to require the [NC Courts Commission](#) to study developing a process to remove this personal information and make a recommendation to the General Assembly by 2015. The House unanimously adopted the bill and sent it back to the Senate, where it was referred to the Rules Committee. NCAR greatly appreciates the efforts of [Rep. Chris Malone \(Wake\)](#) to make the change to ensure no unintended consequences occurred.

## Homeowners Insurance

### Property Insurance Rate-Making Reform

[HB 519](#) would provide greater transparency, accuracy and fairness in the insurance rate-setting process. It would require the NC Rate Bureau to use: (1) More than one projection model when determining risk; (2) North Carolina-specific data; and (3) historical data. The House passed the bill unanimously in 2013, but the Senate Insurance Committee refused to consider the bill.

More than 1,500 NC REALTORS® responded to a call for action on HB 519 during this session. Despite this effort, the Senate leadership would not hear the bill. We greatly appreciate the efforts of the bill sponsors, [Reps. Paul Tine \(Dare\)](#), Susi Hamilton (New Hanover) and [Frank Iler \(Brunswick\)](#), and [Senator Harry Brown \(Onslow\)](#) for their continued efforts to have the bill heard.

### Insurance Rate Study

NCAR succeeded in adding a provision to [SB 734](#) that would require the [Legislative Research Commission \(LRC\)](#) to study whether the Commissioner of Insurance should be given authority to *lower* rates, rather than just approve a rate increase between the current rate and the rate proposed in a [NC Rate Bureau](#) filing. Under the amendment, sponsored by [Rep. Bob Steinburg \(Chowan\)](#), LRC would submit findings and legislative recommendations before the convening of the 2015 legislative session.

The House adopted SB 734, but the Senate failed to concur. The final regulatory reform conference report was agreed upon and passed without this provision.

## Other Issues

### Unmanned Aircraft Systems a.k.a. Drones (HB 1099, SB 744)

The House unanimously adopted a bill to regulate the use of unmanned aircraft systems, more commonly referred to as drones. [HB 1099](#) would require operators to pass a knowledge and skills test and would require a license for drone operation for commercial purposes. The bill did not receive action in the Senate.

The Federal Aviation Administration currently bans commercial use of drones, and the bill's requirements would not become effective until after the FAA issues rules for commercial use. [SB744](#), the Appropriations Act of 2014, reiterated the FAA ban therein.

### A-F Grading of Schools (HB 230, SB 744)

As early as January 1, 2015, local schools could be publishing the grade the school has received from the NC Department of Public Instruction, as required by previous legislation. The grade would be based on student test scores and growth and would be published on websites, at the physical location and in other places necessary as deemed by the Department.

While SB 744 extended the time for publication to January, [HB 230](#) made changes to the calculation model used. The current calculation is 80 percent achievement (standardized test scores) and 20

percent growth (from the previous year). The letter grades are assigned on a 10-point scale (i.e., 100-90 = A, 89-80 = B, etc.).

HB 230 clarifies that the school does not have to include growth in the calculation if:

1. The school has met expected schoolwide growth; and
2. The inclusion of the 20 percent growth component would lower the school's grade.

Additionally, it allows the letter grades to be determined on a 15-point scale (i.e., 100-85 = A) for this year's grades only.

### **Boone ETJ Repeal**

The House and Senate approved [SB 865](#), which eliminates the [Town of Boone's](#) authority to regulate land use policy beyond its city limits, commonly known as extraterritorial jurisdiction (ETJ). As a local bill, it did not require the governor's signature to become law. Land use authority for the area currently within the ETJ will return to [Watauga County](#) effective January 1, 2015. [Senator Dan Soucek \(Watauga\)](#) was the bill sponsor and had the support of local REALTORS®.