



INTRODUCTION

What a Session! Full of historical firsts and changes and new faces around every corner. We discussed how the new Republican majority would cause all the leadership positions, committee chairs and party leadership to change but there were more changes than that as some legislative staff, lobbyists and the legislator's assistants and advisors changed as well. It was strange to walk down the hallway and see legislators that you could not get into see last session walking without anyone trying to get their ear. Likewise, the new Republican leadership seemed almost tickled at first that people wanted to come and talk to them. It was interesting to see the new leadership pull their teams together and grow in confidence as they moved along the learning curve on how to keep their caucus together for votes and how they were going to run the General Assembly. Several interesting notes about the session:

1) The Republicans remained very focused and followed their first 100 day plan. They moved forward on their campaign promises and were very efficient in working not only on their legislation, but on the budget as well. Clearly they have been planning this session for quite some time and had clear goals and ideas about how they wanted to accomplish things. They also did a great job of keeping their caucus together on controversial votes.

2) No matter who is in charge, some things remain constant and reliable. No one likes controversy and both parties want the interested stakeholders to work out and agree on legislation as often as possible. Everyone wants to please their constituents and to make sure that those at home know what they are doing. And last but not least politicians need to raise money and campaign all year round.

3) The Republicans biggest rival was clearly Governor Perdue and not necessarily the Democratic minority. The biggest battles were over the vetoes the Governor signed and the efforts to over-come those vetoes. The verbal sparring seemed to be more intense and personal with the Governor and clearly there is some strategy in play about the upcoming Governor's race.

4) The Republicans in the House and the Senate clearly plan to be in the majority for some time and through re-districting may be able to cement their place for the rest of the decade. Although the theme for the Democrats early was that this election was an anomaly and that they would be back in power soon - the consensus is that the Republicans are highly likely to stay in power indefinitely.



NORTH CAROLINA GROUND WATER ASSOCIATION



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Although the session adjourned on June 18, 2011, they adjourned to a set date to continue on July 25th and limited the issues they could take up. Although re-districting was the main focus, they also were permitted to take up any bills that the Governor vetoed during the session. The legislature over-turned the veto on 5 pieces of legislation and we have a section discussing those bills later on in the report. The session the week of July 25th adjourned to continue September 12th, when their primary goal is to take up Constitutional Amendment legislation. These bills require a 3/5ths vote of the House and Senate and do not require the signature of the Governor. They are expected to take up the marriage amendment, term limits for the General Assembly leadership, curbs on eminent domain and potentially some voting measures. We expect the short session to begin sometime in May, 2012 and the final date will be set at the end of the September session, unless of course they schedule the session to continue again.

It has been an honor to represent the North Carolina Ground Water Association during the first year of the 2011-2012 biennium session of the General Assembly. We enjoy working with you and look forward to keeping you informed and involved in the legislative process. This final legislative report includes summaries of legislation of interest that were approved this year, a section on the vetoed legislation and the over-rides of those vetoes and a summary of the final state budget. We will provide a report of legislation that is pending, before the start of the short session next year. Thank you again for entrusting us with this great responsibility - we continually strive to earn your business and appreciate the confidence you have placed in the Kochanek Law Group.

PRIVATE WELL RIGHTS

SENATE BILL 676, Clarify Water and Well Rights/Private Property. This legislation was filed on behalf of the **North Carolina Ground Water Association** to address some of the issues our members have experienced around the State, specifically some of the actions taken by local governments that have tried to restrict wells when water lines are within reach or when they adopt "no well" policies within their jurisdictions. As enacted, the legislation **prohibits (1) a person from unduly delaying or refusing to permit a well that can be constructed or repaired and operated in compliance with the county requirements for inspection and testing of private drinking water wells and (2) the denial of a permit for a well that is in compliance with requirements on the basis of a local government policy that discourages or prohibits the drilling of new wells. Water supply wells intended for domestic use may continue to be used for non-potable purposes, including non-potable household purposes, farm livestock, or gardens, even when not permitted for potable purposes as a result of new water or sewer lines or other changes that would violate set back requirements.**

The final version of the legislation does **not** include the provision that would have prohibited mandatory connections. The League of Municipalities made this request as a great deal of their funding from the Federal government is contingent on mandatory connections. In addition, many legislators did not want to change this requirement and lose the funding connected to it. The legislation also does not include the provision that would have clarified that the authority granted to local governments to impose more stringent water conservation measures or to adopt rules governing the conservation and use of water in water shortage emergency areas does not authorize a local government, public water supply system, or private water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well. There were several questions from members of the Senate about large wells that may negatively affect subdivisions or single well users. We attempted several different amendments to address these concerns; however, they also caused issues about

local governments having authority over private wells which we did not think were appropriate or legal. After consulting with our allies, sponsors, leadership of the NCGWA and others we decided to remove that provision from the legislation and only address our primary concern of no-well policies. **Effective: June 23, 2011.**

This legislation is a huge accomplishment for the North Carolina Ground Water Association and we want to thank Senator Rouzer and Representatives Gillespie and Lewis for their sponsorship and their assistance in moving the legislation through the process. Also many thanks to our members who called, wrote, emailed and met with their legislators about this important issue. It is important now to monitor local governments to make sure they do not continue these policies and challenge them when they try to enforce them. The law is only effective and valuable if we protect and make sure it is followed. Congratulations to the North Carolina Ground Water Association!

LEGISLATION ENACTED

HOUSE BILL 36, Employers and Local Governments Must Use E-Verify. This legislation as originally filed only required contractors with State and Local government agencies to use E-verify which is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. During the last week of session it was modified to require ALL employers who have 25 or more employees to participate and includes a schedule to phase in the requirement based upon the number of employees. The approved law requires all employers to verify the work authorization of newly hired employees through the federal E-Verify program, except for seasonal temporary employees who are employed for 90 or fewer days during a 12 consecutive month period. Employers must retain the record of the verification while the employee is employed and for one year after the employment is terminated.

A person with a good faith belief that an employer has hired or is hiring an employee without using the E-Verify program may file a complaint that sets forth the basis for that belief with the Commissioner of Labor. A person who knowingly files a false and frivolous complaint will be guilty of a Class 2 misdemeanor. After receiving a complaint, the Commissioner will investigate whether there has been a violation; however, the Commissioner is prohibited from investigating complaints that are based solely on race, religion, gender, ethnicity, or national origin. The Commissioner may issue a subpoena for production of employment records related to the recruitment, hiring, employment, or termination policies, practices, or acts of employment as part of the investigation of a valid complaint.

If the Commissioner determines, after an investigation, that a complaint is not false and frivolous, the Commissioner will hold a hearing to determine if a violation has occurred and may impose civil penalties. If the Commissioner determines that there is a reasonable likelihood that an employee is an unauthorized alien, he or she will notify the U.S. Immigration and Customs Enforcement and local law enforcement agencies.

For violations of failing to use E-Verify for new employees, the employer will be ordered to file within three business days after the order is issued a signed sworn affidavit stating that the employer has, after consultation with the employee, requested a verification of work

authorization through E-Verify and pay civil penalties that will increase based upon the number of violations.

The legislation also requires all cities and counties to register and participate in E-Verify to verify the work authorization of new employees. **Effective: The requirement for cities and counties to use E-Verify is effective October 1, 2011. The remaining provisions are effective as follows: (1) October 1, 2012 for employers that employ 500 or more employees; (2) January 1, 2013 for employers that employ 100 or more but less than 500 employees; and (3) July 1, 2013 for employers that employ 25 or more but less than 100 employees.**

HOUSE BILL 45, Accelerate Cleanup of Industrial Properties. This legislation authorizes the Department to approve the remediation of contaminated industrial sites based on site-specific remediation standards in circumstances where site-specific remediation standards are adequate to protect public health, safety, and welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination. These provisions do not apply to contaminated industrial sites subject to remediation pursuant to any of the following programs or requirements: (1) the Leaking Petroleum Underground Storage Tank Cleanup program; (2) the Dry-Cleaning Solvent Cleanup program; or (3) the pre-1983 landfill assessment and remediation program. The legislation includes provisions regarding remedial standards, remedial investigatory reports and action plans, and financial assurance requirements. **Effective: June 20, 2011.**

HOUSE BILL 56, Local Annexations Subject to 60% Petition, requires pending or completed involuntary annexations in Kinston, Lexington, Rocky Mount, Wilmington, Asheville, Marvin, Southport and Goldsboro to be subject to a petition by residents to disallow or repeal the annexation if at least 60% of the parcels located in the area vote against the annexation. **Effective: June 18, 2011.**

HOUSE BILL 62, Prohibit Boylston Creek Reclassification, prohibits the French Broad River Basin Rule (15A NCAC 02B .0304), as adopted by the Environmental Management Commission on March 12, 2009, and approved by the Rules Review Commission on April 16, 2009, from becoming effective. This legislation became law without the signature of the Governor. **Effective: July 1, 2011.**

HOUSE BILL 103, Requirements for Mineral Oil Spills, clarifies the requirements for the notice, collection, and removal of mineral oil discharges from electrical equipment. "Mineral oil" is defined as "a light nontoxic liquid petroleum distillate used as a coolant and insulator in electrical equipment owned by a public utility." Any person who owns or has control over mineral oil discharged from electrical equipment owned by a public utility must report the discharge to the applicable regional office of the Department within 24 hours of confirmation of a discharge when the discharge (i) exceeds 25 gallons, (ii) is directly to surface waters or causes a sheen on surface waters of the State, or (iii) is at a distance of 100 feet or less from any surface water and contains 50 parts per million or more of polychlorinated biphenyls. The notification must include the time of discovery, address or location of the release, immediate actions taken, estimated amount of the release, and, if known, the concentration of polychlorinated biphenyls present in the discharge. This legislation was worked on by the Department of Natural Resources and they did not oppose the final version of the legislation. **Effective: April 12, 2011.**

HOUSE BILL 119, Amend Environmental Laws 2011. This legislation was amended during the last week of session to add most of the provisions in the bill. The bill includes a variety of contentious provisions and there were attempts to amend the bill several times on the House floor. The new law includes a great variety of changes to state environmental and natural resources laws, including:

- allowing a draft erosion and sedimentation control plan to be submitted without the written consent of the owner of the land, if the owner of the land has been provided prior notice of the project, when the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service;
- directing the Environmental Management Commission to develop model practices for incorporation of stormwater capture and reuse into stormwater management programs and to make information on those model practices available to State agencies and local governments;
- prohibiting the Division of Water Quality from requiring water quality permitting for any Type I solid waste compost facility, unless required to do so by federal law;
- making various changes to the laws governing the state's Underground Storage Tank Program and petroleum discharges, including requiring that rules that use the distance between a source area of a confirmed discharge or release to a water supply well or a private drinking water well must include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk;
- directing the Commission to encourage and promote the safe and beneficial use of gray water and requiring the Commission to adopt rules to: (1) identify acceptable uses of gray water, including toilet flushing, fire protection, decorative water features, and landscape irrigation; (2) facilitate the permitting of gray water systems; (3) establish standards, in coordination with the Commission for Public Health, for gray water systems that protect public health and safety and the environment and reduce the use of potable water within individual structures;
- directing the Department of Environment and Natural Resources to develop policies and procedures to promote the voluntary adoption and installation of gray water systems;
- defining "gray water" as water that is discharged as waste from bathtubs, showers, wash basins, and clothes washers (but does include water that is discharged from toilets or kitchen sinks);
- defining "gray water system" as a water reuse system that is contained within a single family residence or multiunit residential or commercial building that filters gray water or captured rain water and reuses it for non-potable purposes such as toilet flushing and irrigation;
- delaying implementation of certain Jordan Lake rule requirements; and
- prohibiting cities and counties from adopting ordinances that prohibit or have the effect of prohibiting the installation and maintenance of cisterns and rain barrel collection systems used to collect water for irrigation purposes. Cities and counties may regulate the installation and maintenance of those cisterns and rain barrel collection systems to protect the public health and safety and to prevent them from becoming a public nuisance.

In addition, **the legislation authorizes the Department of Environment and Natural Resources to grant a variance from the minimum horizontal separation distances for public water supply wells set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) upon finding that:**

- (1) the well supplies water to a non-community water system or supplies water to a business or institution, such as a school, that has become a non-community water system through an increase in the number of people served by the well;
- (2) it is impracticable, taking into consideration feasibility and cost, for the public water system to comply with the minimum horizontal separation distance set out in the applicable sub-subpart of 15A NCAC 18C .0203(2);
- (3) there is no reasonable alternative source of drinking water available to the public water supply system; and
- (4) the granting of the variance will not result in an unreasonable risk to public health.

The non-community public water supply well must meet the following requirements in order to receive a variance from the minimum horizontal separation distances:

- (1) the well shall comply with the minimum horizontal separation distances set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) to the maximum extent practicable;
- (2) the well shall meet a minimum horizontal separation distance of 25 feet from a building, mobile home, or other permanent structure that is not used primarily to house animals;
- (3) the well shall meet a minimum horizontal separation distance of 100 feet from any animal house or feedlot and from cultivated areas to which chemicals are applied;
- (4) the well shall meet a minimum horizontal separation distance of 50 feet from surface water; and
- (5) the well shall comply with all other requirements for public well water supplies set out in 15A NCAC 18C .0203.

The Commission for Public Health is directed to adopt rules that are substantively identical to these provisions. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2). **Effective: The provisions regarding the variance process for water supply well setback requirements is effective when permanent rules to replace these provisions become effective. The remaining provisions are effective July 1, 2011.**

HOUSE BILL 162, Exempt Small Ag Processing from Permit Requirements, exempts from permitting requirements a wastewater management system for the treatment and disposal of wastewater produced from activities related to the processing of agricultural products if all of the following conditions are met: (1) the activities related to the processing of the agricultural products are carried out by the owner; (2) the activities related to the processing produce no more than 1,000 gallons of wastewater per day; (3) the wastewater is not generated by an animal waste management system; (4) the wastewater is disposed of by land application; **(5) no wastewater is discharged to surface waters; and (6) the disposal of the wastewater does not result in any violation of surface water or groundwater standards. Effective: April 19, 2011.**

HOUSE BILL 242, Natural Gas/Bonds/Fees/Studies, increases the well drilling permit fee for oil and gas from \$50 to \$3,000 and also increases the amount of the bond required upon registration. The legislation also includes a variety of provisions to protect landowners relative to leases for oil and gas exploration, including required compensation for damage to a water supply in use prior to the commencement of the activities of the developer or operator which is due to those activities. The legislation also directs the Department of Environment and Natural Resources, the Department of Commerce, and the Consumer Protection Division of the Department of Justice to study the issue of oil and gas exploration in the State and the use of directional and horizontal drilling and hydraulic fracturing (also known as fracking) for that purpose and to report their

findings and recommendations, including specific legislative proposals, to the Environmental Review Commission no later than May 1, 2012. At a minimum, the study shall include information on the following:

- (1) oil and gas resources present in the Triassic Basins and in other areas of the State;
- (2) methods of exploration and extraction of oil and gas, including directional and horizontal drilling and hydraulic fracturing (fracking);
- (3) potential impacts on infrastructure, including roads, pipelines, and water and wastewater services, including the expected water usage from hydraulic fracturing, water resources in the area in which drilling may occur, and existing water users in the area that may be impacted by increased consumption of water for use in hydraulic fracturing;
- (4) potential environmental impacts, including constituents or contaminants that may be present in the fluid used in the hydraulic fracturing process; **the potential for the contamination of nearby wells and groundwater**, as well as the options for disposal and reuse of the wastewater produced; storm water management; the potential for emission of toxic air pollutants; impacts on wildlife; management and reclamation of drilling sites, including orphaned sites; management of naturally occurring radioactive materials (NORM) generated by the drilling and production of natural gas; and the potential for seismic activity in the area in which drilling may occur;
- (5) potential economic impacts, including possible sources of revenue that could accrue to the benefit of the State in the event that drilling for oil or natural gas were to take place in the State;
- (6) potential social impacts, including impacts of drilling operations on nearby communities and quality of life within those communities, recreational activities, and commercial and residential development;
- (7) potential oversight and administrative issues associated with an oil and gas regulatory program, including statutory authority necessary for implementation; funding requirements necessary to implement a stable and effective program; criteria for permit issuance or denial; frequency and scope of inspections; compliance and enforcement procedures; coordination of agency involvement to ensure efficient permitting and clear delineation of compliance responsibilities; opportunities for public participation; and data management;
- (8) consumer protection and legal issues relevant to oil and gas exploration in the State, including contract and property law, mineral leases, and landowner rights; and
- (9) any other pertinent issues that the Department deems relevant to oil and gas exploration in the State and the use of hydraulic fracturing for that purpose.

Effective: June 23, 2011.

HOUSE BILL 268, Reclaimed Water Rules/Storm Debris Cleanup, provides that the Division does not have to issue individual permits for construction or operation of a reclaimed water system that meets regulations and is approved by the reclaimed water provider for irrigation of agricultural crops, including irrigation of ornamental crops by field nurseries and aboveground container nurseries, if the system does not result in any violations of surface water or groundwater standards and there is no unpermitted direct discharge to surface waters. The legislation also provides that certain setback requirements and design criteria for reclaimed water storage facilities may be waived by the adjoining land owner for artificial lakes or ponds that are used for storage and irrigation of reclaimed water as long as the effluent quality of the reclaimed water source is protective of the groundwater standard for nitrates. **Effective: April 20, 2011.**

HOUSE BILL 298, Insurance Amendments, makes a variety of changes to the state's insurance laws, including requiring premiums for health benefit plans to be filed with and approved by the Commissioner of Insurance before the increase may go into effect. The schedule of premium rates may not be excessive, unjustified, inadequate, or unfairly discriminatory and must show a reasonable relationship to the benefits provided by the insurance contract. **Effective: July 1, 2011.**

HOUSE BILL 332, Clarify Development Moratoria Authority, clarifies that cities and counties may **NOT** adopt temporary moratoria on development approvals for the purpose of developing and adopting new or amended plans or ordinances for residential uses. **Effective: June 24, 2011.**

HOUSE BILL 385, 2011 Omnibus Labor Law Changes, authorizes the Commissioner of Labor to reopen an investigation for retaliatory employment discrimination for good cause shown within 30 days of receipt of a right-to-sue letter. If an investigation is reopened, the 90-day time limit does not begin until the new investigation is complete and either a new right-to-sue letter is issued or the Commissioner notifies the parties in writing that conciliation efforts have failed. The legislation also decreases the time for an employee to make a written request to the Commissioner for a right-to-sue letter from 180 days to 90 days following the filing of a complaint if the Commissioner has not issued a notice of conciliation failure and has not commenced an action. **Effective: June 27, 2011.**

HOUSE BILL 388, Reclaimed Water Cross-Connection Control, prohibits direct cross-connections between reclaimed water and potable water systems, unless the connection has been approved by the Department of Environment and Natural Resources pursuant to 15A NCAC 18C .0406 (Distribution Systems) prior to the effective date of this act. This legislation replaces the rule in place for Design Criteria for Distribution Lines. **Effective: June 23, 2011.**

HOUSE BILL 453, Allow Salary Protection Insurance, provides that when salary protection insurance benefits are payable to an individual or his or her beneficiary, the amount of salary protection insurance plus the amount of any disability income insurance may not exceed 75% of his or her annual earned income. "Salary protection insurance" is defined as "insurance against financial loss caused by the cessation of earned income because of disability from sickness, ailment, or bodily injury." **Effective: October 1, 2011.**

HOUSE BILL 542, Tort Reform for Citizens and Businesses. This legislation started off with additional provisions that the business community requested, more specifically product liability changes that eventually were removed from the bill. There was debate originally about whether to include the provisions of this bill with the medical malpractice liability bill, but ultimately the House and Senate decided to separate out into two bills (the medical malpractice bill is S33). This bill makes a variety of changes to laws regarding calculating damages, tort reform, attorneys' fee calculations and enacts a new Trespassing Responsibility Act. The actual changes are as follows:

- limits evidence offered to prove past medical expenses to evidence of the amounts actually paid to satisfy the bills that have been satisfied, regardless of the source of the payment, and evidence of the amounts necessary to satisfy the bills that have been incurred but not yet satisfied. (This provision is called "actual damages" and was being advocated strongly by the medical community and insurers) States that the rule does not

impose on any party an affirmative duty to seek a reduction in billed charges to which the party is not contractually entitled;

- provides that, in the event that the provider of hospital, medical, dental, pharmaceutical, or funeral services gives sworn testimony that the charge for that provider's service either was satisfied by payment of an amount less than the amount charged, or can be satisfied by payment of an amount less than the amount charged, then with respect to that provider's charge only, the presumption of the reasonableness of the amount charged is rebutted and a rebuttable presumption is established that the lesser satisfaction amount is the reasonable amount of the charges for the testifying provider's services;
- clarifies that a witness is qualified as an expert by knowledge, skill, experience, training, or education to testify in the form of an opinion or otherwise if all of the following apply: (1) the testimony is based upon sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case;
- allows the presiding judge, in his or her discretion, to allow reasonable attorneys' fees not to exceed \$10,000 in a personal injury or property damage suit, upon findings by the court (i) that there was an unwarranted refusal by the defendant to negotiate or pay the claim which constitutes the basis of such suit, (ii) that the amount of damages recovered is \$20,000 or less, and (iii) that the amount of damages recovered exceeded the highest offer made by the defendant no later than 90 days before the commencement of the trial; and
- requires the judge when making such an award of attorneys' fees to issue a written order that includes findings of fact detailing the factual basis for the finding of an unwarranted refusal to negotiate or pay the claim, setting forth the highest offer made 90 days or more before trial, the amount of damages recovered, and the factual basis and amount of the attorneys' fees to be awarded.

The legislation also enacts the Trespasser Responsibility Act, which provides that, as a general rule, a possessor of land, including an owner, lessee, or other occupant, does not owe a duty of care to a trespasser and is not subject to liability for any injury to a trespasser. However, a possessor of land may be subject to liability for physical injury or death to a trespasser in the following situations:

- (1) if the trespasser's bodily injury or death resulted from the possessor's willful or wanton conduct, or was intentionally caused by the possessor, except that a possessor may use reasonable force to repel a trespasser who has entered the land or a building with the intent to commit a crime;
- (2) bodily injury or death to a child trespasser (less than 14 years of age or who has the level of mental development found in a person less than 14 years of age) that results from an artificial condition on the land if:
 - (a) the possessor knew or had reason to know that children were likely to trespass at the location of the condition;
 - (b) the condition is one the possessor knew or reasonably should have known involved an unreasonable risk of bodily injury or death to such children;
 - (c) the injured child did not discover the condition or realize the risk involved in the condition or in coming within the area made dangerous by it;
 - (d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child involved; and
 - (e) the possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child; and

- (3) if the possessor discovered the trespasser in a position of peril or helplessness on the property and failed to exercise ordinary care not to injure the trespasser.

Effective: October 1, 2011, and applies to actions and causes of actions arising on or after that date.

HOUSE BILL 594, Functionally Equivalent Wastewater Systems, authorizes the Commission for Public Health to approve as an innovative wastewater system any wastewater trench system that is determined by the Commission to be functionally equivalent to an accepted wastewater trench system. **Effective: June 23, 2011.**

HOUSE BILL 609, Promote Water Supply Development, directs the Department of Environment and Natural Resources (DENR) to cooperate with local governments to identify water supply needs and appropriate water supply sources and water storage projects to meet those needs. DENR will be the principal State agency to cooperate with other State agencies, the U.S. Army Corps of Engineers, and all other federal agencies or instrumentalities in the planning and development of water supply sources and water storage projects for the State. The Department, if requested, may assist local governments in identifying the preferred water supply alternative that alone or in combination with other water sources will provide for the long-term water supply needs documented in the local water supply plan and meet all of the following criteria: (1) are economically and practically feasible; (2) make maximum, practical beneficial use of reclaimed wastewater and stormwater; (3) comply with water quality classifications and standards; (4) avoid or mitigate impacts to threatened or endangered species to the extent such species are protected by State or federal law; (5) maintain downstream flows necessary to protect downstream users; (6) do not have significant adverse impacts on other water withdrawals or wastewater discharges; and (7) avoid or mitigate water quality impacts consistent with the requirements of rules adopted by the Environmental Management Commission.

A regional water supply system may request that the Department become a co-applicant for all required federal approvals for the alternative identified by the Department. The Department may become a co-applicant when all of the following conditions are met:

- (1) the regional water supply system has acquired or will acquire the property necessary for construction of the water supply reservoir or other water supply resource;
- (2) the local water supply plan shows that the regional water supply system has implemented appropriate conservation measures similar in effect to the measures in comparably sized North Carolina regional water supply systems;
- (3) the regional water supply system has developed and is implementing measures to replace existing leaking infrastructure that is similar in effect to the measures being implemented by comparably sized North Carolina regional water systems; and
- (4) the regional water supply system has entered into a contractual agreement to pay the expenses incurred by the Department as a co-applicant for the project approval.

The legislation allows one or more water systems to establish a water supply planning organization to plan for and manage water resource supply and demand on a regional basis. A water supply planning organization may include representatives of local government water systems, water authorities, nongovernmental water systems, and registered water withdrawers and may do any of the following: (1) identify sources of raw water supply for regional systems; (2) identify areas suitable for the development of new regional water sources; (3) identify opportunities for purchase and sale of water between water systems to meet regional water supply needs; (4) prepare joint water supply plans; (5) enter into agreements with the Department for technical assistance in identifying practical alternatives to meet regional water supply needs

or to provide studies in support of a proposed regional water supply project; and (6) support cooperative arrangements between water systems for purchase and sale of water by providing technical assistance and voluntary mediation of disputes concerning water supply. These provisions do not, however, alter the requirements for obtaining a certificate for an interbasin transfer.

In addition, the legislation authorizes funds from the Clean Water Management Trust Fund to be used to preserve lands that could be used for water supply reservoirs. The criteria for the award of grants from the Fund is expanded to include projects that take into consideration water supply availability and the public's need for resources adequate to meet demand for essential water uses, including the likelihood of a proposed water supply project ultimately being permitted and built. The legislation also requires local water supply plans to include a plan for the reduction of long-term per capita demand for potable water. To be eligible to receive state water infrastructure funds from the Drinking Water State Revolving Fund or other grant or loan for the purpose of extending waterlines or expanding water treatment capacity, a local government or large community water system must show that the system has implemented a consumer education program that includes information on measures that residential customers may implement to reduce water consumption. DENR will provide statewide outreach and technical assistance regarding water efficiency and best management practices for water efficiency and conservation. **Effective: The provisions regarding the local water supply plans are effective October 1, 2011. The remaining provisions are effective June 27, 2011.**

HOUSE BILL 643, Exempt CCPCUA from IBT Requirements, exempts certain transfers of water in the Central Coastal Plain Capacity Use Area from interbasin transfer certification requirements. The Environmental Review Commission will review the state water supply laws, including the interbasin transfer laws and the laws governing the establishment and implementation of capacity use areas, specifically reviewing whether the policies underlying the interbasin transfer and capacity use area laws are consistent. The Commission may make recommendations as to how the State might better coordinate its policies on interbasin transfers, capacity use areas, and other water supply laws and report its findings and recommendations to the 2012 Regular Session of the 2011 General Assembly. These provisions apply to any transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area and will expire if the cumulative volume of water transfers from one river basin to another river basin to supplement groundwater supplies in the Central Coastal Plain Capacity Use Area exceeds 8 million gallons per day. **Effective: June 24, 2011.**

HOUSE BILL 648, Improve Enforcement/General Contractor Laws, clarifies the exception to the term "general contractor" for a person, firm, or corporation who constructs or alters a building on land owned by that person, firm, or corporation if the building is intended solely for occupancy by that person and his or her family, firm, or corporation after completion; and they comply with building code requirements. Before a person, firm, or corporation applying for a building or other permit for the construction of any building, highway, sewer, grading, or any improvement or structure where the cost is \$30,000 or more may receive a permit, they must prove that the applicant seeking the permit or another person contracted to superintend or manage the construction is duly licensed or is exempt from licensure under this exception. If an applicant claims an exemption from licensure, the applicant for the building permit must submit an affidavit stating that the person: (1) is the owner of the property on which the building is being constructed or, in the case of a firm or corporation, is legally authorized to act on behalf of the firm or corporation; (2) will personally superintend and manage all aspects of the

construction of the building and that the duty will not be delegated to any other person not duly licensed under the terms of this Article; and (3) will be personally present for all inspections required by the North Carolina State Building Code. If a permit is obtained by an owner who is exempt for licensure requirements, then no inspection may be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by a licensed architect. **Effective: June 27, 2011.**

HOUSE BILL 687, Attorneys Fees/City or County Action Outside Authority, allows the court to award reasonable attorneys' fees and costs to a party who successfully challenges a city or county regulation or action, upon a finding by the court that the city or county acted outside the scope of its legal authority. However, if the court also finds that the city or county action was an abuse of its discretion, the court will be required to award attorneys' fees and costs. This legislation may have a real impact on actions/decisions by local governments regarding inspections, fees, and other regulations that are not clearly authorized by statute. **Effective: October 1, 2011, and applies to claims for relief which are brought or defended on or after that date.**

HOUSE BILL 709, Protect and Put NC Back to Work. This legislation was worked on by the stakeholders for most of the session and overhauls North Carolina's Worker's Compensation system. The legislation was highly contested by worker's groups as they felt the bill as originally drafted went too far in favor of employers. Many meetings and negotiations were held to amend the bill and reach a consensus that most of the stakeholders could support. This final version of the bill was approved in bi-partisan votes in both the House and the Senate by large margins. The bill is very extensive; however, we have summarized the main provisions. The new law:

- changes two definitions in the Worker's Compensation law: (1) allows attendant care services prescribed by an authorized health care provider and vocational rehabilitation to be included in the definition of medical compensation; (2) defines suitable employment as employment offered to the employee or available to the employee that (i) prior to reaching maximum medical improvement is within the employees work restrictions, including rehabilitative or other non-competitive employment with the employer and approved by the employees authorized health care provider or (ii) after reaching maximum medical improvement is employment that the employee is capable of performing considering the employees pre-existing and injury related physical and mental limitations, vocational skills, education, and experience and is located in a 50 mile radius of the employees residence. No one factor shall be considered exclusively in determining suitable employment;
- prohibits the payment of compensation for injury by accident or occupational disease, if the employer proves that (i) at the time of hire or in the course of entering into employment, (ii) at the time of receiving notice of the removal of conditions from a conditional offer of employment, or (iii) during a post-offer medical examination:
 - the employee knowingly and willingly made a false representation as to his or her physical condition;
 - the employer relied upon one or more false representations by the employee and the reliance was a substantial factor in the employer's decision to hire the employee; and
 - there was a causal connection between the employee's false representation and the injury or occupational disease;
- allows an employee to move for reinstatement of compensation when the employer or insurer has admitted to the employee's right to compensation or when the employer's liability has been established;

- allows an employee to have the right to make a written request to the employer for a second opinion evaluation, or allowing the employee to request the Commission to order a second opinion evaluation if within 14 calendar days of the receipt of the request, the employer denies the request or the parties are unable to agree on a health care provider to perform the second opinion;
- allows an injured employee to select a health care provider of his or her own choosing to attend, prescribe, and assume care of his or her case subject to the approval of the Industrial Commission;
- requires an employee requesting a change in treatment or health care provider to show by a preponderance of the evidence that the change is reasonably necessary to effect a cure, provide relief, or lessen the period of disability;
- provides that the refusal of the employee to accept any medical compensation when ordered by the Industrial Commission bars the employee from further compensation unless in the opinion of the Industrial Commission the circumstances justified the refusal;
- requires an order issued by the Commission suspending compensation to specify what action the employee should take to end the suspension and reinstate the compensation;
- clarifies what constitutes relevant medical information that may be obtained by an employer;
- includes provisions for an employer to obtain the employee's medical records containing relevant medical information from the employee's health care providers and allowing for timely objections and a request for protective order if the employee feels the information should be protected;
- allows employers to have written and oral communication with the employees health care providers under reasonable conditions and provides notice and a chance for the employees to participate in the oral communications;
- directs the Commission to adopt rules to require electronic medical billing and payment processes;
- requires the Commission to annually establish an appropriate medical fee to compensate health care providers for time spent communicating with the employer or employee and requires each party to pay for its own costs of the communication;
- protects health care providers from any cause of action or liability as a result of the release of medical records, reports, or information;
- clarifies that an employee is required to undergo an independent medical examination and includes new provisions regarding that examination;
- provides that no fact that is communicated to or otherwise learned by any physician who attended or examined the employee, or who was present at any examination, is privileged with respect to a claim before the Industrial Commission;
- provides that the employer or the Industrial Commission has the right in any case of death to require an autopsy at its expense;
- limits temporary total disability payments to 500 weeks in most circumstances but does allow extended compensation in excess of the 500 weeks if the employee has sustained a total loss of wage-earning capacity;
- reduces payments upon the employee receiving social security retirement benefits;
- provides that an employee may qualify for permanent total disability only if he or she has one or more of the following limitations resulting from the injury:
 - loss of both hands, both arms, both feet, both eyes, or any two;
 - spinal injury involving sever paralysis of both arms, both legs, or the trunk;
 - severe brain injury or closed head injury evidenced by severed and permanent sensory or motor disturbances, communication disturbances, complex integrated disturbances of cerebral function, or neurological disorders;

- second or third degree burns to 33% or more of the total body surface;
- lifetime compensation, including medical compensation, regardless of whether or not the employee has returned to work in any capacity shall only be allowed for the loss of both hands, both arms, both feet, both eyes or any two. All other permanent total disabilities may be capable of returning to suitable employment;
- increases the maximum duration of compensation for partial incapacity from 300 to 500 weeks;
- allows an employee to engage in vocational rehab services at any point during a claim regardless of whether he or she has reached maximum medical improvement;
- increasing the maximum compensation for burial expenses of an employee who dies without dependents from \$3,500 to \$10,000;
- reducing the number of members of the Commission from 7 to 6;
- limiting Commissioners to no more than two terms and making appointments to the Commission subject to confirmation by the General Assembly by joint resolution;
- providing that commissioners and deputy commissioners are subject to the Code of Judicial Standards;
- requiring the Commission to decide cases and issue findings of fact based upon the preponderance of the evidence in view of the entire record; and
- repealing the Commission's full exemption from the Administrative Procedure Act and exempting the Commission from the contested case provisions of the Act.

Effective: June 24, 2011 and applies to claims pending or claims arising on or after that date.

HOUSE BILL 845, Annexation Reform Act of 2011. This legislation has been debated and studied by the legislature in one form or another for many years. The League of Municipalities has been battling changes to North Carolina's very easy annexation process for years and a citizens group began from areas involuntary annexed to demand changes to the law. The new law is extremely complicated and completely replaces the previous annexation law. While we have not summarized the law completely, here is a summary of the changes, including:

- defining *contiguous area, eligible property owner, necessary land connection, property owner, and used for residential purposes*;
- requiring municipalities to create a plan for the extension of services to the area proposed to be annexed and, before the public hearing, prepare a report that details the following:
 - a map showing the present and proposed boundaries of the municipality; the present and proposed water and sewer mains, outfalls and lines; and the general land use plan;
 - a statement that the area proposed to be annexed meets the statutory requirements;
 - a statement that sets forth the plans for extending to the area proposed to be annexed each major municipal service on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation and the method to finance the extension of major municipal services into the area proposed to be annexed
 - a statement detailing the affect on any rural fire department providing service in the area proposed to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area proposed to be annexed; and
 - a statement showing how the proposed annexation will affect the municipality's finances and services, including municipal revenue change estimates;
- setting forth the criteria which must be met for a municipality to extend its corporate limits;

- setting forth the new detailed procedure for annexation;
- requiring a municipal governing board desiring to annex territory to first pass a resolution of consideration identifying the area under consideration for annexation by either a metes and bounds description or a map, which would remain effective for two years after adoption and be filed with the municipal clerk;
- requiring the municipal governing body to adopt a resolution of intent of the municipality to proceed with the annexation of some or all of the area described in the resolution of consideration at least one year after adoption of the resolution of consideration. The resolution of intent would describe the boundaries of the area proposed for annexation, fix a date for a public informational meeting, and fix a date for a public hearing on the question of annexation;
- providing for a notice of public informational meeting, public hearing, and information to citizens on the opportunity for water and sewer;
- authorizing the governing board to adopt an ordinance extending the corporate limits of the municipality to include all, or part, of the area described in the notice of public hearing which the governing board has concluded should be annexed at any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following the public hearing;
- providing that if the municipal governing board receives a petition signed by at least 60% of the eligible property owners of the real property located within the area described in the annexation ordinance to deny the annexation, the annexation will be terminated and the municipality may not adopt a resolution of consideration for the area described in the annexation ordinance for at least 36 months;
- requiring the municipality to provide water and sewer service to the annexed area within 3 1/2 years of the effective date of the annexation ordinance;
- requiring the municipality to offer to each eligible property owner of real property located within the area proposed to be annexed an opportunity to obtain water or sewer service, or both, at no cost other than periodic user fees based upon usage prior to the adoption of the annexation ordinance;
- **the municipality may not charge, for any reason, any property owner within the area described in the annexation ordinance, for the installation or use of the water or sewer system unless that property owner is, or has requested to become , a customer of the water or sewer system;**
- allowing a property owner of real property located within the area described in the annexation ordinance who believes he or she will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure or to meet the requirements as they apply to the annexation to file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board within 60 days following the close of the signature period; and
- providing that, if 51% of the households in an area petitioning for voluntary annexation have incomes that are 200% or less than the most recently published United States Census Bureau poverty thresholds, the governing board of a municipality must follow additional requirements prior to annexation, including a petition signed by the owners of at least 75% of the parcels of real property in that area approving of the annexation.

Effective: July 1, 2011.

SENATE BILL 17, Joint Regulatory Reform Committee, establishes the Joint Regulatory Reform Committee which purpose is described as fostering a strong environment for creating private sector jobs by removing the undue burden imposed by outdated, unnecessary, and vague rules. Any legislation proposed by this Committee would be eligible for consideration any time

during the session and would not be subject to cross-over rules. The Committee will (1) hold meetings and receive input from the public, regulated community, and agencies regarding outdated, unnecessary, unduly burdensome, or vague rules and rule-making procedures that are an impediment to private sector job creation; (2) evaluate the reform suggestions presented during the public comment process and determine which warrant introduction and consideration during the 2011 Session of the General Assembly in 2011 or 2012; (3) review the rule-making process to determine if the procedures for adopting rules give adequate consideration to the potential impact on job creation; and (4) report to the General Assembly concerning any recommendations for statutory changes. **Effective: February 22, 2011 and expires December 31, 2012.**

SENATE BILL 27, Local Annexations Subject to 60% Petition, requires local pending involuntary annexations in Kinston, Lexington, Rocky Mount, Wilmington, Asheville, Marvin, Southport and Fayetteville to be subject to a petition to deny the annexation by property owners. The property owners are able to stop the annexation if at least 60% of the parcels located in the area vote to reject the annexation. **Effective: June 18, 2011.**

SENATE BILL 182, Statewide Email Subscription Lists, makes effective statewide a local act providing that a list of the e-mail addresses of persons subscribing to local government e-mail lists is open to public inspection but is not required to be copied and provided to those who request the record. The legislation also provides that the local government may use the list only for the subscribed purpose. **Effective: April 28, 2011.**

SENATE BILL 414, Allow Attorneys' Fees in Business Contracts, provides that reciprocal attorneys' fees provisions in business contracts are valid and enforceable for the recovery of reasonable attorneys' fees and expenses only if all of the parties to the business contract sign by hand the business contract. However, in a suit, action, proceeding, or arbitration primarily for the recovery of monetary damages, the award of reasonable attorneys' fees may not exceed the monetary damages awarded or the amount in controversy. Business contract does NOT include consumer contracts, employment contracts or a contract with a government entity. *Reciprocal attorneys' fees* are "provisions in any written business contract by which each party to the contract agrees upon the terms and subject to the conditions set forth in the contract that are made applicable to all parties, to pay or reimburse the other parties for attorneys' fees and expenses incurred by reason of any suit, action, proceeding, or arbitration involving the business contract." If a business contract governed by the laws of this State contains a reciprocal attorneys' fees provision, the court or arbitrator in a suit, action, proceeding, or arbitration involving the business contract may award reasonable attorneys' fees in accordance with the terms of the business contract. In determining reasonable attorneys' fees and expenses, the court or arbitrator may consider all relevant facts and circumstances, including, but not limited to, the following:

- (1) the amount in controversy and the results obtained;
- (2) the reasonableness of the time and labor expended, and the billing rates charged, by the attorneys;
- (3) the novelty and difficulty of the questions raised in the action;
- (4) the skill required to perform properly the legal services rendered;
- (5) the relative economic circumstances of the parties;
- (6) settlement offers made prior to the institution of the action;
- (7) offers of judgment pursuant to Rule 68 of the North Carolina Rules of Civil Procedure and whether judgment finally obtained was more favorable than such offers;

- (8) whether a party unjustly exercised superior economic bargaining power in the conduct of the action;
- (9) the timing of settlement offers;
- (10) the amounts of settlement offers as compared to the verdict;
- (11) the extent to which the party seeking attorneys' fees prevailed in the action;
- (12) the amount of attorneys' fees awarded in similar cases; and
- (13) the terms of the business contract.

Reasonable attorneys' fees and expenses may not be governed by (i) any statutory presumption or provision in the business contract providing for a stated percentage of the amount of the attorneys' fees or (ii) the amount recovered in other cases in which the business contract contains reciprocal attorneys' fees provisions. **Effective: October 1, 2011, and applies to business contracts entered into on or after that date.**

SENATE BILL 593, Government Reduction Act, abolishes certain State boards, committees, and commissions whose statutory requirements have been met and provides that these bodies are no longer authorized to meet, provide recommendations, or operate in any capacity, including the Legislative Study Commission on Water and Wastewater Infrastructure. **Effective: July 1, 2011.**

SENATE BILL 620, Clarify Use of Position, makes a variety of changes to the lobbyist and principal reporting documents that are required to be filed with the Secretary of State. In the past our office has advised you to report all payments made to us for lobbying as these rules were changing on a regular basis and it was unclear what to include in the definition of lobbying. Last year, there was a requirement to break down the payments into categories of lobbying, research, drafting, monitoring, good will, etc. This requirement has now been removed from the law and the year end reports will now require the principal to report the total cumulative amount spent for lobbying - but this term now includes the various activities we perform, including research, drafting, and lobbying so we believe the full amount must be reported unless the payment also includes amounts for separate legal services. We are still permitted to estimate this amount for you and by law you can rely on that estimate. We will continue to provide these forms for your review and signature on a quarterly basis. **Effective: October 1, 2011, and applies to reports filed on or after that date.**

SENATE BILL 686, 2011 Appointments Bill, appoints persons to various boards and commissions based upon the recommendations of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Generally, many of these boards and commission also have appointees from the Governor's office. **Effective: July 1, 2011.**

- George Howard of Wake County, Christine Mele of Pamlico County, and Frank Bragg of Mecklenburg County are appointed to the North Carolina Clean Water Management Trust Fund Board of Trustees for terms expiring on July 1, 2015.
- Charles Allen of Cumberland County is appointed to the North Carolina Irrigation Contractors' Licensing Board for a term effective October 1, 2011 and expiring on September 30, 2014.
- Margaret Currin and Stephanie Mansur Simpson of Wake County, Addison Bell and Garth Dunklin of Mecklenburg County, Pete Osborne and Ralph Walker of Guilford

County, Bob Rippey of New Hanover County, and Faylene Whitaker of Randolph County are appointed to the Rules Review Commission for terms expiring on June 30, 2013.

- Billy Yow of Guilford County and Thomas Whitehead of New Hanover County are appointed to the Well Contractors Certification Commission for terms expiring on June 30, 2014.
- Christopher J. Ayers of Wake County and Clyde E. Smith of Cleveland County are appointed to the Environmental Management Commission for terms expiring on June 30, 2013.
- Steven J. Brown of Wake County and Jeffrey A. Knight of Union County are appointed to the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board for terms expiring on July 1, 2014.

BILLS VETOED BY THE GOVERNOR

During the 2011 Regular Session of the North Carolina General Assembly, Governor Perdue vetoed a multitude of bills approved by the General Assembly. We have reported on most of these in the legislative reports during the session. However, in the frenzy of the last several weeks the legislature approved almost one hundred bills. The Governor had only 10 days to review the legislation and decide whether she would sign the bills into law, hold onto the bill without signing so that they automatically become law or veto the legislation. The Governor ended up vetoing nine bills passed by the Legislature, which is more than any other Governor has vetoed in their entire term! The General Assembly returned to session on June 25th to address re-districting and also to decide whether to attempt to over-ride any of the vetoes. Five of the bills became law that week when the General Assembly voted to over-ride by the required margin of 3/5ths of the legislators present as listed below. The June 25th session adjourned to start again September 12th where the legislation vetoed earlier in the session and the bills below could be voted on at any time. This session primarily has been set to address Constitutional Amendments, including bills to change the constitution to require that marriage be between one man and one women, to provide changes to eminent domain laws, to enact term limits for legislative leaders and possible changes to election laws.

Below is a brief summary of the vetoed bills and whether the veto was over-turned. Relevant bills are described in more detail below:

- House Bill 351, Restore Confidence in Government - requires a government issued ID to vote and has not been over-turned;
- House Bill 482, Water Supply Lines/Water Violation Waivers - allows a local government to have its fines waived and has not been over-turned;
- House Bill 854, Abortion-Woman's Right to Know Act - includes a variety of requirements for physicians who provide abortions. **Veto Overturned;**
- Senate Bill 33, Medical Liability Reforms - provides a variety of medical malpractice reforms including a cap on damages. **Veto Overturned;**
- Senate Bill 496, Medicaid and Health Choice Provider Req. - provides a variety of requirements for Medicaid providers and allows OAH to make final agency decisions for DHHS. **Veto Overturned;**

- Senate Bill 532, ESC/Jobs Reform - moves the Employment Security Commission to the Department of Commerce. **Veto Overturned;**
- Senate Bill 709, Energy Jobs Act - allows a variety of changes in environmental policy including studies on fracking and coastal drilling and has not been overturned;
- Senate Bill 727, No Dues Checkoff for School Employees - would no longer allow dues to be removed from teachers paychecks for Association dues and has not been overturned; and
- Senate Bill 781, Regulatory Reform Act of 2011 - makes a variety of changes to environmental regulations. **Veto Overturned.**

SENATE BILL 532, ESC/Jobs Reform, creates the Division of Employment Security (DES) within the Department of Commerce and removes all the functions from the current Employment Security Commission and transfers them to the Department of Commerce. The Division will have two sections: the Employment Security Section, which will administer the employment services functions; and the Employment Insurance Section, which will administer the unemployment taxation and assessment functions of the Division. The bill also makes substantial amendments and conforming changes to the employment security laws. **Effective: November 1, 2011. This legislation was vetoed by the Governor on June 30, 2011. The veto was overridden by the House and Senate on July 26, 2011.**

SENATE BILL 781, Regulatory Reform Act of 2011. This legislation is the result of the Regulatory Reform Committee which was established soon after the beginning of session and was one of the top priorities for the new Republican majority. The Reform Committee held public hearings across the State to hear from members of the public about the rule making process and the various rules that businesses have to follow. The resulting legislation prohibits agencies from implementing or enforcing against any person a policy, guideline, or other nonbinding interpretive statement that meets the definition of a rule if the policy, guideline, or other nonbinding interpretive statement has not been adopted as a rule in accordance with the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by general statute.
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

Each agency must conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth above and must repeal any rule identified by this review. In addition, each agency must post on its website when the agency submits the notice of text for publication all of the following: (1) the text of a proposed rule; (2) an explanation of and the reason for the proposed rule; (3) the required federal

certification if the proposed rule is purported to implement a federal law, or is required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned; (4) instructions on how and where to submit oral or written comments on the proposed rule; and (5) any fiscal note that has been prepared for the proposed rule. **If two or more agencies' policies and programs overlap, the agencies will be required to coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.** In addition, if an agency determines that a proposed rule will have a substantial economic impact (defined in the bill to be greater than \$500,000 with various requirements and standards), then the agency shall consider at least two alternatives to the proposed rule.

The legislation also established the Rules Modification and Improvement Program to conduct an annual review of existing rules. The Office of State Budget and Management (OSBM) will coordinate and oversee the Program and must invite comments from the public on whether any existing rules, implementation processes, or associated requirements are unnecessary, unduly burdensome, or inconsistent with the principles.

The legislation provides specific limitations on environmental rules by providing that an agency authorized to implement and enforce State and federal environmental laws may not adopt a rule for the protection of the environment or natural resources that imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule, if a federal law or rule pertaining to the same subject matter has been adopted. An exception is provided if adoption of the rule is 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 United States Congress that expressly requires the agency to adopt rules; (3) a change in federal or State budgetary policy; (4) a federal regulation required by an act of the United States Congress to be adopted or administered by the State; or (5) a court order. The agencies provided in the law are the following: the Department of Environment and Natural Resources, the Environmental Management Commission, the Coastal Resources Commission, the Marine Fisheries Commission, the Wildlife Resources Commission, the Commission for Public Health, the Sedimentation Control Commission, the Mining Commission and the Pesticide Board.

At least 30 business days prior to adopting a temporary rule, the agency must (1) submit the rule and a notice of public hearing to the Codifier of Rules to publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days and (2) notify persons on the mailing list and any other interested parties of its intent to adopt a temporary rule and of the public hearing. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

The legislation defines the term "substantial economic impact" as an aggregate financial impact on all persons affected of at least \$500,000 (was \$3 million) in a 12-month period and provides specific criteria for agencies to follow when analyzing substantial economic impact.

The most controversial part of the bill and the one of the stated reasons for the veto of the bill by the Governor is the change in the bill that would **allow the Office of Administrative Hearings to make the final decision regarding any contested case.** Currently after the decision by OAH, the case would return to the agency for a final decision. The legislation also makes changes to the contested case provisions, including allowing an administrative law judge to grant judgment on the pleadings, pursuant to a motion made in accordance with G.S. 1A-1, Rule 12(c), or

summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case. A decision granting a motion for judgment on the pleadings or summary judgment need not include findings of fact or conclusions of law, except as determined by the administrative law judge to be required or allowed by G.S. 1A-1, Rule 12(c), or Rule 56.

The legislation allows an appeal of the final decision from either the aggrieved party or the agency. The standard of review on appeal was also amended to provide that the court will determine whether the petitioner is entitled to the relief sought in the petition based upon its review of the final decision and the official record. With regard to asserted errors pursuant to constitutional provision, excess of statutory authority or jurisdiction, unlawful procedure or other error of law, the court shall conduct its review of the final decision using the de novo standard of review. With regard to asserted errors pursuant to claims that the decision was unsupported by substantial evidence or arbitrary, capricious or an abuse of discretion, the court shall conduct its review of the final decision using the whole record standard of review.

In addition, the legislation amends the provision regarding declaratory rulings under 150B-5 and requires the agency to respond within 45 days or allow judicial review. The Joint Regulatory Reform Committee will require every State agency, board, commission or other body with rule-making authority to provide a list of all permanent rules adopted by the body on October 1, 2011 and a variety of information regarding each rule. **The Joint Regulatory Reform Committee will study the procedural and substantive requirements of administrative hearings conducted under Article 3A of Chapter 150B of the General Statutes, including the various procedures used by the entities that conduct administrative hearings under Article 3A to identify areas of consistency and inconsistency with the purpose of designing procedures that are applicable to all Article 3A hearings and that ensure that the hearings provide a meaningful opportunity to be heard and for dispute resolution.** The Joint Regulatory Reform Committee will report its findings and recommendations to the 2012 Regular Session of the 2011 General Assembly. **Effective: The majority of the provisions are effective January 1, 2012. This legislation was vetoed by the Governor on June 30, 2011. The veto was overridden by the House and Senate on July 25, 2011.**

BUDGET

There were many story lines for this session, but none was bigger than the budget. Like most states, North Carolina had a huge deficit to overcome along with the economic drag that was producing less revenue than expected. There had to be substantial cuts in all programs across state government. The main battle lines were between the Governor who wanted to raise revenue by keeping some of the temporary sales tax and the Republican majority who were adamant that they would not raise taxes in any shape or form. The battle lines were drawn very early and it seemed certain that although never done before, the Governor would veto the budget. Another interesting twist happened in the budget process this year. The House began the process by approving their version of the budget and then the Senate reviewed it and released their version in committee. Usually, the Senate would then approve their version and the chambers would then negotiate out the differences. This year the Senate went into negotiations with the House without approving their version of the budget. Once they worked out their differences the Senate approved the budget and the House agreed with the changes which allowed them to wrap up the budget process in record time. It also took some groups by surprise as there were not nearly as many opportunities to make changes or convince budget writers that your particular program had merit.

The Governor then vetoed the budget based primarily on her concerns regarding cuts in education, but also mentioned a host of other cuts to the mentally ill, the environment, tourism, law enforcement and disaster relief funding. Since the Republicans had enough votes in the Senate for an over-ride, the attention quickly turned to the House, where five Democrats were needed along with all of the Republicans and one Independent to have enough votes to over-ride. An intense period of lobbying by the Governor and the leadership of both parties as well as the interests who participate in the budget process took place, especially on the five Democrats who voted for the budget in the house. On June 15th, for the first time in North Carolina history, the House by a vote of 73-46 and the Senate by a vote of 31-19 voted to over-ride the Governor's veto and pass the 2011-2013 budget.

Ultimately, there were not many differences in the House version of the budget and the final version that was approved by both chambers. Below we have listed the relevant provisions:

Health and Human Services

Division of Environmental Health Transfer. The budget transfers almost \$14.2 million from the Department of Environment and Natural Resources to the Department of Health and Human Services to operate various programs and activities that comprised the Division of Environmental Health. In the transfer, the following programs will be **eliminated**: Public Health Pest Management Section; the **Private Well Program**, WaDE Program, and Quality Assurance of the On-Site Water Protection Section.

Natural and Economic Resources

Soil & Water Conservation. The budget transfers the Division of Soil and Water Conservation from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.

Clean Water State Revolving Fund. The budget directs the Department to use \$5.6 million of its loan origination fee fund to provide the 20% state match needed to draw down the maximum federal funds for the Clean Water State Revolving Fund this year.

Drinking Water State Revolving Fund. The budget provides \$7.1 million to meet the 20% state match required to draw down the maximum federal funds for the Drinking Water State Revolving Fund.

Public Water Supply Program. The budget transfers the Public Water Supply Program from the Division of Environmental Health to the Division of Water Resources.

Wastewater Discharge Elimination Program. The budget **eliminates** funding for the Wastewater Discharge Elimination Program, including two filled positions, for a reduction of \$161,000 in each of the next two years.

Private Well Program. The budget **eliminates** funding for the Private Well Program, including four filled positions, for a reduction in funding of \$278,000 this year and \$348,000 next year.

Clean Water Management Trust Fund. The budget provides \$11.25 million to the Clean Water Management Trust, which is an almost \$89 million reduction in funding of the Trust's statutory

annual appropriation of \$100 million. The budget also repeals the statute that requires that appropriation.

Rural Economic Development Center. The budget reduces funding for the Rural Economic Development Center by 10% or almost \$2.3 million in each of the next two years. The budget moves \$16,505,758 from the North Carolina Rural Economic Development Center to continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment.

DENR Programs Consolidation/Transfer. The budget abolishes, transfers to other departments, or consolidates several programs currently within the Department of Environment and Natural Resources (DENR). The Division of Environmental Health of DENR and the Public Health Pest Management Section of DENR are both abolished. Transfers from the abolished Division of Environmental Health include: (1) the On-Site Water Protection Section to the Division of Public Health of the Department of Health and Human Services; and (2) the Public Water Supply Section to the Division of Water Resources of DENR.

The budget also creates the Division of Water Resources within DENR, and transfers the duties currently performed by the Division of Environmental Health related to water to that division.

Require DENR to use DWQ's Groundwater Investigation Unit's Well Drilling Service in Other DENR Divisions. The budget requires that the Groundwater Investigation Unit of the Division of Water Quality bid to perform well drilling services for any division within DENR that needs wells drilled to monitor groundwater, as part of remediating a contaminated site, or as part of any other division or program responsibility, except for a particular instance when this would be impracticable. The stated purposes for this provision are: (1) to assure that the Groundwater Investigation Unit well drilling staff are fully utilized; and (2) to reduce the need for the Department of Environment and Natural Resources to enter into contracts with private well drilling companies.

DENR Civil Penalty Assessments. The budget includes a provision that extends by 10 days the period between the time a violator of an environmental statute or rule is sent a notice of the violation and the time that an assessment of the civil penalty is charged for the violation.

Funds for Cleanup/Textfi Site. The budget appropriates \$50,000 from the Solid Waste Management Trust Fund for the cleanup and monitoring of groundwater and other contamination located at the Textfi site in Fayetteville and for any necessary emergency cleanup activities at that site.

Repeal DENR Review of Fee Schedules. The budget repeals G.S. 143B-279.2(4), which details the responsibility of DENR to conduct a biannual review all fees charged under any program under its authority to determine whether any of these fees should be changed.

Agricultural Water Resources Assistance Program. The budget establishes the Agricultural Water Resources Assistance Program to assist farmers and landowners to:

- (1) identify opportunities to increase water use efficiency, availability, and storage;
- (2) implement best management practices to conserve and protect water resources;
- (3) increase water use efficiency; and

(4) increase water storage and availability for agricultural purposes.

Transportation

DENR LUST Trust Fund. The budget **eliminates** funding for the Leaking Underground Storage Tank (LUST) program for a savings of \$2.2 million this year and \$2.3 next year.

Capital

Water Resources Development Projects. The budget provides over \$4.5 million for the state's share of water resources development projects, which provides the state match for \$23 million in federal funds for 20 projects across the state.

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