



### **Adjournment to Date Uncertain**

The 2013-2014 session of the North Carolina General Assembly adjourned last Saturday morning, with the House completing their work roughly 36 hours after the Senate had finished up and left town. Rather than a joyful, "end of school" kind of feel that is usually the case when session winds down, the "end" of session was not much of an end at all. Special sessions are scheduled to convene later this month and in November, but the House and Senate could not even agree on which topics would be eligible for consideration when they meet. The Senate sent the House an adjournment resolution that would have allowed only a very limited number of topics to be taken up during the session beginning August 14th, including reconsideration of any bills the Governor chooses to veto. The Senate then wrapped up its business and adjourned, effectively stranding a number of measures important to the House, including an Autism insurance mandate, a \$40 million film tax credit, and various regulatory reform proposals. The Senate resolution would have allowed consideration of coal ash cleanup legislation along with Medicaid reform proposals, after action on both of those issues stalled toward the end of session.

The House responded by amending the adjournment resolution list to include a wide variety of topics, returning it to the Senate despite the fact that there was no one there to receive it. As such, no adjournment resolution has been passed and the General Assembly is essentially still in session and in limbo, required to convene session every four days until a compromise is reached. In keeping with the tone of this very contentious session, there is as yet no evidence of a deal forthcoming, and no clear end to yet another standoff in sight. Typically, short sessions adjourn "sine die" (without day), though when special sessions are planned adjournment is to "a date certain." This year, however, the only thing certain about what comes next is that no one seems to know. We delayed sending out this report to see if any progress would be made between the chambers this week; however, the Senate sent out a press release yesterday stating that they would not be back until the agreed upon November session to take up Medicaid Reform. The House has been stating that they are still working with the Senate and plan to have a regular session on August 14th to take up any issues that they can agree upon with the Senate. So basically still a mess.



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



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## BILL UPDATES

HOUSE BILL 761, Regulatory Reform Act of 2014. The provisions of this bill were removed completely in the Senate Rules Committee and replaced with new provisions that include a variety of administrative reforms, eliminate various boards and commissions, and make other statutory changes. Many of the provisions included in the bill have already been included in other bills, and we have summarized those in previous legislative reports this session. Some of these provisions include the following:

- eliminating the Small Business Contractor Act and the Small Business Contractor Authority;
- clarifying the process for readoption of rules in accordance with the periodic review and exemption of existing rules provision of the Administrative Procedures Act;
- authorizing licensing boards to adopt rules for professional corporations;
- seeking to streamline the rule-making process by eliminating the requirement that an agency obtain a certification of adherence to rule-making principles prior to submitting the proposed text of a rule for publication. If the rule would have a substantial economic impact, then the agency would have to obtain from the Office of State Budget and Management a certification that the agency adhered to regulatory principles before adopting the permanent rule change;
- amending the statute regarding the periodic review and expiration of existing rules to provide that a rule will be considered necessary with substantive public interest if the rule imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule;
- amending the provisions regarding legislative appointments when the legislator is required to consult with a third party by providing that: (1) the recommendation or consultation is discretionary and is not binding upon the legislator; (2) the third party must submit the recommendation or consultation at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy, and (3) failure by the third party to submit the recommendation or consultation to the legislator within the required time period will be deemed a waiver by the third party of the opportunity;
- amending the statute on County Inspections of work in progress to provide that its provisions prohibit a county from adopting a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council;
- amending the statute on City Inspections of work in progress to provide that its provisions prohibit a city from adopting a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council;
- directing the North Carolina Building Code Council to study the authority granted to local building inspectors in counties and cities where building plans are reviewed and approved prior to the issuance of a building permit pursuant to specified statutes, and report to the 2015 General Assembly any statutory amendments that are necessary to ensure local field inspectors cannot disregard or independently require changes to any construction plans previously approved by a county or city;

- authorizing the Joint Legislative Oversight Committee on Unemployment Insurance to review rules adopted by the Division of Employment Security and recommend statutory policies and procedures, if necessary, to ensure the Division is operating in compliance with state and federal laws and regulations and written guidance issued by the U.S. Department of Labor;
- clarifying the statute regarding official misconduct for code officials by providing that "willful misconduct, gross negligence, or gross incompetence" includes:
  - the enforcement of a Code requirement applicable to a certain area or set of circumstances in other areas or circumstances not specified in the requirement;
  - for an alternative design or construction method that has been found by the Department of Insurance to comply with the Code, to refuse to accept the decision by the Department to allow that alternative design or construction method under the conditions or circumstances set forth in the Department's decision for that appeal;
  - for an alternative construction method currently included in the Building Code, to refuse to allow the alternative method under the conditions or circumstances set forth in the Code for that alternative method;
  - the enforcement of a requirement when the Code-enforcement official has actual knowledge that the requirement is more stringent than or otherwise exceeds the Code requirement;
- allowing the Guilford County and Mecklenburg County Boards of Elections to adopt a policy to provide for notices, advertisements, and publications to be given electronically;
- allowing a spring that transverses a property on which a restaurant is located to be used for water service to restaurant patrons and for employees of the restaurant and exempting the spring from requirements for disinfection of the spring water and other requirements that may be applicable to a public water system. This provision would only apply to the extent not preempted by requirements of the federal Safe Drinking Water Act;
- providing that, when an applicant seeks administrative review of a decision concerning a minor or major development permit under CAMA, the permit is suspended from the time the person seeks administrative review until the Commission makes a final decision in the contested case;
- providing that, if a permit applicant submits a permit for any type of development (other than a zoning permit) and a rule or ordinance changes between the time the permit application was submitted and a permit decision is made, the permit applicant may choose which version of the rule or ordinance will apply to the permit;
- enacting provisions regarding environmental audit privilege and limited immunity to protect the confidentiality of communications relating to voluntary internal environmental audits. An "environmental audit" would mean "a voluntary, internal evaluation or review of one or more facilities or an activity at one or more facilities regulated under federal, State, regional, or local environmental law, or of compliance programs, or management systems related to the facility or activity if designed to identify and prevent noncompliance and to improve compliance with these laws." An environmental audit report or any part thereof would be privileged and, therefore, immune from discovery and not admissible as evidence in civil or administrative proceedings except as specifically provided;
- requiring the Environmental Management Commission to adopt a rule to amend the rule regarding Review of Applications so that when implementing the rule (1) the amount of impacts of isolated wetlands is less than or equal to 1 acre of isolated wetlands east of I-95 for the entire project, and (2) the mitigation ratio is 1:1;

- requiring the Department of Environment and Natural Resources to study (1) how isolated wetland is defined in state law and whether it should be clarified to provide certainty in identifying isolated wetlands, and (2) the surface area thresholds for the regulation of mountain bog isolated wetlands and report to the Environmental Review Commission on or before November 1, 2014;
- requiring the Department of Environment and Natural Resources to study the surface area thresholds for the regulation of mountain bog isolated wetlands, including whether mountain bog isolated wetlands should have surface area regulatory thresholds different from other types of isolated wetlands, and report its findings and recommendations to the Environmental Review Commission on or before November 1, 2014;
- changing the name of the Ecosystem Enhancement Program to the Division of Mitigation Services; and
- requiring a lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property to include a clause that requires the oil or gas developer or operator to pay for the reasonable costs involved in testing all water supplies within a one-half mile radius from the center of a proposed wellhead drilling site, and requiring DENR to post results of the testing to its website within 30 days of receipt of the results, unless the surface owner specifies otherwise in writing at the time the results are provided.

**The bill as amended was approved by the Senate Rules Committee, but was subsequently sent back to the Committee for further consideration.**

HOUSE BILL 1224, Local Sales Tax Options/Economic Development Changes. A variety of amendments were made to this bill in a Conference Committee appointed to settle the differences between the House and Senate versions of the bill. One of the provisions would provide that the local sales and use tax rate of a county may exceed two and one-half percent (up to two and three-quarters percent) if all of the following conditions are met:

- the county is Durham, Forsyth, Guilford, Orange, Mecklenburg or Wake County; and
- the county conducted one or more advisory referendums on or before December 31, 2014, in which a majority of the voters approved the levy of a local sales and use tax at the rate of one-quarter percent.

**The bill as amended in the Conference Committee was approved by the Senate; however, the House has assigned the bill to the House Rules Committee.**

HOUSE JOINT RESOLUTION 1266, Adjournment, is effectively identical to the House version of S881, summarized below. **The resolution was passed by the House and sent to the Senate for consideration.**

SENATE BILL 763, Revenue Laws Technical Changes and Other Changes. This bill was amended on the House floor to:

- clarify that the federal income tax credit for making qualified rehabilitation expenditures for a certified historic structure located in this State is allowed a credit equal to the sum of the base amount, development tier bonus, and target investment bonus (as defined);
- cap the maximum tax credit allowed for qualifying expenses of a film production company at \$40 million;
- reduces the allowed film production company tax credit to 22.5% of the taxpayer's qualifying expenses (currently, 25%); and
- direct the Program Evaluation Division to evaluate the income tax credits for qualifying expenses of a film production company, and submit its findings and recommendations to

the Joint Legislative Program Evaluation Oversight Committee and Revenue Laws Study Committee on or before February 1, 2016. The study would include:

- the return on investment of the credit to the State;
- methods to increase the benefit to the State resulting from the credit; and
- programs in other states, best practices of other states, and other ways used by other states to compete for film investment in the State.

**The bill as amended was approved by the House, and has been assigned to the Senate Rules Committee to consider the changes made by the House.**

SENATE JOINT RESOLUTION 881, Adjournment, is the adjournment resolution passed by the Senate and then amended by the House in the final days of session. As introduced by the Senate back on June 11, it called for adjournment “sine die” on June 27<sup>th</sup>.

Over a month after that date the Senate passed an amended version that would have adjourned session on August 2<sup>nd</sup> and reconvened a session beginning on August 14<sup>th</sup> and ending the next day, limited to only allow consideration of:

- Bills vetoed by the Governor, but solely for the purpose of considering overriding of the veto upon reconsideration of the bill.
- Bills relating to claims or orders in litigation to which the State, its instrumentalities, or its officers are parties.
- Bills in which the General Assembly makes an appointment or appointments to public office and which contain no other matter.

The Senate version would also have convened a special session on Monday, November 17, 2014, at 6:00 p.m., during which the issues above as well as the following could be considered:

- Bills related to the structure, operation, and funding of Medicaid.
- Confirmations
- Bills relating to coal ash management.
- A joint resolution adjourning the 2013 Regular Session of the General Assembly sine die.

NOTE: An earlier version of S881 would also have also allowed consideration of “matters in conference between the two houses where conferees have been appointed by both houses on or before August 2, 2014,” during the November session, but that provision was later amended out by the Senate.

The Senate passed this version and sent it to the House, then adjourned session and essentially left town, likely assuming the House would have no choice but to accept, pass, and send it to the Governor. Instead, the House amended the resolution and returned it to the Senate. The House amended S881 by adding to the list of issues that could be considered during the August 14<sup>th</sup>-15<sup>th</sup> session:

- Bills relating to coal ash management.
- Bills relating to environmental and natural resources laws.
- Bills relating to regulatory and administrative reforms.
- Bills relating to health benefit plan coverage for the screening, diagnosis, and treatment of autism spectrum disorder.
- Bills relating to technical and other changes to revenue laws.
- Bills relating to the confidentiality of unemployment compensation information.

The House’s amended version would not allow consideration of bills related to coal ash management during the November 17<sup>th</sup> session. House Speaker Tillis made clear in remarks

made on the floor that he felt the November session should be focused on Medicaid reform and all other issues that have not passed by the end of the August session would need to wait until 2015. **The resolution as passed by the House was returned to the Senate for concurrence on August 2<sup>nd</sup>. The resolution was not taken up during either of the Senate “skeleton” sessions that have convened since August 2<sup>nd</sup>, therefore the 2013-2014 session of the General Assembly has not technically adjourned.**

SENATE BILL 883, Mitigation Buffer Rule/Wastewater Treatment. This bill was amended in the House Regulatory Reform Subcommittee on Environmental to provide that, in high rate infiltration wastewater disposal systems that use non-native soils or materials in a basin sidewall to enhance infiltration, the non-native soils or materials in the sidewall are not considered part of the disposal area when specified standards are met. These standards include the following:

- the treatment system must include a mechanism to provide filtration of effluent to 0.5 microns or less and all essential treatment units must be provided in duplicate;
- particle size analysis in accordance with ASTM guidelines for all native and non-native materials must be performed, and 75% of all non-native soil materials specified must have a particle size of less than 4.8 millimeters; and
- non-native materials must comprise no more than 50% of the basin sidewall area.

Systems that meet these standards would be considered nondischarge systems, and the outfall of any associated groundwater lowering device would be considered groundwater if the outfall does not violate water quality standards. **The bill as amended was approved by the House and the Senate agreed to the changes made by the House. The bill was signed into law by the Governor on August 1, 2014. Effective: August 1, 2014.**

SENATE BILL 884, 2014 Appointments Bill. This 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 commissions also have appointees from the Governor's office. The bill started in the Senate with the President Pro Tempore's appointments and then the House amended the bill to add the appointments from the Speaker of the House. However, the House did not approve their version until the Senate had already left, so it is unclear whether this bill will be finalized before next year and these appointments are on hold.

### **PRESIDENT PRO TEMPORE’S APPOINTMENTS**

- If Senate Bill 729 becomes law, then the following are appointed to the Coal Ash Management Commission: Dr. D. Allen Hayes of Wake County for a term expiring on June 30, 2016; Scott Flanagan of Rockingham County for a term expiring on June 30, 2018; and Harrell Jamison Auten III of Mecklenburg County for a term expiring on June 30, 2020.
- Captain Jerry M. Hairston of Onslow County is appointed to the Coastal Resources Commission for a term expiring on June 30, 2018.
- Charles M. Elam of Pender County is appointed to the Environmental Management Commission for a term expiring on June 30, 2015, to fill the unexpired term of Steve Keen.

- Reid Hobbs of New Hanover County and Edwin Stott of Rockingham County are appointed to the North Carolina Board for Licensing of Soil Scientists for terms expiring on June 30, 2017.
- Robin S. Hackney of New Hanover County is appointed to the North Carolina Clean Water Management Trust Fund Board of Trustees for a term expiring on June 30, 2017.
- Ivan K. Gilmore of Beaufort County is appointed to the North Carolina Mining and Energy Commission for a term expiring on July 31, 2015.
- Walter H. James of Rockingham County is appointed to the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board for a term expiring on June 30, 2017.
- William "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, 2017.

### **SPEAKER'S APPOINTMENTS**

- Renee D. Kumor of Henderson County is appointed to the Clean Water Management Trust Fund Board of Trustees for a term expiring on June 30, 2017.
- John Snipes II of Carteret County is appointed to the Coastal Resources Commission for a term expiring on June 30, 2018.
- Patrick A. Freeman of Chatham County is appointed to the North Carolina Irrigation Contractors' Licensing Board for a term effective October 1, 2014, and expiring on September 30, 2017.
- Dr. Martin D. Matthews of Lee County is appointed to the North Carolina Mining and Energy Commission for a term expiring July 31, 2015, to fill the unexpired term of Charles Holbrook.
- Jeffrey Knight of Union County is appointed to the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board for a term expiring on June 30, 2017.
- Jeannette K. Doran of Wake County and Anna Baird Choi of Wake County are appointed to the Rules Review Commission for terms expiring on June 30, 2016.
- Erich M. Gram of Lincoln County is appointed to the Small Business Contractor Authority for a term effective January 1, 2015, and expiring on December 31, 2018.
- Fred W. Burt of Wake County is appointed to the North Carolina Board for Licensing of Soil Scientists for a term expiring on June 30, 2017.
- If Senate Bill 729 becomes law, then the following are appointed to the Coal Ash Management Commission: Timmy "Tim" L. Bennett of Wake County for a term expiring

on June 30, 2018; and Dr. Rajaram Janardhanam of Mecklenburg County for a term expiring on June 30, 2020.

## **BUDGET DEAL**

In the days before session adjourned, both chambers passed the \$21.1 billion state budget update. This was essentially the only major compromise reached between the chambers as a deal on coal ash cleanup fell apart in the final hours, and deep divisions on how to reform the state Medicaid system led to a special session being called for November to tackle that problem (and to allow both chambers to hear from, and presumably raise money from, interested parties on both sides of the issue). The budget compromise was hard won, and was announced at a press conference at which leaders of the two chambers put the acrimony of the preceding weeks behind them, at least temporarily. Gov. McCrory announced he would sign the budget deal (and in fact signed the budget today), despite threats to veto during the negotiations. The chambers compromised on the promised teacher pay increase and settled on an average 7% raise, and the deep cuts to Medicaid eligibility previously considered were not included. Despite this, \$135 million was cut from the Medicaid program, including further reductions to provider reimbursement and reduced spending on childcare subsidies. Our final legislative report will contain a detailed summary of the budget, and some key provisions are summarized below:

- The final budget includes an increase in the well testing fee from \$55 to \$74 for both new wells and existing wells proposed by both the House and Senate.

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