



### **A Long Awaited Breakthrough, and What's Left to Do**

On Wednesday, after several weeks of building tension between the chambers on the budget, Medicaid reform and teacher pay, something unusual took place at the General Assembly. A public meeting of the House and Senate Appropriations committees was held, during which offers and counter-offers were made, in full view not only of the rank-and-file members, but also leadership, lobbyists, staff and the press. This meeting was entirely unprecedented - normally these kinds of negotiations take place behind closed doors, and involve only the senior budget writers. To be clear, all that was being negotiated was the budget availability - specifically the amounts needed to cover the estimated Medicaid shortfall and to fund reserve accounts for next year - not the specifics on how to spend the remaining state dollars. Only days ago, however, it seemed entirely possible that finding common ground on those figures might be impossible. The House's attempt to circumvent the normal budget process and deal with only the most pressing issues (the "mini-budget" we reported on last week) was met with open derision by the Senate leadership and sent back to the House without consideration, something no observer could remember ever seeing happen before.

After a break to allow the Senate to formulate a counter-offer (their 4<sup>th</sup>) to the latest House offer (their 3<sup>rd</sup>), during which the tension between the chambers seemed to dissipate some as Senators and Representatives talked and joked with each other, compromise was found, allowing negotiations between the subcommittee chairs to begin in earnest. Some major differences between the budget proposals remain - the Senate's latest offer would still cut Teachers Assistants and fund a grant program for film production, for example, while the House's includes neither of those provisions - but the consensus feeling is that there is enough mutual motivation to find common ground and get a budget deal done. The House will hold skeleton (no-vote) sessions all next week to allow budget conferees to focus on crafting that compromise, and Speaker Tillis made clear policy committee work is done for the year. The Senate also announced that they will have no committee meetings next week so that all the focus could be on resolving the budget. Whether both chambers will make exceptions for bills in the House and Senate that become part of the normal budget horse-trading, remains to be seen. What



### **NORTH CAROLINA GROUND WATER ASSOCIATION**



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is clear, though, is that we are in the waning days of session, and the unprecedented meeting held yesterday was the breakthrough that everyone had been waiting for.

As the budget compromise is crafted and session wraps up, one major issue remains unresolved. While compromise on the Common Core bill was announced on Wednesday and a consensus bill to deal with coal ash cleanup is in the works, the issue of Medicaid reform remains unsettled. The House approved H1181, its Accountable Care Organization-based reform plan unanimously this week, though the reception it will receive in the Senate is uncertain. Given the wide differences between the chambers' initial reform plans – the Senate budget included steps to move the Division of Medical Assistance from DHHS to a new standalone department, and the framework for a Managed Care-based reform plan – it's unclear that a compromise plan can be reached in the coming weeks. The Governor has publicly endorsed the House proposal, as have the state's Medical Society and Hospital Association, which may only serve to harden the Senate's position. Strictly speaking there is no deadline for getting a consensus plan passed, but failure to find any common ground on an issue that has been the focus of so much work, attention and public scrutiny would be something of a defeat - particularly for the Governor, who has made it one of his administration's top priorities.

## **BILLS OF INTEREST**

SENATE BILL 883, Disapprove EMC Buffer Rule, would disapprove 15A NCAC 02B .0295 (Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers), as adopted by the Environmental Management Commission on May 9, 2013, and approved by the Rules Review Commission on July 18, 2013. **Introduced by Senator Brock and referred to the Senate Agriculture/Environment/Natural Resources Committee.**

## **BILL UPDATES**

HOUSE BILL 369, Criminal Law Changes/WC Illegal Aliens. The provisions of this bill were removed in the Senate Judiciary I Committee and replaced with a new bill that would make changes to various criminal laws and amend the Workers' Compensation Act. These new provisions would include prohibiting the payment of compensation for injury by accident or occupational disease if the employer proves that at the time of hire or in the course of entering into employment that: (1) the worker was not lawfully employable in the United States and knowingly made a false representation to the employer as to his or her legal work status; and (2) the employer relied upon the worker's false representations, and the reliance was a substantial factor in the employer's decision to hire the employee. The bill also would prohibit a worker not lawfully employable in the United States who is not excluded under the provisions above from receiving benefits for vocational rehabilitation, or compensation for total and permanent disability or partial incapacity if a duly qualified physician who is licensed and practicing in North Carolina has indicated that the worker is able to work in any capacity. **The bill as amended was approved by the Senate Judiciary I Committee and will next be considered by the full Senate.**

SENATE BILL 729, Coal Ash Management Act of 2014. A variety of amendments were made to this bill on the Senate floor, including: (1) requiring the owner or operator of a wastewater collection or treatment works for which a permit is issued to report a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State to the Department as soon as

practicable, but no later than 24 hours after determining that the discharge has reached the surface waters of the State; and (2) directing the Department of Environment and Natural Resources and the Environmental Management Commission to review the uses of coal ash products as structural fill and the regulation of this use to determine if the requirements are sufficient to protect public health, safety, and welfare; the environment; and natural resources. The bill as amended was approved by the full Senate, but was further amended in the House Environment Committee to:

- extend the moratorium on the Utilities Commission granting an increase in the base rates of electric public utilities for costs related to coal combustion residuals surface impoundments from January 15, 2015, to December 31, 2016;
- clarify that the invalidation of local ordinances that regulate or have the effect of regulating the management of coal ash and coal combustion products within the jurisdiction of a local government also include restrictions or conditions applicable to facilities that primarily engage in processes to prepare coal ash for beneficial use such as carbon burn-out plants;
- provide that the owner of the coal ash surface impoundment must submit a proposed Groundwater Corrective Action Plan to the Department for review and approval no later than 90 days from submission of the Groundwater Assessment Report or a time frame otherwise approved by the Department;
- require an alternate supply of potable drinking water to be supplied within 24 hours of the Department's determination that there is an exceedance of groundwater quality standards attributable to constituents associated with the presence of the impoundment, and an alternate supply of water that is safe for other household uses to be supplied within 30 days of the determination;
- provide that low-risk impoundments must comply with the closure and post-closure requirements of the North Carolina Administrative Code, but are not required to install and maintain a leachate collection system;
- allow DENR to grant a variance to extend any deadline for closure of an impoundment. To request such a variance, the owner of an impoundment would submit an application, which would include, at a minimum, the following information: identification of the site, applicable requirements, and applicable deadlines for which a variance is sought, and detailed information that demonstrates that compliance with the deadline cannot be achieved by application of best available technology found to be economically reasonable at the time and would produce serious hardship without equal or greater benefits to the public. As soon as practicable, but no later than 60 days from receipt of an application, DENR would determine whether the information supports issuance of a variance, and if DENR finds that the information supports issuance of a variance from the deadline, it would issue a proposed variance. Within 10 days after a proposed variance has been issued, DENR would issue a written declaration, including findings of fact, documenting the proposed variance. DENR would be required to provide for public participation on the proposed variance;
- provide that, where operation of a disposal system permitted results in exceedances of the groundwater quality standards at or beyond the compliance boundary, the Environmental Management Commission must require the permittee to undertake corrective action, without regard to the date that the system was first permitted, to restore the groundwater quality by assessing the cause, significance, and extent of the violation of standards and submit the results of the investigation, and a plan and proposed schedule for corrective action to the Director or the Director's designee; and

- remove the provision that would have created 25 receipt-supported positions in the Department of Environment and Natural Resources to carry out the coal ash management duties.

The bill was also amended on the House floor to:

- require low-risk impoundments to be closed as soon as practicable, but no later than December 31, 2029, and a proposed closure plan for such impoundments to be submitted as soon as practicable, but no later than December 31, 2018; and
- require DENR to either issue or deny a permit required for dewatering of a retired impoundment within 90 days of receipt of a completed application. DENR would accept written comment on a draft permit decision for a period of not less than 30 days or more than 60 days prior to issuance or denial of such a permit. If it fails to act within any required time period, the applicant could treat the failure to act as a denial of the permit and challenge the denial.

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

SENATE BILL 853, Business Court Modernization, was amended in the House Judiciary Subcommittee B to:

- clarify that, in order for a party to designate an action as a mandatory complex business case, the contract dispute must have at least one plaintiff and at least one defendant that is a corporation, partnership, or limited liability company, including any entity authorized to transact business in North Carolina under GS Chapter 55, 55A, 55B, 57D, or 59;
- require a civil action under G.S. 105-241.17 containing a constitutional challenge to a tax statute to be designated as a mandatory complex business case by the petitioner or plaintiff;
- remove the provisions that would have created a three-judge panel to hear and determine certain constitutional challenges to the validity of State laws;
- provide that a provision in the articles of incorporation or bylaws of a corporation that specifies a forum or venue in North Carolina as the exclusive forum or venue for litigation relating to the internal affairs of the corporation is valid and enforceable; and
- establish an 18-member Working Group on Judicial Efficiency and Business Court Modernization to study court efficiency, resource management, and other management needs of the General Court of Justice to better guide the General Assembly in determining the needs of the court system; the implementation of Senate Bill 853; and any other issue it deems relevant to the study. The Working Group would report the results of its study, including any proposed legislation, to the General Assembly prior to the convening of the 2015 General Assembly.

**The bill as amended was approved by the House Judiciary Subcommittee B and the full House. The bill has been sent to the Senate to consider the changes made by the House.**

### **NC GEAR Seeks Reform Ideas**

The NC Government Efficiency and Reform initiative, commonly known as **NC GEAR**, has launched a new website to collect ideas from state employees and citizens interested in reforming state government. The website address is [www.ncgear.nc.gov](http://www.ncgear.nc.gov).

Created by Governor McCrory and the General Assembly last year, **NC GEAR** is currently performing an evaluation of state government that will lead to a package of reforms to be

presented early next year. The legislation gives **NC GEAR** the authority to evaluate the entire executive branch of government.

Over the past few months, **NC GEAR** has met with leaders across state government to identify opportunities to improve its efficiency, effectiveness, and customer service. However, the **NC GEAR** team realizes that good ideas come from both inside and outside government.

All proposals will be reviewed by the **NC GEAR** analysts and consultants. The strongest concepts will be evaluated further and included in the final report to the Governor and General Assembly next February. Some proposals will be included in the Governor's Budget. Others will be offered to the Legislature for their consideration.

Please think about the various agencies, statutes and rules that you deal with on a daily basis and if you have an idea that you think would make the process more efficient, less costly for business, or just easier for everyone to deal with please contact NCGEAR and also please let me know so that we can help support your idea.

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