



## INTRODUCTION

During this fourth week of the “short” legislative session, the general feeling around the General Assembly was a bit of panic as things started to feel like session was drawing to a close. The Senate announced policy committees were shutting down, word of a compromise position on issues that had temporarily deadlocked the two chambers began to emerge, and an adjournment resolution that listed June 19<sup>th</sup> as the last day of session began to feel less like a threat and more like a promise.

The result for lawmakers, lobbyists and staff was for the already manic pace of action to accelerate even further. Bills that had become controversial or difficult were rewritten to ease their passage, converted to the subject of future studies or possibly abandoned for the session. As the threat of the Senate adjourning without passing a budget lifted, advocates for (and against) provisions included in the House budget went into overdrive to make their influence felt before the final gavel falls.

While June 19<sup>th</sup> is generally considered too soon to be reasonable, a consensus is emerging that the last day of session will be no later than June 28<sup>th</sup>, leaving three weeks to finalize a budget compromise between the chambers, round up votes to override a likely Governor’s veto of that budget, and give final passage to several controversial pieces of legislation and scores of other bills.

Among the controversial issues taken up during this short session, four of the most contentious have yet to be resolved: education reform, with Senate President Pro Tem Phil Berger advocating merit pay for teachers and the end of tenure and House Majority Leader Paul Stam pushing for taxpayer-funded credits for private school scholarships; the development of a regulatory framework that would allow natural gas exploration by hydraulic fracturing (fracking) in the state for the first time; the reform or repeal of the 2009 Racial Justice Act, which allows death-row inmates to seek a conversion of their sentence to life in prison without parole if they can prove racial bias in the prosecution of their case; and a measure that would require voters to show a photo ID before being allowed to cast their ballot. With roughly three weeks remaining to tackle these tough issues, compromise positions are beginning to emerge for each of them.



## NORTH CAROLINA GROUND WATER ASSOCIATION



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As part of the rumored deal between the chambers' budget writers, many expect to see a final draft that includes funding for some the provisions in Sen. Berger's education reform package, and for Rep. Stam's scholarship 'vouchers.' Sen. Rucho introduced the newest version of his fracking bill (summarized below) on June 5th, which contained more changes sought by proponents of a "go-slow" approach and was passed by the Senate the following day; a second attempt to reform the Racial Justice Act (the first attempt, essentially a repeal, was vetoed by the Governor last year and has thus far not been able to generate enough Democratic votes for repeal) was introduced and quickly passed by a House Judiciary committee and sent to the floor, only to be sent back by Speaker Tillis for further revisions; and a compromise Voter ID proposal that was floated by the Speaker on his Facebook page generated considerable buzz, despite not having appeared as legislation in either chamber.

To be clear, the "compromise" designation given to these new proposals does not indicate an agreement between Republican leadership and the state teacher's association, for example, or between fracking backers and environmentalists, Rep. Stam and the NAACP or Speaker Tillis and the Democratic Party. The changes to each of these proposals have all been designed with a single purpose: to give up just enough to guarantee passage. Whether it has been a counting of the votes, the Governor's veto stamp or a member's own party leadership standing in the way, all of these proposals had been stalled at one point during this session, and as Speaker Tillis said regarding Voter ID, "a considerable amount of something is better than 100% of nothing." It would seem that the backers of these other proposals agree, and we expect to see most if not all of the pass, in one form or another, before the session comes to a close.

This is democracy in overdrive, and we will continue to keep you updated as the Legislature sprints to a rapid close.

### **BILLS OF INTEREST**

HOUSE BILL 1220, *Legislative Term Limits*, would amend the North Carolina Constitution, if approved by a majority of voters in a statewide referendum held in November 2012, to limit members of the General Assembly to three consecutive four-year terms, and to provide for staggered four-year terms. **Introduced by Representative Pridgen and referred to the House Judiciary Committee.**

### **BILL UPDATES**

HOUSE BILL 111, *Amend Firearms Laws*. This legislation to allow concealed carry permit holders to carry a handgun into a restaurant or park was amended in the Senate Judiciary II Committee. The amendment would change the effective date of the legislation from December 1, 2011, to January 1, 2013, for the provision that would allow persons with concealed handgun permits to possess handguns in restaurants or eating establishments if not prohibited by the posting of a notice prohibiting possession on the premises. This delay will give restaurants time to post a notice.

The bill also would: (1) expand the provisions that make it unlawful for a person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control a firearm, or weapon of mass death and destruction to include, any ammunition, or any electric weapon or electric device intended to be used as a weapon; (2) make it unlawful for a person who has been convicted of a felony to carry a concealed weapon, including a tear gas gun or similar device intended to be used as a weapon; and (3) add additional criminal penalties if the person discharges the weapon or if the violation results in serious injury to a person.

The bill would clarify a local government's authority to prohibit the carrying of a concealed handgun on municipal and county recreational facilities by specifying the particular playground, athletic field, swimming pool, and athletic facilities that are included in the term "recreational facilities." "Recreational facilities" would NOT include any greenway; designated biking or walking path; an area that is customarily used as a walkway or bike path although not specifically designated for such use; open areas or fields where athletic events may occur unless the area qualifies as an "athletic field"; and any other area that is not specifically described in the statute. Those with concealed carry permits could carry their handguns in these areas that are not considered recreational facilities and municipalities and counties would not be permitted to prohibit concealed carry weapons in these areas. **The bill as amended was approved by the Senate Judiciary II Committee and will next be considered by the Senate Finance Committee.**

HOUSE BILL 199, Metal Theft Prevention Act of 2012. The provisions of this bill were removed in the House Judiciary Subcommittee A and were replaced with new provisions that would recodify the provisions of the General Statutes that regulate precious metals businesses, pawnbrokers and cash converters, and secondary metals recyclers, and require permitting of nonferrous metals purchasers. "Nonferrous metals" would mean "metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs or containers." The bill also would make it unlawful for a person to willfully and wantonly cut, mutilate, deface, or otherwise injure any personal or real property of another, including any fixtures or improvements, for the purpose of obtaining nonferrous metals in any amount. Violations would be punishable according to the amount of damage to the property, and whether a person suffered serious bodily injury or was killed during the commission of the violation. No duty of care would be imposed upon the owner of personal or real property that would not otherwise exist under common law and the owner would not be civilly liable: (1) to a person who is injured while committing or attempting to commit a violation; (2) to a person who is injured while a third party is committing or attempting to commit a violation; or (3) for a person's injuries caused by a dangerous condition created as a result of a violation, when the owner does not know and could not have reasonably known of the dangerous condition. **The bill as amended was approved by the House Judiciary Subcommittee A and will next be considered by the full Senate.**

HOUSE BILL 237, 2012 Workers' Compensation Amendments. All of the provisions of this bill were removed in the Senate Commerce Committee and were replaced with new provisions that would make a variety of clarifying and other changes to the state workers' compensation laws. These changes would include:

- requiring an employer to provide an employee with a copy of any records received within 30 days of its receipt by the employer, upon the request of the employee;
- allowing an employer to request additional information regarding work restrictions resulting from the condition, including whether the employee is able to return to the employer of injury as provided in an attached job description;
- providing that if the employee does not file with the Industrial Commission a request for a protective order within 10 business days from the postmark or verifiable facsimile or electronic mail either to consent or object to the employer's proposed written communication, the employer may submit the additional information directly to the health care provider; and
- authorizing other forms of communication with a health care provider to include: a valid written authorization voluntarily given and signed by the employee; an agreement of the parties; or an order of the Industrial Commission or through other discovery authorized by the rules of the Commission.

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

HOUSE BILL 261, Intrastate Motor Carrier Markings, was amended in the Senate Transportation Committee and on the Senate floor to clarify that a motor vehicle with a gross vehicle weight rating of more than 26,000 pounds that is used in intrastate commerce must have (i) the name of the owner and (ii) the motor carrier's identification number preceded by the letters "USDOT" and followed by the letters "NC" printed on each side of the vehicle in letters not less than three inches in height unless the motor vehicle is subject to federal motor vehicle carrier safety regulations or the vehicle type is specifically listed in 49 CFR 390.3(f). **The bill as amended was approved by the Senate Transportation Committee and the full Senate and will next be sent to the House to consider the changes made by the Senate.**

HOUSE BILL 462, Contingency Contracts for Audits/Assessments. The Senate Commerce Committee removed all of the provisions of the original version of this bill and replaced them with new provisions that would prohibit the Secretary of Revenue, the State Treasurer, and local governments from compensating persons hired to perform audits or assessments on a contingent fee basis or any other similar method that may impair his or her independence or the perception of his or her independence by the public. The bill also would prohibit local governments and the Treasurer from renewing contingency fee based contracts for these services after July 1, 2012. **The bill as amended was approved by the Senate Commerce Committee and will next be considered by the full Senate.**

SENATE BILL 231, Municipal Incorporation Standards/Water Extensions. The provisions of the previous version of this bill were removed in the House Government Committee and were replaced with new provisions that would amend the standards required for incorporation of a municipality. The bill also would prohibit a public water or sewer system from establishing or extending water or sewer service within one mile of the corporate limits of a municipality with a population of 5,000 to 9,999; within three miles of the corporate limits of a municipality with a population of 10,000 to 24,999; within four miles of the corporate limits of a municipality with a population of 25,000 to 49,999; or within five miles of the corporate limits of a municipality with a population of 50,000 or more, unless each of the governing boards of any municipalities within the prescribed distances has adopted a resolution approving the establishment or extension of service. **The bill as amended was approved by the House Government Committee and will next be considered by the full House.**

SENATE BILL 820, Clean Energy and Economic Security Act, was introduced in the Senate Commerce Committee as a Proposed Committee Substitute (PCS), which are basically amendments to the bill. The PCS made several changes to the previous version of the bill.

The Oil and Gas Board proposed in the previous version is replaced in the PCS by a reconfigured version of the Existing state Mining Commission, renamed the Mining and Energy Commission. The Commission would be made up of 9 voting members appointed by the Governor, Speaker of the House and President Pro Tem of the Senate (7 representing the energy industry or with experience in the industry, 2 representing environmental interests), and 5 non-voting advisory members, including the State Geologist, Assistant Secretary of Energy for the Department of Commerce (or their designees) and other governmental appointees. The Commission would be directed to establish rules and a regulatory framework to develop the oil, gas and mining resources of the state. The Commission would be empowered to hold hearings and appeals on decisions made by the state Department of Environment and Natural Resources (DENR) that relate to oil and gas development, and exercise quasi-judicial powers as detailed in the PCS. The existing authority of DENR to make rules related to oil and gas wells would be repealed, and portions of its authority to enforce the Oil and Gas Conservation Act would be granted to the Commission and the Department of Labor, which would be directed to develop rules to protect the health and safety of industry workers.

The PCS details the proposed penalties for violating the Oil and Gas Conservation Act (Class 1 misdemeanor) and for drilling a well or using fracking fluids without a permit (a fine up to \$25,000 per day, an increase from the current \$1,000 fine).

The PCS clarifies that the Oil and Gas Conservation Act does not restrict the Environmental Management Commission's authority to regulate water and air pollution or the Commission for Public Health's authority to regulate solid and hazardous waste, and adds to those Commissions the authority to regulate fracking under their respective jurisdictions.

The PCS details issues to be studied by the Mining and Energy Commission and relevant other entities, including funding to address impacts on local governments and infrastructure, local government regulation, integration or forced pooling (in which developers are permitted to extract resources from the property of landowners whose property is part of an areas in which a certain percentage of the land has been leased for oil and gas development). The Commission and other agencies are directed to have rules in place related to these issues no later than October 1, 2014.

The PCS removes a provision from the earlier version that essentially mandated a specific date for drilling to begin (July 1, 2014), and includes a requirement that further legislative approval of the rules be provided before drilling, including the drilling of test wells, can begin.

Provisions in the earlier version of the bill requiring the Department of Public Instruction and Department of Transportation to purchase vehicles powered by compressed natural gas (CNG); the establishment of a task force focused on the development of a natural gas refueling infrastructure; the installation of electric-vehicle charging stations at state rest stops and the requirement to use retreaded tires were all removed in the PCS.

Landowner protections included in the PCS include: extended written notice periods for landowners when developers will enter the property and when they will disturb the surface; the creation of a rebuttable legal presumption that the landowner protected developer personnel against injury or property damage; the creation of a rebuttable legal presumption that any contamination of a private drinking water well or a water supply well within 5,000 feet of a wellhead was caused by the developer or operator; details the remedy and compensation in cases of contamination; the setting of landowner royalty payments at a minimum of 12.5% (no less than 10% after production costs); a requirement that developers state in the lease agreement whether landowners' water supplies will be used (in which case the landowner is owed full compensation for its usage); a requirement that testing wells be drilled and retested periodically; a requirement that details minimal intrusion upon and damage to the land by the developer or operator; requires disclosure by property owners of any mineral rights sale or lease when selling the property; a requirement that Department of Justice and Real Estate Commission develop a publication that details consumer protection and landowner rights issues; and a specification that the remedies and protections granted to landowners in the bill are not exclusive.

The PCS also requires "landmen" (defined as a person "that, in the course and scope of the person's business, does any of the following: acquires or manages oil, gas, or mineral interests; performs title or contract functions related to the exploration, exploitation disposition of oil, gas, or mineral interests; negotiates for the acquisition or divestiture of oil, gas, or mineral rights including the acquisition or divestiture of land or oil, gas, or mineral rights for a pipeline; negotiates business agreements that provide for the exploration for or development of oil, gas, or minerals") to register with DENR and authorizes DENR to regulate permits and penalize registrants. **SB820 was passed by the Senate on June 6<sup>th</sup>, and has been referred to the House Environment Committee. The House Environment Committee is scheduled to debate the bill on Wednesday, June 13<sup>th</sup>.**

SENATE BILL 828, Unemployment Insurance Changes, was amended in the Senate Finance Committee to: (1) allow all interested parties to waive the recording of testimony at a hearing before an appeals referee upon a disputed claim; (2) allow the appeals referee, hearing officer, or other employee assigned to make the decision to accept the stipulation and render a decision based on the stipulation if he or she believes the stipulation provides sufficient information to make a decision and require him or her to reject the stipulation if he or she does not believe the stipulation provides sufficient information to make a decision; and (3) require the decision to accept or reject a stipulation to occur in a recorded hearing. The bill was further amended on the Senate floor to clarify that receipt by the employee of no fewer than three written reprimands from the employer in the 12 months that immediately precedes the employee's termination is prima facie evidence of misconduct connected with the work. **The bill as amended was approved by the Senate Finance Committee and the full Senate. The bill will next be assigned to a House committee for consideration.**

SENATE BILL 851, Boards and Commissions Efficiency Act of 2012, was amended in the Senate Program Evaluation Committee to restore the Drought Management Advisory Council, which was eliminated in the prior version of the bill. **The bill as amended was approved by the Senate Program Evaluation Committee and will next be considered by the Senate Finance Committee.**

## SENATE BUDGET

Sen. Brunstetter, one of the chief budget writers in the Senate, set off a firestorm on Tuesday when he predicted the Senate budget would be so short it would not need to be reviewed by his chambers' Appropriations subcommittees. While insiders understand the real final work on the budget will be done by a joint conference committee made up of House and Senate budget chiefs (making a protracted Senate process somewhat redundant), it was unusual to hear such a public admission. Open government advocates took to the press to loudly disparaged the move as a lack of transparency, leading to a slight backpedaling in the form of a Senate review of the House budget by all Appropriations subcommittees on Thursday afternoon. These meetings gave little insight to that chamber's true intentions, and were happening as the real Senate priorities were being discussed behind the scenes. What was clear from these meetings, however, is that the Senate priorities are quite different than the House, so the work to protect funding and provisions that appeared in the House budget is far from over.

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