



INTRODUCTION

The North Carolina General Assembly ended the third week of this “short” session with strong actions that sent clear messages – to the Governor, the public and, most emphatically, to the opposing legislative chamber.

The House passed its budget update on the 10th working day of this session with a veto-proof 73-46 majority, which may not stop the Governor’s veto stamp from falling but clearly indicates that House leadership has the votes to pass the budget it wants, despite any objection from the executive branch. The five Democrats who broke with their party to support the budget were the same members of the “Gang of Five” – Reps. Brisson, Crawford, Hill, Owens and Spear – who helped overcome Governor Purdue’s veto of the 2011 spending measure.

During the 8.5 hours of debate on the budget, social issues took center stage as the most intense exchanges were reserved for a provision that effectively bans Planned Parenthood from receiving any state dollars, by disallowing county Health Departments from contracting with third-party vendors. Another hot topic was the \$617,000 set aside for tax credits for corporations who provide private-school scholarships, a move critics call the beginning of tax-payer funded vouchers in North Carolina. Most Democratic amendments, like those that would restore funding for programs such as Drug Courts and a Youth Development Center in Edgecombe County, failed along party lines.

Other landmark policy changes that moved forward this week included the House giving final approval to legislation that would end ongoing annexations in 9 cities and make future involuntary annexations much more difficult; a Senate committee considering a bill that would authorize the controversial oil and gas exploration technique known as “fracking”; and the Senate passing President Pro Tem Phil Berger’s signature education reform package, which would institute merit pay and end teacher tenure, among other reforms.

The issue of whether House leadership will allow consideration of Sen. Berger’s education reform bill has been closely watched, as it appears to be a source of significant discord between the chambers. The House did not include any funding for the measure in its budget update, which most observers took as a clear statement of its position on the issue. A day after the House passed its budget, however, the Senate passed Berger’s reform package on the floor and Senate leaders filed an adjournment resolution with an effective date of June 19th, signaling their possible willingness to leave Raleigh without passing a budget update.



NORTH CAROLINA GROUND WATER ASSOCIATION



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If the Senate were to adjourn without passing a revised budget, state funding would continue at levels set in the 2011 budget, and given the additional \$333 million in public school funding, proposed bonuses for state employees and teachers, and multitude of special provisions authorized by the 2012 House update, such a move would be highly controversial. Whether Senate leadership is truly willing to follow through on this remains to be seen, but legislators, lobbyists and staff are hard at work on contingency plans for their priorities just in case, and the already fast pace of this session has picked up dramatically. We will continue to keep you updated as things develop, and as the mounting drama on Jones St. unfolds.

BILLS OF INTEREST

HOUSE BILL 1166, Temporarily Raise Income Tax on Millionaires, would temporarily raise the income tax rate to 8.5% until January 1, 2014 for the following: (1) married individuals who file a joint return under and for surviving spouses with taxable income over \$1 million; (2) heads of household with taxable income over \$800,000; (3) unmarried individuals with taxable income over \$600,000; and (4) married individuals who do not file a joint return with taxable income over \$500,000. **Introduced by Representative Luebke and referred to the House Rules Committee.**

HOUSE BILL 1177, Legislative Building Access Study, would direct the Legislative Ethics Committee to study public access to all areas of the Legislative Building and Legislative Office Building. The Committee would consider the need for security and safety of elected officials and employees and whether there is a need to restrict access by members of the public to certain areas of either building. The Committee would report its findings and recommendations to the General Assembly on or before March 1, 2013. **Introduced by Representatives Earle and Glazier and referred to the House Rules Committee.**

HOUSE BILL 1184, Clarify Underground Injection Ban, would clarify that the ban on discharge of wastes to the subsurface or groundwater of the State by means of wells applies to the injection of fluids using a well for the purpose of oil and gas exploration or production. **Introduced by Representative Faison and referred to the House Environment Committee.**

HOUSE BILL 1185, Fracking Contracts/Against Public Policy, would provide that any contract or lease agreement that conveys oil, gas, or mineral rights for the purpose of natural gas extraction using hydraulic fracturing is void and unenforceable. **Introduced by Representative Faison and referred to the House Environment Committee.**

HOUSE BILL 1186, Restore Budget Cuts/Add Temporary Sales Tax, would seek to (1) restore personnel positions eliminated in the public schools, the University of North Carolina, the Community College System, and state government employment; (2) reduce program and service reductions in Medicaid and Health Choice; and (3) provide additional funding to the Highway Patrol and to the Savings Reserve Account, by temporarily increasing the sales and use tax by seven-tenths of 1% until July 1, 2015. **Introduced by Representatives Faison and Hall and referred to the House Commerce and Job Development Committee.**

HOUSE BILL 1188, Casino Night for Nonprofits, would authorize nonprofit organizations to operate "casino nights," provide for the regulation of nonprofit organizations holding casino nights, allow for licensing and regulation of gaming table dealers, and allow the consumption of alcoholic beverages at casino nights. To operate a casino night, the organization would have to

apply for a license to the Department of Crime Control and Public Safety and pay an annual application fee of \$400. Any licensed exempt organization who conducts a casino night in violation of these provisions would be guilty of a Class 1 misdemeanor. The bill sets out limits on the number of casino nights per year, the prize amounts, and what games may be played. **Introduced by Representative Owens and referred to the House Judiciary Subcommittee B.**

HOUSE BILL 1192, Amend Castle Doctrine/Repeal Stand Ground, would provide that a lawful occupant within a home or other place of residence is justified in using any degree of force that the occupant reasonably believes is necessary, including deadly force, against an intruder to prevent a forcible entry into the home or residence or to terminate the intruder's unlawful entry if the occupant reasonably (i) apprehends that the intruder may kill or inflict serious bodily harm to the occupant or others in the home or residence or (ii) believes that the intruder intends to commit a felony in the home or residence. The person would not have a duty to retreat from an intruder in these circumstances. The bill also would repeal the "stand your ground laws" so that the common law continues to govern the lawful use of force in defense of one's self or another person. **Introduced by Representative Adams and referred to the House Judiciary Subcommittee C.**

BILL UPDATES

HOUSE BILL 142, Economic Development and Finance Charges. All of the provisions of the previous version of this bill were removed in the House Finance Committee and were replaced with new provisions that would seek to promote economic development and provide fiscal relief to citizens of the state by (1) temporarily capping the gas tax, (2) delaying the imposition of tolls on ferry routes, (3) exempting certain motions from civil motions filing fees, (4) waiving the filing fee otherwise due from unemployed individuals organizing limited liability companies, (5) clarifying and extending the appropriate filing period for an economic incentive, (6) expanding the use of Industrial Development Funds for certain projects, and (7) making a technical correction to the port enhancement zone. **After further amendments on the House floor, the bill as amended was approved by the House and will next be assigned to a Senate committee for consideration.**

SENATE BILL 810, Regulatory Reform Act of 2012, was amended on the Senate floor to clarify that an administrative judge may assess attorneys' and witnesses' fees against a state agency in a contested case if the judge finds that the state agency has substantially prejudiced the petitioner's rights and has acted arbitrarily or capriciously. **The bill as amended was approved by the Senate and will next be sent to the House for consideration.**

FRACKING

SENATE BILL 820, Clean Energy and Economic Security Act. There were major developments last week in the debate over whether to allow "fracking" in North Carolina. Previous updates have noted the divide on the issue of oil and gas exploration and development by horizontal drilling and hydraulic fracturing (a technique known as fracking) between Rep. Gillespie, who supports the "go-slow" method recommended by the state Department of Environment and Natural Resources (DENR), and Sen. Rucho and Rep. Hager, who favor a "fast-track" approach.

A revamped version of Sen. Rucho's bill (Senate Bill 820) was introduced in the Senate Commerce Committee last week, and seemed to be designed to close the gap between those two positions. While steadfastly opposed by environmentalist groups, the new version addressed

several of the concerns raised by Rep. Gillespie. Under this new version, there would be a legal presumption that drillers are responsible for any contamination of water sources within a mile of each well, unless the drillers can prove that they did not cause the contamination. Additionally, a requirement was added that would ensure drinking water wells are tested before nearby fracking wells are drilled.

Aside from contamination issues, the issue of landowner protections has been cause for considerable debate. The new version of S820 would demand that full disclosure be made regarding the mineral rights when property is sold, and that landowners are guaranteed a minimum of 12.5% of the sales of resources captured from wells on their land.

Finally, S820 would not authorize any drilling, but only the development of rules and regulations related to fracking; additional legislative authorization to begin exploration would be required.

Despite these changes, environmental groups and several legislators remain opposed, and cite historically low natural gas prices, a recent opinion from an assistant state geologist that previous estimates of North Carolina's resource may be drastically overstated, and the slowing of industry development in other states as reasons this policy exercise is unnecessary and, given the outcomes in other states that have authorized fracking, potentially dangerous.

Additional concerns include the makeup of the 9-member commission which would be charged with developing rules and regulations for fracking, as it would have as many as 7 industry representatives among its members (out of 9). Additionally, critics point to the recent budget cuts to DENR, which they say would hamper the department's ability to effectively regulate the industry, and to a provision in the bill that would require the commission to complete development of regulations by 2014, even if the full DENR study on these issues is not complete before that time.

The Senate Commerce Committee is expected to vote on S820 this week, and we expect more revisions to be made as the bill moves through the legislative process.

HOUSE BUDGET

The budget update approved by the House last week authorized \$20.3 billion in state spending, below the \$20.9 billion proposed in the Governor's budget recommendation (which assumed a $\frac{3}{4}$ cent sales tax increase the House leadership was unwilling to raise), but would increase spending by more than \$338 million from the 2011 level.

The biggest beneficiary of the additional funding would be the public schools, which would see most of the looming \$333 million 'management flexibility' cut restored, though \$227 million of the funds used to offset the cut would be non-recurring (one-time) funds, meaning the budget writers will need to find money again next year to keep those cuts at bay.

The budget also covers the necessary adjustment to Medicaid funding to pay providers through the end of the fiscal year which includes \$168 million in additional funding to cover increases in enrollment and consumption, but also requires an additional \$59 million in Medicaid savings from Community Care of North Carolina (CCNC). Additionally, the budget assumes \$3.8 million in savings from anti-fraud efforts. There are no provider rate reductions or additional cuts to optional services included in the House budget, though theoretically failure by CCNC to reach

target reductions could lead to service cuts if the legislature does not act, as it did this year, to cover the deficit.

The Clean Water Management Trust Fund, cut from \$100 million to \$11.25 million in the 2011 and 2012 budgets, is converted in the House budget from a recurring to non-recurring funding, meaning legislators will need to find money to continue supporting the Fund each year.

In the Justice and Public Safety budget, the continuation review for Family Court put in place last year led some to believe funding for this program would be eliminated, however, in the end, the House budget would restore recurring funding of \$2.86 million annually, which would be enough to keep the present courts in place but would not provide for expansion into additional counties. The \$2.26 million annual funding for Drug Treatment Courts was eliminated in the HHS budget, however, and a floor amendment to restore it did not garner sufficient votes.

LEGISLATION ENACTED

HOUSE BILL 5, Local Deannexations, specifies local involuntary annexation areas in 9 different municipalities by repealing specified involuntary annexation ordinances, and prohibits municipal initiation of any procedure to involuntarily annex those areas for 12 years. **Effective: July 1, 2012.**

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