

2016 End of Session Report

Following is a summary and status of pending legislation in 2016 which CAI monitored 2015 and 2016:

SB 778: Performance Guarantees/Subdivision Streets

This bill provided a mechanism for some orphan roads constructed since 2010 to be accepted by the State and sets up a provision by which developers shall post performance guarantees or meet recording requirements before street construction can begin. Most of the bill applied to roads intended to be public that fall outside of municipal systems. If a County requires a performance guarantee, but the developer elects not to post a performance guarantee, the developer must post a residual performance guarantee to pay for maintenance and repairs pending street acceptance. The bill established a state-wide street database to report the status of roads within all counties and requires that the streets be noted as one of six different designations. This bill passed the Senate in different form, and was sent to the House, where it underwent the changes leading to the current form. It passed the House and went back to the Senate for concurrence. The bill was referred to Senate Transportation committee where it remained for the rest of the Session.

HB 1030: An Act to Modify the Current Operations and Capital Improvements Appropriations Act of 2015 and to Make Other Changes in the Budget Operations of the State.

This 2016-17 State Budget includes several new sales tax provisions intended to clarify the application of sales and use tax on certain repair, maintenance and installation services and provides a grace period for under-collection of that tax by contractors in 2016. These new provisions will be important to individuals and companies who provide repair, maintenance and installation services to real property. For example, as opposed to current sales and use tax law, these new provisions will treat similar transactions the same regardless who performs the service. This bill removes the distinction and provides that all businesses that provide taxable repair, maintenance and installation services will be treated the same. As a practical matter, this will have the effect of taxing many more repair and maintenance services to real property.

The new sales and use tax provisions in the 2016 budget bill also would do the following important things:

- **Exclude capital improvements** – Installations into real property, and some significant repairs, would not be taxable if the service is a “capital improvement”. Factors to consider in determining whether a contract is for the performance of a capital improvement to real property are:
 1. The method of attachment for the property installed.
 2. The degree of customization of the property installed.
 3. The value added by or the useful life of the property installed.

The bill specifically identifies the following as capital improvements, and the installation and construction of these items would not be subject to sales tax:

- New construction and enlargement of an existing structure.
- Removal of items from real property, such as asbestos and construction material.

- Performance for work that requires a permit under the State Building Code.
 - Installation of equipment that is attached to real property so that the removal of the item would cause physical, function or economic damage to the property;
 - Installation of roofing, septic tank, plumbing, electrical, commercial, refrigeration, irrigation and sprinkler systems.
 - Installation of an HVAC unit or system.
 - Installation of roads, driveways, parking lots and sidewalks.
 - Landscaping services.
- **Clarify the taxability of certain RMI services with respect to tangible personal property** – The bill would exempt the following services with respect to tangible personal property:
 - Car Washes
 - Clothing Alterations
 - Towing Services
 - Storage of a motor vehicle
- **Exempt Certain RMI Services from Tax** – The following services, which otherwise fall within the definition of “repair, maintenance, and installation services”, would be exempt from tax:
 - A fee or charge for an inspection required by law. For example, a fee imposed to have a motor vehicle inspected.
 - Service performed by a related member. A person is a related member if at least 50% of its value is owned by the entity for which it is providing the RMI service; in this instance, the service is more analogous to a service provided by an employee than a retailer.
 - Service performed to resolve an issue that was part of a capital improvement if the services are performed within six months of the completion of the improvement or within 12 months of a new structure being occupied for the first time. This exemption would include repair services a contractor may have to provide for “punch list” items required of a purchaser of a new structure.
 - RMI service for roads, parking lots and sidewalks. This exemption would treat the repair and maintenance of these items the same as the construction of them. These items are most often State or county-owned in nature and commercial property.
 - Removal of items from real property that may be provided on an as-needed basis rather than under a real property contract. Examples include garbage, grease and debris.
 - Home inspections in preparation for sale of property.
 - House cleaning and janitorial services.
 - Building cleaning services.
 - Landscaping services.
 - Car washes.
 - Alteration services.
 - Pest Control.

Most of these new sales tax changes will become effective January 1, 2017.

HB 882: An Act to Regulate Community Association Property Managers by Establishing a Licensing Procedure with the North Carolina Real Estate Commission and to Make Various Changes to the Planned Community Act.

This bill was not considered during the 2016 Session, and is effectively dead for next Session.

HB 731: An Act to Establish a Fidelity Bond Requirement for Community Associations and to Create the North Carolina Community Association Commission to Regulate Community Associations and Community Association Managers in this State.

This bill, introduced by Rep. Jason Saine in 2015, was not considered during this Session and is effectively dead for next Session.

SB-563/HB-514: An Act Establishing the Community Association Managers Licensure Act and Requiring Registration of All Community Associations.

Introduced in 2015, both bills were referred to Committee, where they were not considered. Neither version of these bills was considered this year.

HB 931: An Act to Amend the North Carolina Constitution to Prohibit Homeowners' Association from Foreclosing on Real Property for Unpaid Association Dues, to Allow Homeowners' Associations to Obtain Judgments for Past-Due Assessments, and to Allow for Setoff Against State Income Tax Returns for Past-Due Assessments.

This bill was referred to House Rules Committee in 2015, and was not considered last Session, or this Session.

HB 336: An Act to Study Homeowners' Protection and Participation in the Governance, Assessments, and Record-Keeping of Their Homeowners' Associations and Other Related Matters.

Was referred to the House Committee on Local Government in 2015, and was not considered. Nothing further happened to this bill this session.

Delinquent Assessment of Certificate Fees. No legislation was introduced or otherwise considered involving or regulating delinquent assessment certificates or disclosures in any way or form.