



INTRODUCTION

We are running out of terms to describe the pace of this legislative session so please just remember that things are moving very quickly and change by the day and sometimes by the hour. The Legislative Reports that you receive cover the activities from the previous week, so in this case we are reporting on the activities from June 11th through June 15th. During last week the Senate finalized and approved their version of the Budget and we were preparing a summary of the same; however, the House and Senate have already reached a compromised agreement between the House and Senate versions and today, June 21st voted to approve the final budget. We do not want to cause any confusion by summarizing the Senate version which is no longer the most recent information so we will provide a short summary of the final budget below and then provide a detailed summary of the budget in the Final Legislative Report.

Also last week the House was able to gather enough votes to over-ride the Governor's veto of House Bill 7, Community Colleges/Opt out of Federal Loan Program, which was not a high profile bill, but does confirm the message that on any given day the Republican majority will try to over-ride vetoes if they have the votes. The Speaker did move three other vetoed bills off of the calendar and will no longer attempt over-rides on those since the issues have either been resolved through other legislation or they have decided not to proceed. These bills are H482, Water Supply Lines/Water Violation Waiver, Senate Bill 9, No Discriminatory Purpose in Death Penalty and Senate Bill 709, Energy Jobs Act. The only remaining veto over-ride on the calendar is House Bill 351, Restore Confidence in Government, which would require voter ID at the polls and is a priority for the Republican majority.

Both the House and Senate have announced to their members that they would like to adjourn the session by June 30th or July 2nd at the latest and both plan to work through the next weekend. The variation depends on whether the Governor vetoes the budget bill which would require them to stay longer to attempt to over-ride the veto. Once the Governor receives the Final Budget, she will have 10 days to sign it into law, veto it or let it become law without her signature. The expectation is that the Governor will veto the budget as she has been stating publicly that she does not feel there is enough funding for education and is still advocating for a sales tax increase.



NORTH CAROLINA GROUND WATER ASSOCIATION



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Next week will be a form of controlled chaos as legislators try to wrap up the session and finalize their business. We have already seen this week that almost half of the bills that are on the agenda to be considered in committee are either completely replaced with new language and issues or have major re-writes that have not been seen before the meeting. This makes the process difficult especially for legislators who have not seen the legislation before they walked into the meeting and for lobbyists and others who try to monitor their activities. The last week will be a roller coaster ride and we will send our next report out after the session is complete to cover the last two weeks of activity and then will begin working on your final report which will summarize all the legislation of interest that was approved during the short session.

FINAL BUDGET

The House and Senate approved their compromise budget today and sent it to the Governor by special messenger. Here are the highlights of the final compromise provisions:

- The total budget is \$20.2 billion and the House and Senate resolved the differences in their separate proposals in less than one week;
- The budget provides \$251 million in additional education funds and also included portions of Senator Berger's Excellence in Public Schools proposal, including a reading program to target those in the third grade, merit pay for teachers and a grading system for schools that will give them an "A - F" grade;
- The budget does NOT include some of the more controversial provisions of the Excellence in Public Schools proposal like the tenure changes for teachers and changes to the school calendar. The proposal to allow private businesses a tax credit for scholarships for private schools was also not included;
- The motor fuels tax is capped at 37.5 cents which is 1.4 cents lower than the current rate;
- No changes to Driver's Education Programs - there was a proposal to charge Driver's Ed fees of \$15 to \$45;
- The budget includes a Medicaid reserve of \$100 million and all expansion items for the Department of Health and Human Services (additional money in the budget) will begin January 1st instead of July 1st to make sure the Medicaid shortfall is filled before spending additional sums;
- The budget does not include funding that was proposed by the Governor and the House to provide reimbursement to those sterilized in the Eugenics Program in the amount of \$50,000 each;
- Smoking cessation programs received \$2.7 million in block grant funding which is a great deal less than advocates were requesting; and
- The sum of \$250,000 was included to provide a study on how to regulate "Fracking."

The budget does not include the additional funding necessary to maintain the State Private Well Program along with the three positions that were in the Program. Although we were not

successful having these positions funded, several legislators agreed to assist us in getting these positions back next year.

BILLS OF INTEREST

HOUSE BILL 1227, Disapprove New River Basin Rule, would disapprove 15A NCAC 02B .0307 (New River Basin), as adopted by the Environmental Management Commission on January 1, 2012, and approved by the Rules Review Commission on February 16, 2012. **Introduced by Representative Jordan and assigned to the House Rules Committee.**

BILL UPDATES

HOUSE BILL 237, 2012 Workers' Compensation Amendments, was amended on the Senate floor to establish the Joint Legislative Committee on Workers' Compensation Insurance Coverage Compliance and Fraud Prevention and Detection. The Committee would:

- (1) Review the statutes relating to workers' compensation to determine whether there are sufficient safeguards to ensure that employers comply with statutory requirements related to workers' compensation insurance coverage and to prevent and detect fraudulent claims before the Industrial Commission;
- (2) Examine the measures taken by the Industrial Commission to determine whether the Commission is effectively using existing powers and resources relating to employer compliance and the prevention of claims fraud;
- (3) Recommend any statutory changes necessary to improve or enhance the Industrial Commission's efforts and effectiveness in securing employer compliance with statutory requirements related to workers' compensation insurance coverage and to the prevention and detection of fraudulent workers' compensation claims; and
- (4) Study any other matter related to the integrity of the workers' compensation system that the Committee deems necessary.

The bill was also amended to provide that the reasonable access to medical information provisions would apply to claims pending on or after the effective date. **The bill as amended was approved by the Senate and has been sent to the House to consider the changes made by the Senate.**

HOUSE BILL 819, Coastal Management Policies, was amended in the Senate Agriculture/Environment/Natural Resources Committee and on the Senate floor to require the Coastal Resources Commission to study and modify certain coastal management policies, including studying the feasibility of creating a new Area of Environmental Concern for the lands and waters adjacent to the mouth of the Cape Fear River. **The bill as amended was approved by the Senate and will next be considered by the House Environment Committee.**

HOUSE BILL 1009, MSD Amendments, was amended in the House Government Committee to clarify that a Metropolitan Sewerage District has the authority to exercise any power of a Metropolitan Water District not listed by statute and to prohibit local governments from appointing members to a district board if it does not own or operate a public system for the collection of wastewater at the time of the appointment. **The bill as amended was approved by the House Government Committee and the full House, and will next be considered by the Senate State and Local Government Committee.**

HOUSE BILL 1052, Mechanics Liens/Payment Bond Reforms, was amended in the House Judiciary Subcommittee B to provide that the provisions regarding lien waivers do not apply to lien waivers or subordinations obtained by closing attorneys, lenders, title insurance companies, or those acting on their behalf, as a part of any real estate or financing transactions and does not prevent partial or final lien waivers obtained by closing attorneys, lenders, title insurance companies, or those acting on their behalf, from containing subordination and/or release of lien agreements or from otherwise altering or modifying lien rights if agreed to by the signing parties. The bill also was amended to add provisions regarding a subsequent purchaser and lender are not necessary or proper parties to an action filed after claim of lien is discharged and to revise the amounts and number of days required for a notice of public subcontract. **The bill as amended was approved by the House Judiciary Subcommittee B and will next be considered by the House Finance Committee.**

SENATE BILL 229, Amend Environmental Laws 2012. The provisions of this bill were completely removed in the House Environment Committee and were replaced with all new provisions that would amend a variety environmental and natural resources laws, including:

- directing the Department of Environment and Natural Resources (DENR) to report on the integration of stormwater capture and reuse into stormwater regulatory programs;
- directing DENR to study the advisability and feasibility of reallocating water supply in John H. Kerr reservoir from hydropower storage to water supply storage;
- clarifying that the Division of Water Quality may not require a water quality permit for a Type I solid waste compost facility;
- directing DENR to accept alternative measures for stormwater control other than ponds that meet certain criteria at airports;
- allowing for two noncontiguous properties to be treated as a single contiguous property for purposes of compliance with local water supply watershed programs;
- amending the Neuse and Tar-Pamlico River Basin Buffer rules to provide that it is permissible to develop an existing lot located adjacent to surface waters under certain conditions;
- providing flexibility for the development of basinwide water quality management plans for river basins that have waters designated as nutrient sensitive;
- amending the definition of community water system;
- **establishing a variance process for certain setback requirements for existing private drinking water wells. The Department of Health and Human Services could grant a variance from the minimum horizontal separation distances from existing private drinking water wells if: (1) the well was constructed and completed on or before July 1, 2008; (2) the Department determines that continued use of the well will not endanger human health and welfare or groundwater; (3) it is impracticable, taking into consideration feasibility and cost, for the well to comply with the minimum horizontal separation distance; and (4) there is no reasonable alternative source of drinking water available. The existing private drinking water would have to comply with the minimum horizontal separation distances to the maximum extent practicable, be inspected by the Department or the applicable local health department and be determined to be in good repair, and comply with all other requirements for private drinking water wells;**
- allowing the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to be used for the removal of abandoned underground storage tanks that have not leaked but pose an imminent hazard;
- requiring septage management firms to provide identification of and notice to DENR before placing a pumper truck not previously included in a permit into service; and

- amending or repeal various environmental and natural resources reporting requirements.

After further amendments on the House floor, the bill as amended was approved by the House. The bill will next be sent to the Senate to consider the changes made by the House.

SENATE BILL 820, Clean Energy and Economic Security Act, was heard in the House Environment Committee on 6/13 and on the House floor on 6/14. A Proposed Committee Substitute (PCS) for the bill made several changes to the legislation from the previous, Senate-approved version, and four amendments to the PCS adopted on the House floor (all from Rep. Gillespie, one of the main House champions of the bill) made further changes.

The Mining and Energy Commission (Commission) created in the original bill is changed in the PCS from 14 to 15 members, including an attorney with experience in the oil and gas development matters, and replaces several energy industry representatives with local government representatives and members of “nongovernmental conservation interests”. These changes addressed critics’ complaints that the makeup of the Commission was weighted heavily in favor of the industry. The PCS also includes language that would preclude any Commission member from voting on matters in which the member has an economic interest. The PCS also directs the Commission to create from certain of its members a Committee on Mining, which would be charged with the duties of the existing Mining Commission (which is converted by this legislation to the Mining and Energy Commission).

The PCS removes a provision that would have empowered the Commission 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 specifies that all rules adopted by the Commission would be enforced by DENR.

The PCS changes the definition in the bill of “hydraulic fracturing fluid” to include all additives, which are defined as “any chemical substance or combination of substances, including any chemical or proponent, which is intentionally added to a base fluid for purposes of preparing a hydraulic fracturing fluid or treatment of a well” (previous version defined hydraulic fracturing fluid as only “the base fluid utilized” in fracking, which is water). It also changes the proposed definition of “hydraulic fracturing treatment” from simply referring to well stimulation to “all stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure that is expressly designed to initiate or propagate fractures in a target geologic formation to enhance production of oil and gas.”

The PCS also adds a definition of “water supply” as “any groundwater or surface water intended or used for human consumption; household purposes; or farm, livestock, or garden purposes” and replaces references in the bill to private drinking water wells and water supply wells with that term, significantly broadening the proposed water supply protections.

Other landowner protections that are included or expanded in the PCS include requirements that oil and gas exploration and extraction developers or operators compensate landowners for any damage to water supply in use before those activities began; provide a bond running to the surface owner that covers reclamation of the property; replacement water supplies if a landowner’s water supply is damaged due to the developer or operators’ activities; deleted the provision in the previous version that would have allowed a reduction of royalty payments to cover expenses; make payments within 60 days of leases being signed and pay interest on late payments; provide landowners who are not lessors (those who have previously sold the mineral rights for the property) with a publication produced by the Consumer Protection Division of the North Carolina Department of Justice entitled “Oil & Gas Leases: Landowners’ Rights”; provide

notice to lenders when signing a lease; and allow a three-day right of withdrawal for all leases and include a “bold and conspicuous notice of that right in all leases.

The PCS also changes the definition of “landmen” (defined in the previous version) to remove reference to mineral interests (leaving in place oil and gas interests). **SB820 was passed by the House Environment Committee on June 13th and the full House on June 14th, and sent to the Senate to consider the changes made by the House.**

SENATE BILL 828, Unemployment Insurance Changes, was amended in the House Finance Committee to require the Division of Employment Security to charge benefits to an employer when it determines that an overpayment has been made to a claimant and that both of the following conditions apply: (1) the overpayment occurred because the employer failed to respond timely or adequately to a written request of the Division for information relating to an unemployment compensation claim; and (2) the employer exhibits a pattern of failure to respond timely or adequately by failing to respond to written requests from the Division for information relating to an unemployment compensation claim on two or more occasions. A penalty in an amount equal to 15% of the amount of the erroneous payment, payable to the Unemployment Insurance Fund, would be imposed on a person who received a fraudulent overpayment. In addition, the penalties for fraudulently obtaining unemployment insurance benefits would be a Class I felony if the value of the benefit wrongfully obtained is more than \$400 and a Class 1 misdemeanor if the value is \$400 or less. **The bill as amended was approved by the House Finance Committee and will next be considered by the full House.**

LEGISLATION ENACTED

HOUSE BILL 925, Annexation Reform 2, requires a vote of the residents prior to the adoption of an involuntary annexation ordinance initiated by a municipality. **Effective: July 1, 2012, and applies to any annexation ordinance adopted under Part 7 of Article 4A of Chapter 160A of the General Statutes on or after that date. The legislation became law without the Governor’s signature, since Governor Perdue did not sign or veto the legislation within the required time frame.**

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