



INTRODUCTION

Crossover

The crossover deadline was yesterday, Thursday May 16th. What that means, technically, is that all public bills that do not have a substantive fiscal impact must be passed by the chamber from which they originated by midnight on Thursday. Of course there are ways to get around the deadline (available almost exclusively to members of majority, for the purposes of moving legislation that has the approval of the leadership), but for the vast majority of bills, Thursday was it. Which means, for the members, staff, lobbyists and advocates (and, it must be said, spouses and children) that make up the legislative community the last week was something exceptional. Session often ran late into the night, committees had multiple meetings in addition to the regularly scheduled variety (some of these happened during breaks, on the chamber floor around the Chair's desks), all to get as many bills as possible and politically feasible across the line before the clock struck midnight.

In years past a lot of legislation that would likely have been stopped or substantively altered under normal circumstances has been passed in the days or hours leading up to crossover, while other bills that have been negotiated at length and vetted extensively by multiple committees have gone down over last minute concerns or minor disagreements. It's chaotic to say the least and the frenetic pace can be downright dangerous for those trying to get legislation, in some cases years in the making, through the final stretch. Veterans of the process tried to be ready for the madness and knew that it would be an epically intense week, while freshman legislators and rookie lobbyists tried to prepare for something you have to experience to fully understand.

In case this all makes it seem like the end of the week will be occasion for a break, it's worth noting that House Speaker Tillis recently announced the date he would like to see the session adjourn (and promised to stop shaving after that date in protest if the legislature is still in town): June 7th, or 22 days after crossover. All that needs to happen in that time is finishing hundreds of pieces of legislation, reforming our tax code and the entire budget process! So hold on - it is going to be a bumpy ride.



NORTH CAROLINA GROUND WATER ASSOCIATION



THIS LEGISLATIVE REPORT IS A PUBLICATION OF KOCHANEK LAW GROUP AND IS A MEMBER BENEFIT OF NCGWA. ANY USE OR REPRODUCTION OF THIS REPORT IS LIMITED TO NCGWA AND ITS MEMBERS.

FOR MORE INFORMATION:

Colleen Kochanek
NCGWA Legislative Counsel
P.O. Box 12946
Raleigh, NC 27605
919.747.9988

colleen@kochaneklawgroup.com
www.kochaneklawgroup.com

Senate Tax Reform Plan Unveiled

Last week the much-anticipated tax reform plan that Senate leaders have been developing behind closed doors was unveiled to the public. The state Republican Party released a website (nctaxcut.com) and video featuring Senate President Pro Tem Phil Berger touting the plan as the largest tax cut in state history, under which everyone would pay “their fair share.”

While the plan does not go as far as proposals Senate leaders have previewed (which would have eliminated the state’s personal and corporate income taxes), it would represent a major overhaul of the state’s tax system. Under the plan the state’s top income tax would be reduced from the current 7.75% to 4.5% over three years, and the corporate income tax would fall from 6.9% to 6%. The estate tax would be eliminated and the business franchise tax would be reduced by 10%.

To replace revenue lost from these cuts, a sales tax of 6.5% would be applied to roughly 130 services that are currently exempt (including the services of physicians, accountants and attorneys, as well as haircuts, car washes, auto repairs, and landscaping, among many others). Prescription drugs and food, also currently exempt, would be taxed at the 6.5% level, and the existing tax refund for nonprofits’ purchases would be eliminated. Social Security income would also be taxed, if the recipient has other sources of income as well. The plan falls short of being revenue neutral (which Governor McCrory has made clear he expects any plan sent to him to be), missing that mark by \$250 million in the first year and \$1 billion in the third. In the video he released, Pro Tem Berger says balance will be achieved by “holding the line on spending,” and praises the plan for representing a \$1 billion dollar tax cut, the largest in state history. How exactly the line will be held on spending is not yet clear.

The plan immediately drew criticism for being regressive, hurting low-income and middle class families while benefiting business interests and the wealthy. The plan also appears to favor families with few or no children. The “tax cut calculator” on nctaxcut.com estimates that a family of 5 making \$60,000 would pay \$840 more per year, while a married couple with no kids making the same amount would pay \$827 less in taxes that year. A family of 5 making \$250,000 per year, meanwhile, would see their taxes cut by \$6369 per year. It was noted that the calculator proclaims all results to be “Great News!” despite the tool revealing that most North Carolinians would actually pay more (an increase reads a “tax cut” with a negative number). While proponents stress that the full details have yet to be worked out, the initial PR campaign was hampered by these revelations.

The real threat to the plan seems to be the strong advocacy by influential groups against having their services included on the list of those to be taxed. Groups representing doctors, lawyers, realtors, hospitals and pharmacies have already begun strong advocacy efforts within the legislature, and many have launched PR campaigns against “raising the cost” of housing, healthcare, and so on. Groups representing nonprofits and the poor have also made their concerns known, the latter pointing out that the plan would raise taxes on a family of 5 making \$25,000 per year by nearly \$1500.

While some Republican lawmakers have been among those critical of the initial plan (there are plenty of lawyers and realtors among the members of the House and Senate, along with other professions affected by the plan), many also reiterate that tax reform is overdue, and most observers expect some kind of reform bill to be passed by the Senate during this session. With Senate leaders yet to release an actual bill, and the firestorm over many of the provisions it’s expected to contain, the final shape of the Senate plan is far from certain. Of course any plan approved by that chamber will also need to get through the House, and given the recent tension between the chambers, the real battle may lie ahead.

BILL UPDATES

HOUSE BILL 74, Periodic Review and Expiration of Rules, was amended to:

- require the notice of a proposed rule to include the actual text of the proposed rule, unless the rule is a re-adoption without substantive change to the existing rule.
- provide that any rule for which the agency that adopted the rule has not conducted a review in accordance with the statute will expire on the date set in the schedule established by the Rules Review Commission (Commission).
- require each relevant agency to conduct a review of the agency's existing rules at least once every ten years in accordance with the following specified process, and to analyze each existing rule and decide whether the rule is necessary with substantive public interest, necessary without substantive public interest, or unnecessary. The determination is to be posted and open to public comment.
- require the agency to, after reviewing and assessing the merits of the public comments, report to the Commission. The Commission must review the reports and if there is a comment on a rule the agency has determined to be necessary and without substantive public interest or unnecessary, the Commission must decide whether the comment has merit; if the comment does have merit, the rules must be designated as necessary with substantive public interest.
- require the Commission to report final determinations to the Joint Legislative Administrative Procedure Oversight Committee (Committee) for consultation.
- provide that the final determination report does not become effective until that agency has consulted with the Committee.
- provide for when the Committee does not hold the consultation meeting within 60 days and also describes the role of the General Assembly when the Committee disagrees with a determination.
- require the Commission to establish a schedule for the review of existing rules according to the statute on a decennial basis by assigning each title of the Administrative Code a date by which the review must be completed, and that if the agency does not conduct the review by the set date, the rules in that title will expire.
- allow an agency to subject a rule that it determines to be unnecessary to review under the statute at any time by notifying the Commission that it wants to be placed on the schedule for the current year.

The bill as amended was approved by the House Regulatory Reform Committee and will next be considered by the full House.

HOUSE BILL 94, Amend Environmental Laws 2013, was amended in the House Environment Committee to: (1) clarify that underground storage tank systems installed after January 1, 1991, and prior to April 1, 2001, are not required to provide secondary containment until January 1, 2020; and (2) require the Commission for Public Health to adopt rules governing permits issued for private drinking water wells for circumstances in which the local health department has determined that the proposed site for a private drinking water well is located within 1,000 feet of a known source of release of contamination, and require these rules to provide for notice and information of the known source of release of contamination and any known risk of issuing a permit for the construction and use of a private drinking water well on such a site. **The bill as amended was approved by the House Environment Committee and will next be considered by the House Finance Committee.**

HOUSE BILL 649, Small Group Health Insurance Technical Changes. The provisions of this bill were removed in the House Insurance Committee and replaced with new provisions to:

- provide that no small employer carrier shall be required to issue the basic or standard health benefit plan, and require basic or standard health benefit plans that are not "grandfathered health plans," as that term is used in the Affordable Care Act to be terminated on the next anniversary date on or after January 1, 2014;

- require the small employer carrier to offer the employer replacement coverage from available small group health benefit plans pursuant to and in accordance with all applicable State and federal laws and regulations, and a 90-day notice prior to termination;
- define "small employer," in connection with a non-grandfathered group health plan, as an employer that employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and that employs at least one employee on the first day of the plan year
- remove the provisions that requires the carrier to either offer small employers one basic and one standard health care plan or alternative coverage as a condition of transacting business as a small employer carrier in this State;
- provide that, for all small employer health benefit plans that are not grandfathered health benefit plans, the premium rates are subject to all of the specified provisions; and
- prohibit a small employer carrier from modifying the premium rate charged to a small group non-grandfathered health benefit plan or a small employer group member, including changes in rates related to the increasing age of a group member, for 12 months from the initial issue date or renewal date.

The bill as amended was approved by the House Insurance Committee. After amendment on the House floor with a totally unrelated provision, the bill was sent to the House Judiciary Subcommittee C for further consideration.

HOUSE BILL 755, DENR Electronic Notice, was amended to:

- require the Department of Environment and Natural Resources (DENR) to publish, at least 10 days before the hearing date, notice of a public hearing on any application for, or modification of, a mining permit both electronically on DENR's web site, and via email to interested parties who have requested notification.
- require that a notice of a public hearing regarding the approval of a lease application (for shellfish cultivation) must be published electronically on DENR's web site and via email to interested parties who have requested notification. Also provides that service by publication may be accomplished by electronic publication on DENR's web site and via email, and that notice by publication requires that the notice be published on DENR's web site for a minimum of 30 days.
- require DENR to report to the Environmental Review Commission, on both January 1, 2014, and January 1, 2015, on the effectiveness and implementation of the electronic notice authorized by the bill.
- remove provisions in the previous version which would have authorized public notice via electronic means of any proposed final action granting or denying certain permit applications or of a public hearing on any such permit applications or renewals; as well as provisions regarding the use of electronic publication in providing notice for public input.

The bill as amended was approved by the House Environment Committee and will next be considered by the full House.

SENATE BILL 91, Prohibit Expunction Inquiry, was amended by the joint Conference Committee to:

- provide that an employer or educational institution will not require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged, and that they cannot knowingly or willingly inquire about that which they know has been expunged.
- remove a requirement that employers or educational institutions that requested disclosure of information concerning any arrest, criminal charge, or criminal conviction of the applicant first advise the applicant of law allowing the applicant to not refer to any expunged arrest, charge, or conviction, and replace it with language that would:

- provide that an applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include information or refer to any arrests, charges, or convictions that have been expunged.

The Conference Report as amended was approved by the full House and full Senate and sent to the Governor for his signature.

SENATE BILL 341, Amend Interbasin Transfer Law, was amended in the Senate Agriculture/Environment/Natural Resources Committee to reinstate the requirement that a person must obtain a certificate from the Environment Management Commission prior to increasing the amount of an existing transfer of water from one river basin to another by 25% or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2 million gallons or more per day. The bill also was amended to provide that provisions that exempt certain transfers of water in the Central Coastal Plain Capacity Use Area from interbasin transfer certification requirements will expire if the cumulative volume of water transfers from one river basin to another on or after August 31, 2007, by any person that does not hold a certificate for an interbasin transfer on or before the effective date of this act, exceeds 20.3 million gallons per day. **The bill as amended was approved by the Senate Agriculture/Environment/Natural Resources Committee and the full Senate. The bill will next be considered by the House Environment Committee.**

SENATE BILL 473, Healthcare Cost Reduction and Transparency. A variety of amendments were made to this bill in the Senate Finance Committee, including:

- stating that it is the intent of the Act to improve transparency in health care costs by providing information to the public on the costs of the most frequently reported diagnostic related groups (DRGs) for hospital inpatient care and the most common surgical procedures and imaging procedures provided in hospital outpatient settings and ambulatory surgical facilities;
- requiring the Department of Health and Human Services (instead of the NC HIE) to make available to the public on its website the most current price information it receives from hospitals and ambulatory surgical facilities;
- making it unlawful for a provider of health care services to charge or accept payment for a health care procedure or component of a health care procedure that was not performed or supplied;
- removing the provisions in the previous version that prohibited duplicate charges for certain radiology services;
- providing that competitive health care information does not include any of the information hospitals and ambulatory surgical facilities are required to report to DHHS; and
- requiring a hospital or ambulatory surgical facility to provide the patient with a refund within 45 days of receiving notice of the overpayment, if a patient has overpaid the amount due to the hospital or ambulatory surgical facility, whether as the result of insurance coverage, patient error, health care facility billing error, or other cause, and the overpayment is not in dispute or on appeal.

The bill as amended was approved by the Senate Finance Committee and full Senate. The bill will next be assigned to a House committee for consideration.

SENATE BILL 489, Consumer Finance Act Amendments, was amended to:

- clarify that no licensee will contact a military service member, or their spouse, by phone or email, for the purposes of collecting on the loan, when the military service member has been deployed to a theater of combat
- provide that if a late payment fee has been imposed once, with respect to a particular late payment, no such fee can be imposed with respect to any future payment which would have been timely and sufficient but for the previous default.

- delete the section in the previous version (“Rates, maturities and amounts”) and replace it with a requirements that loans issued in accordance with GS 53-176(a) cannot charge interest that exceeds the following actuarial rates:
 - (1) With respect to a loan not exceeding \$10,000, cannot exceed 30% per annum on that part of the unpaid principal balance not exceeding \$5,000 and cannot exceed 24% per annum on that part of the remainder of the unpaid principal balance.
 - (2) With respect to a loan exceeding \$10,000, cannot exceed 18% per annum on the outstanding principal balance.

The bill as amended was passed by the full Senate and will next be considered by the House Banking Committee.

SENATE BILL 612, Regulatory Reform Act of 2013. Several new provisions and amendments were made to this bill in the Senate Commerce Committee and on the Senate floor. As amended, the bill would:

- require the Environmental Management Commission to adopt rules to implement a fast-track permitting process for (1) the issuance of stormwater management system permits and (2) approval of erosion and sedimentation control plans by the Department or a local erosion and sedimentation control program without a technical review when the permit applicant complies with the Minimum Design Criteria and submits a permit application sealed by an appropriate professional with the specific criteria;
- require the Commission to adopt rules implementing a fast-track plan approval process allowing for approval of erosion and sedimentation control plans by the Department or a local erosion and sedimentation control program without a technical review when the plan complies with the Minimum Design Criteria for erosion and sedimentation control and is sealed by the appropriate professional specified in the criteria;
- prohibit the State or a local government from requiring, in the course of conducting technical review of an application for a permit or a plan submitted for approval by the entity, revisions to the part of the application or plan that constitutes the practice of engineering and that has been supervised and sealed by a professional engineer unless the employee or official of the reviewing entity requiring the revision is also a professional engineer or an engineering intern under the responsible charge of a professional engineer;
- direct the Department of Environment and Natural Resources to identify other permitting programs for which the fast-track permitting process would be appropriate and make a report, including proposed legislation, to the Environmental Review Commission no later than May 1, 2014;
- clarify that a city or county ordinance is not consistent with State or federal law when the ordinance regulates a field that is also regulated by a State or federal statute or regulation and the ordinance is more stringent than the State or federal statute or regulation. This limitation does not apply to an ordinance if adoption of the ordinance was and continues to be required by one of the following: (1) a serious and unforeseen threat to the public health, safety, or welfare; (2) an act of the General Assembly or US Congress that expressly requires the city to adopt an ordinance; (3) a provision in federal or State budgetary policy; (4) a federal regulation required by an act of the US Congress to be adopted or administered by the State; or (5) a court order;
- clarify the laws relating to groundwater compliance boundaries by requiring a person required to obtain an individual permit from the Commission for a disposal system to have a compliance boundary as established by the Commission for various categories of disposal systems and beyond which groundwater quality standards may not be exceeded;
- provide that if operation of a permitted disposal system results in a violation of the groundwater quality standards, the Commission must require that the violation be remedied through clean-up, recovery, containment, or other response when: (1) a violation of any water quality standard in adjoining classified waters of the State occurs or can be reasonably

predicted to occur considering hydrogeological conditions, modeling, or any other available evidence; (2) an imminent hazard or threat to the environment, public health, or safety exists; or (3) a violation of any standard in groundwater occurring in the bedrock other than limestones found in the Coastal Plain sediments, unless it can be demonstrated that the violation will not adversely affect, or have the potential to adversely affect, a water supply well;

- extend the terms of certain environmental permits;
- amend the Administrative Procedure Act to eliminate the requirement that an agency prepare a fiscal note when repealing a rule;
- require the repeal or revision of existing environmental rules more restrictive than federal rules pertaining to the same subject matter;
- direct the Department of Environment and Natural Resources and the Department of Transportation to jointly petition the Wilmington District of the US Army Corps of Engineers to allow for greater flexibility and opportunity to perform wetlands mitigation beyond the immediate watershed where development will occur;
- clarify that the definition of "built-upon area" includes only impervious surfaces; and
- require members of advisory bodies to State agencies and boards to disclose potential conflicts of interest prior to making a recommendation.

The bill as amended was approved by the Senate Commerce Committee and the full Senate and will next be considered by the House Regulatory Reform Committee.

SENATE BILL 638, NC Farm Act of 2013, was amended in the Senate Agriculture/Environment/Natural Resources Committee to amend the statute governing water shortage emergency powers to provide that this section does not limit a landowner from withdrawing water for use in agricultural activities when the water is withdrawn from any of the following: (1) surface water sources located wholly on the landowner's property, including, but not limited to, impoundments constructed by or owned by the landowner and captured stormwater; and (2) groundwater sources, including, but not limited to, wells constructed on the landowner's property, springs, and artesian wells. **The bill as amended was approved by the Senate Agriculture/Environment/Natural Resources Committee and the full Senate. The bill will next be considered by the House Agriculture Committee.**

- Colleen Kochanek
NCGWA Legislative Counsel
P.O. Box 12946
Raleigh, NC 27605
919.747.9988
colleen@kochaneklawgroup.com
www.kochaneklawgroup.comⁱ

ⁱ THIS LEGISLATIVE REPORT IS A PUBLICATION OF KOCHANЕК LAW GROUP AND IS A MEMBER BENEFIT OF NCGWA. ANY USE OR REPRODUCTION OF THIS REPORT IS LIMITED TO NCGWA AND ITS MEMBERS.