



## INTRODUCTION

When the 2014 “short” session of the North Carolina General Assembly adjourned on August 20<sup>th</sup>, it was after several days marked by the same conflict and contentiousness that had defined the entire legislative year. While the session lasted only slightly more than three months, the near-universal consensus among legislators, lobbyists, staff and press was that it had lasted entirely too long. In the waning days a measure important to the Senate was tied to a key objective of the Governor and then defeated on the House floor, priorities of House leadership were left stranded by the Senate, and a technical fix that could help school districts save Teaching Assistant positions became yet another casualty of the friction between the chambers. When a previously agreed-to special session on Medicaid reform was scrapped, several months lay ahead in which the battles, resentments and rivalries of the session could subside, if not resolve completely. Although there were calls for a special session on economic incentives and film tax credits, the Governor announced several weeks ago that he would not call the Legislature back into session unless agreements were reached on these contentious issues. The Governor even stated that everyone probably needed a break from the process, including himself. So the interminable battle between and within the chambers, caucuses, and departments of State government will wait until next session.

The main goal of any short session is twofold: to complete the unfinished business held over from the previous year’s long session, and to approve a budget update. Since the budget approved in the long session covers both years of the fiscal biennium these updates are not technically required, but historically have always been done. This year the single most important priority of both chambers was tied to the budget update: providing a substantial raise for the state’s teachers, a campaign promise both House and Senate leaders intended to fulfill before returning to the districts to seek reelection. Rumors swirled before the session began in May that significant work on the budget update had already been completed, fueling talk of a very short session. After all, the story went, House Speaker Tillis is running for U.S. Senate and will want to get back on the campaign trail as soon as possible, and Senate President Pro Tem Berger would also favor an early adjournment, presumably so he could assist his



## NORTH CAROLINA GROUND WATER ASSOCIATION



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son's Congressional runoff campaign. The Senate even introduced an adjournment resolution with an end date of June 27<sup>th</sup>, and dreams of July beach vacations began to seem realistic, if only for a moment.

Almost from the outset, hope of an early adjournment was strained by the release of the Senate budget, which proposed to pay for an average 11% teacher raise by making deep cuts to Medicaid eligibility and eliminating thousands of Teaching Assistant positions, while also requiring teachers to forfeit tenure rights to receive an increase. The House responded with a more modest teacher raise, which did not require such deep cuts to Medicaid and saved the Teacher Assistant positions. Over the following weeks the stalemate only deepened, with Governor McCrory's decision to publicly back the House position only hardening the Senate's resolve. Eventually, a series of Joint Appropriations Committee meetings were held to negotiate the budget. These meetings made the process unprecedentedly public and, while heated at times, produced a compromise budget which essentially split the difference on most major issues of contention – a 7% average teacher raise (this average is in dispute this campaign season) paid for with Medicaid provider rate cuts and other reductions to Health and Human services; Teaching Assistant positions saved – but only for one year in 3<sup>rd</sup> grade – and with problematic funding language that may result in lost positions; no requirement that teachers give up tenure rights but an end to automatic funding on enrollment growth in public schools. There was little real celebration at the passage of the budget, as it came over a month after the state's fiscal year had already begun, and the Governor's signature could not erase the bruising battles of the preceding months.

While the budget process ground slowly and haltingly along, the other major issues of the session were effectively on hold. Once the budget was passed, however, action resumed on a slate of issues, a great many of which had seen tremendous movement in one chamber or the other before the budget breakdown put a chill on their forward progress. The most prominent of these was the reform of the state's Medicaid program, a major priority of the Governor's administration. The Senate included in its initial budget a proposal to spin Medicaid off from DHHS into its own Department, which was not included in the final budget agreement. The House preferred a reform plan based on provider-led Accountable Care Organizations (which is the reform preferred by almost all health care related entities), despite the Governor's stated preference at the outset of the process for a Managed-Care based plan. As the close of session loomed the Senate countered the House's proposal with a plan that allowed Managed Care and provider-led plans to compete, but no compromise could be reached. Both sides agreed to return to Raleigh after the November election to take up the issue in a special session, yet that plan was eventually discarded as well, meaning further action on Medicaid reform – and the cost savings and budget predictability that all sides hope it will deliver – will have to wait until 2015.

Despite the impasse on Medicaid reform there were some issues on which compromise was finally reached. The transfer of the State Bureau of Investigation from the Department of Justice to the Department of Public Safety (Oversight would be transferred to a Republican led agency from the Department of Justice, which is led by a Democrat who is expected to run against the Governor in 2016), a priority of the new majority for the past two sessions, was completed. A new 3-judge panel was created to hear cases related to the constitutionality of laws passed by the General Assembly, possibly in response to judicial intervention in several majority-passed changes in the past three years. A major Regulatory Reform bill was approved, despite being presumed dead for the session until the final days before adjournment. A compromise bill on coal ash cleanup, also a presumed casualty until the final days of session, was the last bill

completed. Given the ongoing battles over these bills, the fate of typically routine legislation such as the annual technical corrections measure was also unclear going until the final days, making what is always an unpredictable time significantly more chaotic.

While compromise was found on some issues, others were abandoned when the chambers decided to end session. This was not particularly surprising given the contentious nature of the session - the members even endured a two-week lull during which the chambers could not even agree on what issues they would agree to take up before adjournment. Aside from Medicaid reform, measures requiring insurance companies to cover Autism spectrum disorders and an extension of the state's film tax credit – both favored by Speaker Tillis – were both abandoned when the Senate concluded its business. An economic incentive package requested by the Governor's Commerce Department was tied to a local sales tax cap favored by the Senate, yet the combined bill was unpalatable to the House and was rejected in a rare floor defeat. The following day the House and Senate, perhaps exhausted with the conflict and each other, adjourned *sine die* (without day), abandoning any plans to reconvene later this year. It was fitting that the last day did not feature the traditional “hanky drop” ceremony between the chambers, and felt to all involved less like a celebratory end-of-school (as is typical) and more like the unremarkable end to a remarkably contentious few months.

It has been an honor to represent the interests of the North Carolina Ground Water Association at the 2013-2014 Session of the General Assembly. We have included in this Final Legislative Report a summary of relevant legislation that was approved during 2014 and also a summary of the final version of the budget. We hope you will contact us if you have any questions and look forward to working with you again during the 2015-2016 Session.

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## **LEGISLATION OF INTEREST**

HOUSE BILL 201, Building Reutilization for Economic Development Act. This legislation:

- amends the applicability of the Energy Conservation Code to certain existing non-residential buildings;
- clarifies stormwater program impervious surface calculations for redevelopment by prohibiting stormwater runoff rules and programs from requiring private property owners to install new or increased stormwater controls for (i) preexisting development or (ii) redevelopment activities that do not remove or decrease existing stormwater controls. Development is defined as any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the subsoil. When additional development occurs at a site that has existing development, the built-upon area of the existing development shall not be included in the density calculations for additional stormwater control requirements, and stormwater control requirements cannot be applied retroactively to existing development, unless otherwise required by federal law. Redevelopment is defined as any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control to that of the previous development;

- creates an exemption from the North Carolina Environmental Protection Act for the reoccupation of an existing building or facility by providing that no environmental document is required for the redevelopment or reoccupation of an existing building or facility, if additions to the existing building/facility or any new construction does not increase the total footprint to more than 150% of the footprint of the existing building or facility;
- amends the statute governing the Department of Commerce Rural Economic Development Division (REDD) to allow economically disadvantaged and rural areas to access REDD building reuse funds; and
- directs the Building Code Council, the Environmental Management Commission, the Coastal Management Commission, and the Department of Environment and Natural Resources to amend their rules to conform with these provisions.

**Effective: July 30, 2014.**

HOUSE BILL 330, Planned Community Act/Declarant Rights, makes a variety of amendments to the North Carolina Planned Community Act regarding the transfer of special declarant rights. One of the amendments provides that, upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings of all interests in a planned community owned by a declarant, the declarant ceases to have any special declarant rights and the period of declarant control terminates unless either of two specified conditions applies. **Effective: July 7, 2014.**

HOUSE BILL 366, NC Farm Act of 2014, allows drainage districts to maintain ditches in buffer zones. The legislation provides that no State statute or rule or local government ordinance for the establishment, preservation, or maintenance of riparian buffers for the protection of water quality may apply to the construction, operation, maintenance, or repair of canals, water retardant structures, or other improvements under the control and supervision of a board of drainage commissioners. **Effective: August 6, 2014.**

HOUSE BILL 573, Stormwater Management Fee Uses, authorizes a county with a population of 910,000 or greater, through its stormwater management program, to: (1) purchase property for the purpose of demolishing flood-prone buildings; and (2) implement certain flood damage reduction techniques that result in improvements to private property, including demolishing, elevating, and retrofitting flood-prone structures. An existing stormwater advisory committee must review and approve projects that implement these flood damage reduction techniques and submit an annual report to the board of county commissioners for its review. **Effective: June 19, 2014.**

HOUSE BILL 688, Amend Continuing Ed Req's/Cert. Well K'ors. The North **Carolina Ground Water Association** worked diligently to stop this legislation that would reduce the continuing education requirements for well drillers. After many different version of the bill changing the continuing education requirements, this bill had two different versions approved by the House and Senate last year during the long session and was in a Conference Committee made up of members of the House and Senate appointed to work out a compromise between the two chambers.

When the short session began we worked with some of the original sponsors of the legislation to make sure any final compromise did not reduce the continuing education to under 2 years each year for all licensees. Despite the objections of the **North Carolina Ground Water Association**, the Conference Committee report (which became the final version of the bill)

lowers the continuing education requirement for certified well contractors from 6 hours per year to the following:

A certified well contractor must satisfactorily complete two hours of approved continuing education each year for the first three years of his or her certification. Additionally, the Well Contractor Commission cannot require a certified well contractor to obtain continuing education credits for annual renewal of certification after the contractor's third year of certification, unless the well contractor has had disciplinary action taken against him or her. If such action has been taken, the well contractor must satisfactorily complete the number of hours of approved educational courses required by the Commission for remedial purposes. The Commission will be required to specify the scope of required continuing education courses for remedial purposes and approve continuing education courses.

**Effective: May 29, 2014.** This continuing education reduction is now the law in North Carolina. When getting feedback from legislators about their approval of this change despite the objections of the North Carolina Ground Water Association, they referenced the strong approval of their local well drillers to the reduction.

HOUSE BILL 894, Source Water Protection Planning, requires every supplier of water operating a public water system and furnishing water from unfiltered surface supplies to create and implement a source water protection plan (SWPP). The Commission of Public Health must adopt rules that include:

- a standardized format for use by suppliers of water in creating their SWPP. The Commission could create different formats and required plan elements for public water systems based on the system type, source type, watershed classification, population served, source susceptibility to contamination, proximity of potential contamination sources to the intake, lack of water supply alternatives, or other relevant characteristics;
- schedules for creating, implementing, reviewing, and updating the SWPP by suppliers of water; and
- reporting requirements sufficient for DHHS to monitor the creation, implementation, and revision by suppliers of water.

The Commission of Public Health will report to the Environmental Review Commission no later than April 1, 2015, on its progress in implementing these requirements, and submit a final report within six months of adopting final rules. **Effective: June 30, 2014.**

HOUSE BILL 1043, Prequalification Update, clarifies the statutes related to the use of prequalification in public construction contracting. A governmental entity may prequalify bidders for a particular construction or repair work project when the governmental entity is using one of the authorized construction methods and has adopted an objective prequalification policy and an assessment tool and criteria for the project. The objective prequalification policy must: (1) be uniform, consistent, and transparent in its application to all bidders; (2) allow all bidders who meet the prequalification criteria to be prequalified to bid on the construction or repair work project; (3) clearly state the prequalification criteria and the assessment process of the criteria to be used; (4) establish a process for a denied bidder to protest the denial of prequalification; and (5) outline a process by which the basis for denial of prequalification will be communicated in writing, upon request, to a bidder who is denied prequalification.

The legislation also establishes a 20-member Blue Ribbon Commission to Study the Building and Infrastructure Needs of the State to study specified matters related to building and infrastructure needs, including new repairs, renovations, expansion, and new construction, in North Carolina. The Commission may make an interim report of its findings and recommendations to the 2015 General Assembly with a final report to the 2016 Regular Session of the 2015 General Assembly. **Effective: October 1, 2014, and applies to contracts awarded on or after that date.**

HOUSE BILL 1050, Omnibus Tax Law Changes, is a major piece of legislation that contains a significant number of changes to the state's tax code, dealing with issues as diverse as the taxation of "e-cigarette" nicotine vapor products to vending machines. Most of these changes (48 pages worth) will be of interest mainly to tax professionals; however, there are important changes to deductions for State net loss, investment limitations on accelerated depreciation, excise tax changes for bonds and letters of credit, taxation of prepaid meal plans, entertainment activity admissions and compensation for License Plate Agents as well as many others. The most significant change proposed by the legislation would be a repeal of the state's current privilege license tax (PLT) system, which varies widely from city to city (and some counties as well). As we previously reported this change is referred to by sponsors and supporters as the Fair and Flat Local Business Tax. While previous versions would have repealed the PLT effective this year, the final version of the legislation makes the repeal effective on July 1, 2015, but does provide that a city may only levy privilege license taxes on specified trades, occupations, professions, businesses, and franchises *physically located* within the city (previously the tax could be applied to on specified trades, occupations, professions, businesses, and franchises *carried on* within the city). In addition, the bill would prohibit a city from enacting a privilege license tax ordinance for fiscal year 2014-15 if the city did not have a privilege license tax ordinance in effect for fiscal year 2013-14. **Effective: Restriction of the privilege license tax to businesses physically located within city limits is effective July 1, 2014, and the repeal of the privilege license tax is effective July 1, 2015.** NOTE: Critics of the change, many representing the state's cities, have warned that the revenue they stand to lose when the repeal goes into effect will require raising property taxes and cutting vital services. Proponents of the bill responded that additional reforms to the state's tax code that they intend to work on during the next session of the General Assembly, particularly a significant broadening of the sales tax base, will provide revenue to replace the revenue previously generated through the PLT system.

HOUSE BILL 1133, Technical and Other Corrections. This legislation was the vehicle for the annual technical corrections bill that includes many technical amendments (many of which are recommended by the General Statutes Commission), but also a variety of substantive law changes. The provisions of the legislation include the following:

- amending the provisions regarding standing of the Speaker of the House of Representatives and the President Pro Tempore of the Senate, as agents of the State, to intervene on behalf of the General Assembly as a party in any judicial proceeding challenging a North Carolina statute or provision of the North Carolina Constitution. The law already provides the procedure for interventions at trial level in State court and the law was amended to provide the procedure for intervention at the appellate level in State court by motion in the appropriate appellate court or by any other relevant procedure set forth in the Rules of Appellate Procedure;
- including in the definition of a "serious traffic violation" a conviction for the unlawful use of a mobile telephone while operating a commercial motor vehicle;

- amending the requirements for issuance of a commercial drivers license to include the requirement that a person must have held a commercial learner’s permit for a minimum of 14 days; and
- requiring every supplier of water operating as a public water system *treating* and furnishing water from surface supplies to create and implement a source water protection plan (SWPP).

**Effective: Most of the provisions are effective August 11, 2014.**

HOUSE BILL 1276, Adjournment, was the Joint Resolution that adjourned the 2013-2014 session of the General Assembly “sine die” (without day). While adjournment sine die is typical at the end of a short session, it was expected that at least one “special session” would be convened later this year, including one to tackle Medicaid reform that was scheduled to begin November 17<sup>th</sup>, after the midterm elections. As we’ve reported, these plans were abandoned in the last days of session, and with the Governor’s announcement that he does not plan to call a special session to deal with economic incentives (unless a major development occurs), the General Assembly will not reconvene until January 14, 2015. **Effective: August 20, 2014.**

SENATE BILL 58, Clarify Statute of Repose, makes a technical correction to Session Law 2014-17 (SENATE BILL 574, Groundwater Contamination/Modify Response) by:

- declaring that the General Assembly never intended the statute of repose in G.S. 1-52(16) to apply to claims for latent disease caused or contributed to by groundwater contamination, or to claims for any latent harm caused or contributed to by groundwater contamination;
- amending GS 130A-26.3 (Limitations period for certain groundwater contamination actions) to clarify that the 10-year period may not be construed to bar an action for personal injury, or property damages caused or contributed to by groundwater contaminated by a hazardous substance, pollutant, or contaminant, *including personal injury or property damages resulting from the consumption, exposure, or use of water supplied from groundwater contaminated by a hazardous substance, pollutant, or contaminant*;
- removing the expiration date of the act; and
- providing that the act is not intended to change existing law relating to product liability actions based upon disease.

**Effective: June 30, 2014.**

SENATE BILL 163, Reclaimed Water as a Source Water, designates reclaimed water as a source water under certain conditions. The legislation allows that permitted reclaimed water systems operated in approved wastewater reuse programs “can provide water for the beneficial purpose of supplementing the water supply source for potable water in a way that is both environmentally acceptable and protective of public health”. The legislation authorizes local water supply systems to combine reclaimed water with other raw water sources before treatment as long as:

- the reclaimed water use is not permitted for compliance with flow limitations imposed by a permit issued for wastewater systems designed to discharge effluent to the land surface or surface waters;
- the reclaimed water and source water are combined in a pretreatment mixing basin owned and controlled by the drinking water supplier from which water is pumped to the water treatment plant;
- the pretreatment mixing basin is sized to hold a minimum volume corresponding to five days' storage at the authorized operating capacity of the water treatment plant under normal operating conditions;

- the pretreatment mixing basin design and pumping infrastructure incorporate features to ensure mixing of reclaimed water and source water;
- the reclaimed water is treated to comply with the highest reclaimed water effluent standards established by the North Carolina Environmental Management Commission;
- the average daily flow of reclaimed water into the pretreatment mixing basin, as measured over a 24 hour period, is no more than 20% of the sum of the average daily flow of source water and reclaimed water, as measured over the same 24 hour period, into the pretreatment mixing basin;
- the local water system has implemented conservation and efficiency measures designed to achieve water use reductions;
- unbilled leakage from the local water system is maintained below 15% of annual average potable water consumption of the local water system;
- the local water system has a master plan that evaluates alternatives for reclaimed water use;
- the local water system provides public notice to potable water recipients with opportunity for public participation;
- the potable water supply provided pursuant to this subsection shall comply with all State and federal laws for the provision of safe drinking water; and
- any discharge into the waters of the State must be pursuant to a permit issued by the North Carolina Environmental Management Commission.

The legislation also defines "pretreatment mixing basin" as "a basin created from lands that do not include waters of the State and in which raw water is mixed with reclaimed water before it is treated to the standards to make it suitable for potable water supply", and prohibits the North Carolina Environmental Management Commission from adopting standards under their Water Reuse Rule Making authority which prohibit the combining of reclaimed water with other raw water sources before treatment. **Effective: August 6, 2014.**

SENATE BILL 403, Omnibus Election Clarifications, makes a number of changes to the state's election laws, including to:

- prohibit a person from filing a notice of candidacy in a party primary unless that person has been affiliated with that party for at least 90 days as of the date that the person files the notice;
- apply the provisions regarding the random ordering of candidates on official ballots to candidates whether the primary is partisan or nonpartisan and apply to any nonpartisan general election ballot item, and providing that the same random selection process is to be used for all primaries and elections in a calendar year.
- clarify that the phrase "cumulative total number of scheduled voting hours" includes those at the office of the county board of elections or a reasonably close alternate site;
- clarify that public education on the requirement that voters must have photo identification in order to vote in person beginning in 2016 will be included as a brief statement in the notices of elections published by county boards of elections for the 2014 primary and the 2015 general election;
- clarify that the individuals made available by the county board of elections to engage in the review of voters presenting photo identification to a local election official at a time other than on election day, may reside anywhere in the county or may be an employee of the county or the state;
- provide that in instances where photo identification is presented for voting purposes, if the individual presents a US military identification card or a Veterans Identification Card issued by the US Department of Veterans Affairs, there is no requirement that the identification card have a printed expiration or issuance date;



- provide that if the individual presents as photo identification for voting purposes a tribal enrollment card issued by a federally recognized tribe that lacks a printed expiration date, the card is acceptable if it has a printed issuance date that is not more than eight years before the date it is presented for voting;
- provide that the repeal of the requirement that the Board of Elections publish a Voter Guide becomes effective when the funds for publishing the Judicial Voter Guide are exhausted;
- allow a registrant who appears at an old precinct be permitted to vote by a provisional ballot, and provide that the ballot will count as long as it is determined the individual was eligible to vote under State or federal law;
- provide that if a provisional ballot is found to be valid and eligible, pursuant to the specified requirements, then it will be counted by the county board of elections before the canvass. If the ballot is found to not be valid or eligible because the voter did not vote in the proper precinct, is not registered in the county, or is not otherwise eligible to vote, the ballot will not be counted;
- provide that candidates required to file statements of economic interest must file with the Commission within 10 days of the filing deadline for the office sought.
- remove the requirement that statements of economic interest be filed at the same place and same manner as the notice of candidacy;
- remove the requirement that individuals nominated after the primary and before the general election, as well as unaffiliated candidates, must file statements of economic interest with the county board of elections in each county in the senatorial or representative district;
- set out a three-day deadline to file statements of economic interest for unofficial candidates, write in candidates, and candidates of a new party;
- provide that the State Board of Elections has the authority to perform list maintenance pursuant to this section, with the same authority as the county board.
- provide that a registered voter that votes in a primary, moves to another county in the State prior to a second primary, qualifies to vote in the new precinct and registers in a timely manner is allowed to vote a provisional ballot in that precinct for the second primary and will have the ballot counted for all the ballot items the county board determines the individual was eligible to vote.

**Effective: Except as noted, August 6, 2014.**

SENATE BILL 574, Groundwater Contamination/Modify Response. This legislation is in response to a recent ruling by the US Supreme Court to limit recovery for groundwater contamination. The legislation provides that the 10-year statute of limitation for certain groundwater contamination actions does not bar an action for personal injury, or property damages caused or contributed to by the consumption, exposure, or use of water supplied from groundwater contaminated by a hazardous substance, pollutant, or contaminant. "Contaminated by a hazardous substance, pollutant, or contaminant" means that the concentration of the hazardous substance, pollutant, or contaminant exceeds Federal groundwater quality standard.

**Effective: June 20, 2014, and applies to actions arising or pending on or after that date. The Act expires on June 19, 2023, and is not effective for claims for relief brought on or after that date, but does not affect actions pending on that date.**

SENATE BILL 729, Coal Ash Management Act of 2014. This legislation as originally filed was recommended by the Governor and filed by Senate leader Berger and Rules Chairman Tom Apodaca in response to the February disaster in which the failure of a stormwater pipe under a

utility coal ash impoundment pond spilled an estimated 39,000 tons of coal ash into the Dan River. As enacted, the legislation will:

- prohibit an electric public utility from recovering from the retail electric customers costs resulting from an unlawful discharge to the surface waters of the State from a coal ash pond, unless the Commission determines the discharge was due to an Act of God;
- establish a moratorium on the Utilities Commission granting an increase in the base rates of electric public utilities for costs related to coal ash ponds until January 15, 2015, to allow the State to study the disposition of coal ash ponds, including any final rules adopted by the United States Environmental Protection Agency on the regulation of coal combustion residuals;
- create the Coal Ash Management Commission to review and approve coal ash ponds classifications and closure plans and otherwise study and make recommendations on laws governing management of coal combustion residuals;
- require expedited review by the Department of Environment and Natural Resources of any permit necessary to conduct activities required by this act;
- establish various reporting requirements to the General Assembly, including a quarterly report from the Department of Environment and Natural Resources on its operations, activities, programs, and progress with respect to its obligations under this act for coal ash ponds;
- prohibit local government regulation of management of coal ash or coal combustion products;
- prohibit construction of new or expansion of existing coal ash ponds effective October 1, 2014;
- prohibit the disposal of coal combustion residuals into coal ash ponds at coal-fired generating units that are no longer producing coal combustion residuals effective October 1, 2014;
- prohibit disposal of stormwater to coal ash ponds effective December 31, 2018;
- require all electric generating facilities to convert to generation of dry fly ash on or before December 31, 2017, and dry bottom ash on or before December 31, 2020, or retire;
- **require the owner of a coal ash pond to conduct groundwater monitoring and assessment as provided;**
- **require an owner of a coal ash pond to submit a proposed Groundwater Assessment Plan for the impoundment to the Department for review and approval, no later than December 31, 2014. The Groundwater Assessment Plan must, at a minimum, provide for all of the following:**
  - **description of all receptors and significant exposure pathways;**
  - **an assessment of the horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards;**
  - **a description of all significant factors affecting movement and transport of contaminants;**
  - **a description of the geological and hydrogeological features influencing the chemical and physical character of the contaminants;**
  - **a schedule for continued groundwater monitoring; and**
  - **any other information related to groundwater assessment required by the Department;**
- **require an owner of a coal ash pond to conduct a Drinking Water Supply Well Survey, no later than October 1, 2014, that identifies all drinking water supply wells within one-half mile down-gradient from the established compliance boundary of the impoundment and submit the Survey to the Department. The Survey must**

include well locations, the nature of water uses, available well construction details, and information regarding ownership of the wells. No later than December 1, 2014, the Department will determine, based on the Survey, which drinking water supply wells the owner is required to sample and how frequently and for what period sampling is required. The Department will require sampling for drinking water supply wells where data regarding groundwater quality and flow and depth in the area of any surveyed well provide a reasonable basis to predict that the quality of water from the surveyed well may be adversely impacted by constituents associated with the presence of the impoundment. No later than January 1, 2015, the owner will initiate sampling and water quality analysis of the drinking water supply wells. A property owner may elect to have an independent third party selected from a lab certified by the Department's Wastewater/Groundwater Laboratory Certification program sample wells located on their property in lieu of sampling conducted by the owner of the coal ash pond, and the owner of the coal ash pond must pay for the reasonable costs of the sampling. If the sampling and water quality analysis indicates that water from a drinking water supply well exceeds groundwater quality standards for constituents associated with the presence of the impoundment, the owner must replace the contaminated drinking water supply well with an alternate supply of potable drinking water within 30 days of the Department's determination that there is an exceedance of groundwater quality standards attributable to constituents associated with the presence of the impoundment;

- require the owner of a coal ash pond to submit an annual Groundwater Protection and Restoration Report to the Department and to the Coal Ash Management Commission no later than January 31 of each year. The Report must include a summary of all groundwater monitoring, protection, and restoration activities related to the impoundment for the preceding year, including the status of the Groundwater Assessment Plan, the Groundwater Assessment Report, the Groundwater Corrective Action Plan, the Drinking Water Supply Well Survey, and the replacement of any contaminated drinking water supply wells;
- require the identification, assessment, and correction of unpermitted discharges from coal ash ponds;
- require the Department of Environment and Natural Resources to, as soon as practicable, but no later than December 31, 2015, prioritize for the purpose of closure and remediation coal ash ponds, including active and retired sites, based on these sites' risks to public health, safety, and welfare, the environment, and natural resources;
- require owners of coal ash ponds to submit a proposed plan for closure of all impoundments to the Department of Environment and Natural Resources;
- require closure and remediation of certain coal ash ponds as soon as practicable, but no later than August 1, 2019;
- require the Department of Environment and Natural Resources to establish a schedule and process for closure and remediation of all coal ash ponds based upon the department's risk assessment of these sites, baseline requirements set by the general assembly, evaluation of proposed closure plans submitted by impoundment owners, and input from the public and other stakeholders;
- establish minimum statutory requirements for structural fill projects using coal combustion products and require the Department of Environment and Natural Resources to inventory and inspect certain structural fill projects;
- place a moratorium on certain projects using coal combustion products as structural fill until August 1, 2015, and direct the Department of Environment and Natural Resources and the Environmental Management Commission to jointly (1) review the uses of coal

combustion products as structural fill and for other beneficial uses and the regulation of these uses to determine if the requirements are sufficient to protect public health, safety, and welfare; the environment; and natural resources, and (2) report to the Environmental Review Commission no later than January 15, 2015, on their findings and recommendations regarding the use of coal combustion products as structural fill and for other beneficial uses;

- place a moratorium on the expansion and construction of coal ash landfills until August 1, 2015, and direct the Department of Environment and Natural Resources to assess the risks to public health, safety, and welfare, the environment, and natural resources of coal ash ponds located beneath these landfills to determine the advisability of continued operation of these landfills;
- strengthen the reporting and notification requirements applicable to discharges of wastewater to waters of the state by requiring an owner or operator of a wastewater collection or treatment works for which a permit is issued under this Part to report a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State to the Department as soon as practicable, but no later than 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. This reporting requirement is be in addition to any other reporting requirements applicable to the owner or operator of the wastewater collection or treatment works;
- require certain emergency calls to be recorded;
- require development of emergency action plans for high and intermediate hazard dams and amend other dam safety law requirements applicable to coal ash ponds;
- transfer solid waste rule-making authority from Commission for Public Health to Environmental Management Commission;
- amend compliance boundary provisions by providing that, where operation of a disposal system permitted results in exceedances of the groundwater quality standards at or beyond the compliance boundary, the Environmental Management Commission must require the permittee to undertake corrective action, without regard to the date that the system was first permitted, to restore the groundwater quality by assessing the cause, significance, and extent of the violation of standards and submit the results of the investigation, and a plan and proposed schedule for corrective action to the Director or the Director's designee;
- provide for various studies;
- require the State Construction Office and the Department of Transportation to develop technical specifications for use of coal ash products; and
- provide resources for implementation of this Act.

**Effective: September 20, 2014. The legislation became law without the Governor's signature, since Governor McCrory did not sign or veto the legislation within the required time frame.**

SENATE BILL 734, Regulatory Reform Act of 2014. This legislation was approved in the final days of session and contains several provisions that previously appeared in one of the many Regulatory Reform bills considered during the session. Of course, what is interesting are the provisions that were NOT included and the new provisions that were added at the last minute. We will summarize all the provisions that are included that are relevant. As enacted, the legislation:

- clarifies the process for the re-adoption of rules in accordance with the periodic review and exemption of existing rules provision of the Administrative Procedures Act by (1) requiring the Rules Review Commission (RRC) report to the Joint Legislative Administrative Procedure Oversight Committee any agency that fails to conduct the

existing rule review, (2) requiring, once the final determination report becomes effective, the RRC to establish a date by which the agency must re-adopt the rules, (3) allowing the agency to amend a rule as part of the re-adoption process, and (4) providing that if a rule is re-adopted without change, the agency is not required to prepare a fiscal note;

- amends the reporting requirements for occupational licensing boards by adding to the current list of information required to be included in the boards' annual report: (1) the total number of licensees supervised by the board; and (2) the number of persons who failed the board's licensure examination. The legislation also requires each board to provide the required annual financial report electronically; directs the required reports currently delivered to the Joint Regulatory Reform Committee to be delivered instead to the Joint Legislative Procedure Oversight Committee, and requires the Joint Legislative Procedure Oversight Committee to notify the boards which fail to file any of the required reports;
- provides that, if a party in a contested case under GS 150B (Administrative Action) or an appeal to the Property Tax Commission is a small business entity, a business entity may represent itself in an administrative appeal using a non- attorney representative who is one or more of the following of the entity: (1) officer, (2) manager or member-manager, if the entity is a limited liability company, (3) employee whose income is reported on a W-2, if the entity authorizes the representation in writing, or (4) the owner, if the owner's interest in the entity is at least 25% and the entity authorizes the representation in writing;
- provides that if a permit applicant submits a permit for any type of development but a rule or ordinance changes between the time the permit application was submitted and the permit was granted, then the permit applicant can chose which version of the rule or ordinance will apply to the permit. Applies to all development permits issued by state and local governments; however, this provision does not apply to zoning permits;
- repeals Section 10.2 of SL 2013-413, which placed temporary limitations on the enactment of environmental ordinances by local governments and required a related study. Requires the Department of Agriculture and Consumer Services (DACS) and the Department of Environment and Natural Resources (DENR) to report to the Environmental Review Commission by November 1 of 2014 and 2015 on any local government ordinances that impinge or interfere with areas regulated by those departments. Also requires DENR and DACS to solicit and receive input from the public regarding any local government ordinances that impinge on or interfere with any area subject to regulation by the respective department;
- **exempts from electrical contractor requirements the installation, construction, maintenance, or repair of electrical wiring, devices, appliances, or equipment by a certified well contractor when running electrical wires from the well pump to the pressure switch;**
- **directs the Well Contractors Certification Commission to establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors for the installation, construction, maintenance, and repair of electrical wiring devices, appliances, and equipment related to the construction, operation, and repair of wells. These requirements would apply only to the initial certification of an applicant and would not be required as part of continuing education or as a condition of certification renewal;**
- **requires local well programs to use the standard forms created by the Department of Environment and Natural Resources for all required submittals and not create their own forms unless the local program submits a petition for rule making to the Environmental Management Commission, and the Commission by rule finds that conditions or circumstances unique to the area served by the local well program**

constitute a threat to public health that will be mitigated by use of a local form different from the form used by DENR;

- requires local health departments to maintain a registry of all private drinking water wells for which a construction permit or repair permit is issued *that is searchable by address or addresses served by the well*;
- prohibit any local well program from requiring that well contractor identification plates include the well construction permit numbers;
- directs that if the well location marked on the map submitted with an application to a local well program is also marked with a stake or similar marker on the property then the local well program may not require the contractor to be on-site during the on-site pre-drill inspection as long as the contractor is available by phone to answer questions;
- clarifies that where multiple licenses are required from an agency for a single activity, the agency's Secretary or chief administrative officer may issue a written determination that the decision is reviewable on the date the last license for the activity is issued, denied, or otherwise disposed of. Any licenses issued for the activity before the date of the last license identified in the written determination will not be reviewable until the last license for the activity is disposed of;
- amends the Administrative Procedure Act by providing that rules adopted by agencies authorized to implement and enforce State and federal environmental laws that imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule, as 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, be treated as if they had received 10 written objections, meaning a delay in the effective date until the earlier of (1) the 31st legislative day or (2) the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the rule was approved; and
- amends the laws regarding administrative procedures by providing that, if an agency fails to take required action within the time period specified by law, a person whose rights are substantially prejudiced by the agency's failure to act may commence a contested case seeking an order that the agency act as required by law. If the administrative law judge finds that the agency has failed to act as required by law, the administrative law judge could order the agency to take the required action within a specified time period (This was referred to as the "shall means shall" provision), and amends the provisions of GS 150B-44 to clarify the right to judicial intervention when a final decision is unreasonably delayed (120 days of the close of the contested case hearing).

**Effective: Except as otherwise noted in the legislation, September 18, 2014.**

SENATE BILL 761, Credit for Military Training, updates the existing statute dealing with licensure for individuals with military training and experience by occupational licensure boards, by:

- removing the authority of the boards to determine the experience of the applicant when the applicant has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: (i) completed a military program of training, (ii) completed testing or equivalent training experience, and

(iii) performed in the occupational specialty (this provision is effective on January 1, 2015);

- requiring that within 30 days following receipt of an application, an occupational licensing board must notify an applicant when the applicant's military training or experience does not satisfy the requirements for licensure, certification, or registration. The board must also specify the criteria or requirements that the board determined that the applicant failed to meet and the basis for that determination (this provision is effective on January 1, 2015);
- requiring each occupational licensing board to publish a document that lists the specific criteria or requirements for licensure, registration, or certification by the board, with a description of the criteria or requirements that are satisfied by military training or experience, and any necessary documentation needed for obtaining the credit or satisfying the requirement. This information must be published on the occupational licensing board's website as well as the website of the North Carolina Division of Veterans Affairs.
- requiring each occupational licensing board to contact training offices at military installations or any other federal offices that provide information on military occupational specialties and training for the purpose of (i) acquiring information necessary for an adequate understanding of military training and job requirements and (ii) assisting in determining the applicability and correlation of military training and experience to the criteria and requirements for licensure, certification, or registration. No later than September 1, 2014, each occupational licensing board must submit a report to the co-chairs of the Legislative Research Commission Study Committee on Civilian Credit for Military Training and State Adjutant Selection Criteria which details the results of their consultation with military training officials as well as the status of the document summarized in the paragraph;
- requiring the Board of Governors of The University of North Carolina and the State Board of Community Colleges to jointly develop a plan for implementing a uniform system of granting course credits to all students based on the students' military training or experience. The plan must: (i) include a description of the procedure to be utilized in evaluating military training or experience and its correlation to school course credits; (ii) include the process for the transfer of course credits between constituent institutions and community colleges when course credit has been granted based upon military training or experience; and (iii) consider a process for recognizing Associate of Arts or Associate of Science degrees granted by institutions that are participants in the Service members Opportunity Colleges Consortium or the Community College of the Air Force, and must report on the plan to committees of the General Assembly as detailed; and
- requiring the Board of Governors of the University of North Carolina and the State Board of Community Colleges, through the NC Community College System Office, to consult with the NC National Guard Education and Employment Center, the Department of Commerce, the Department of Labor, and other appropriate state and federal agencies to complete five specified tasks including identifying job development programs requiring the same Military Occupation Skills or sharing the same aptitude skills required to complete the program and determine the ability of state community colleges to conduct non-degree programs conducted in other states that have a high employment demand in North Carolina.

**Effective: Except as otherwise noted, July 10, 2014.**

SENATE BILL 786, Energy Modernization Act, also known as the “fracking bill,” makes a variety of changes to the statutes enacted in the past few years, which collectively open North Carolina to oil and gas exploration and development by hydraulic fracturing. Previous legislation required action by the General Assembly before permits could be issued; however, this legislation allows permits to be issued 61 days after rules the Commission is required to develop to regulate fracking are adopted and approved by the Rules Review Commission. The legislation moves the deadline for the adoption of those rules back to January 1, 2015, meaning unless the General Assembly takes action during the next session to block the rules, fracking permits could begin being issued early next year.

Legislators opposed to or skeptical of the claims by sponsors that the rules being developed by the Commission provide sufficient protections for our state’s groundwater attempted to change the bill in various ways, but were voted down. Concerns expressed by these members and by environmental advocates noted that the proposed rules allow fracking wastewater to be stored in open pits, and treated wastewater to be dumped into lakes and rivers. Sponsors countered that the rules being developed would be the most stringent in the nation in protecting groundwater from fracking activities.

The provisions in the legislation will:

- Create a new Oil and Gas Commission and reconstitute the Energy and Mining Commission to just the Mining Commission to oversee mining resources of the state. The members, powers and duties of the existing Mining and Energy Commission related to oil and gas development will transfer to the Oil and Gas Commission;
- Provide for disclosure of fracking fluid ingredients through the FracFocus website, and require disclosure of fracking fluid formulas deemed “trade secrets” by the Commission to the State Geologist. The State Geologist will provide this information to the Division of Emergency Management and local Fire Chiefs in emergency situations (as defined), and health care providers who determine the information is necessary to provide emergency treatment. Those who make unlawful disclosure of such information are subject to a Class 1 misdemeanor.
- Amend the rebuttable presumption provision enacted in 2012 (which stated that “it shall be presumed that an oil or gas developer or operator is responsible for contamination of all water supplies that are within 5,000 feet of a wellhead that is part of the oil or gas developer's or operator's activities”) by reducing the radius from 5000 feet to a half-mile. Sponsors of the bill defended this change by saying the original intent was for a 5000 ft diameter (2500 ft radius) to be established, and that a half-mile (2640 ft) is still the largest area for such rebuttable presumptions in the nation.
- Require oil or gas developers to pay the “reasonable cost” of testing all water supplies within a half-mile radius of each wellhead 30 days prior to initial drilling activities and at least 5 follow-up tests (increased from 2), at 6, 12, 18 and 24 months after production commenced, and within 30 days of completion of production activities. Surface owners will be required to use an independent third party selected from a laboratory certified by the Department's Wastewater/Groundwater Laboratory Certification program to sample wells located on their property, and the developer or operator will pay for the reasonable costs involved in testing of the wells in question. All analytical results from testing must be provided to DENR within 30 days of testing and will constitute a public record. DENR must post any results to their website within 30 days of receipt of the results.
- Require oil or gas developers or operators to provide a minimum \$1 million bond to the state sufficient to cover potential environmental damage.



- Prohibit local ordinances that prohibit oil and gas exploration, development and production, and in cases where such ordinances exist, allow operators to petition the Commission to review the matter. The Commission will in these cases hold a public hearing within 60 days in the affected municipality. Local zoning and land-use ordinances that do not have the effect of prohibiting oil and gas exploration, development and production will be presumed valid and enforceable.
- Prohibit the disposal of waste, produced in connection with oil and gas exploration, development, and production, and use of horizontal drilling and hydraulic fracturing treatments for that purpose by injection to subsurface or groundwaters of the State by means of wells.
- Exempt from the requirement to receive certification as a certified well contractor the following activities: “construction, repair or abandonment of a well used for the exploration or development of oil or gas.”
- Establish the structure for a severance tax to be imposed on all oil and gas minerals “severed from the soil or water of the state.”
- Require timely notice to surface owners of intended activities by operators.
- Require DENR to issue specific recommendations for legislative action related to compulsory pooling and dormant mineral statutes, and report the findings of its study, including specific proposals for legislative action, to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission on or before October 1, 2015.
- Direct a number of studies related to oil and gas development to be conducted, including one to determine the desirability and feasibility of siting, constructing, and operating a liquefied natural gas export terminal in North Carolina.

**Effective: June 4, 2014.**

SENATE BILL 794, Disapprove Industrial Commission Rules. This legislation disapproves certain rules adopted by the North Carolina Industrial Commission for worker's compensation. The legislation includes the following provisions:

- disapproves 04 NCAC 10A .0202 (Hearing Costs or Fees), as adopted by the Industrial Commission on March 11, 2014, and approved by the Rules Review Commission on March 20, 2014; and 04 NCAC 10A .0702 (Review of Administrative Decisions), as adopted by the Industrial Commission on September 20, 2012, and approved by the Rules Review Commission on October 18, 2012;
- removes provisions in GS 97-25 (Medical treatment and supplies) that allow a party to file an expedited, emergency, or other medical motion with the Office of the Chief Deputy Commissioner. Instead, the bill would allow a party, in claims subject to GS 97-18(b) and (d) to file a motion as specified regarding a request for medical compensation or a dispute involving medical issues. The nonmoving party would have the right to contest the motion, and motions and responses would be submitted contemporaneously via e-mail to the Commission and to the opposing party or the opposing party's attorney;
- requires the North Carolina Industrial Commission to include in its annual report to the Joint Legislative Commission on Governmental Operations the total number of requests for, and disputes involving, medical compensation under G.S. 97-25 in which final disposition was not made within 75 days (currently, 45 days) of the filing of the motion with the Commission;
- directs the Industrial Commission to adopt rules to replace the rules disapproved by the act, in accordance with specified directions in the legislation; and
- requires the Industrial Commission to adopt permanent rules in accordance with the provisions of this act using the procedure and time lines for temporary rules, which would be subject to review by the Rules Review Commission. The Industrial

Commission must consult with the Office of Administrative Hearings to ensure that the adopted rules are submitted to the RRC in time to be eligible for legislative disapproval in the 2015 Regular Session of the 2015 General Assembly. The rules of the Industrial Commission that were in effect on the effective date of S.L. 2011-287 will remain in effect with regard to the disapproved rules until rules adopted to replace the disapproved rules become effective.

**Effective: July 22, 2014.**

SENATE BILL 865, Town of Boone/Extraterritorial Jurisdiction, prohibits the Town of Boone from exercising the powers of extraterritorial jurisdiction. **Effective: January 1, 2015.**

SENATE BILL 883, Mitigation Buffer Rule/Wastewater Treatment, disapproves 15A NCAC 02B .0295 (Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers), as adopted by the Environmental Management Commission on May 9, 2013, and approved by the Rules Review Commission on July 18, 2013. The Environmental Management Commission must adopt a new Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers Rule by October 1, 2014.

The legislation also provides 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 non-discharge systems, and the outfall of any associated groundwater lowering device will be considered groundwater if the outfall does not violate water quality standards. **Effective: August 1, 2014.**

SENATE BILL 884, 2014 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 commissions also have appointees from the Governor's office. **Effective: August 15, 2014.**

### **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**

The headline of this year's budget was the inclusion of a substantial pay increase for teachers, which was the first raise authorized in 5 years, and which the leadership and Governor have called the largest teacher pay raise in our state's history. While this is technically true in total dollars, critics have noted that previous raises have been larger both as a percentage, and in total dollars when adjusted for inflation. The amount of the raise – 7% on average, according to sponsors – has also been a matter of contention. While the average teacher will receive a 7% raise, the rolling in of longevity pay for teachers with more than 10 years of experience lowers the total raise to 5.5% on average. Also, while the “average” increase has been frequently

quoted, the vast majority of teachers will not receive that amount - 5<sup>th</sup> and 6<sup>th</sup> year teachers will receive close to a 20% increase, for example, while many veteran teachers would see raises of less than 0.5%. Regardless of these details, many of those who voted for the budget have already made teacher pay raises the center of their fall campaign platforms, perhaps trusting that their constituents will reward them for providing such a substantial increase for educators, and will be less concerned with its place in history.

As we reported at the time, the House and Senate differed greatly on how to pay for the teacher pay raise. The Senate's proposal included a controversial proposal to cut Teaching Assistants in grades 2 and 3. The House preferred to keep all Teacher Assistants in the classrooms and favored an increased use of lottery funding to help pay for the raises. In the end the budget does rely on roughly \$150 million in additional lottery funding to fund teacher and TA salaries, which is an issue that evoked strong reactions by anti-lottery legislators and will likely continue to be a issue of contention going forward. While the budget writers announced that the final version saved Teachers Assistants from elimination, the budget does cut the total TA funding by \$100 million this year and \$130 million going forward. Districts can shift funds allocated for teacher positions to pay for TAs; however, after the budget was passed, an issue was identified with the wording of the transfer provision, but the legislature failed to pass a correction before adjourning, meaning some districts will either need to contribute more funding to cover the gap or be forced to eliminate TA positions. Legislative leaders, pressed on the issue, said the Governor likely has the authority to make the fix himself.

Because North Carolina must pass a balanced budget each year, the funding for teacher raises required cuts in other areas of the budget (the idea of raising taxes was a nonstarter, with the majority committed to further tax cuts next session and beyond). While most of the necessary reductions were made in other areas of the budget, there were some cuts to education line items, including a 10% reduction in operational funding for the Department of Public instruction, a 3% cut to local central office administration and an elimination of the Teaching Fellows program.

The education portion of the budget included a little-discussed but potentially significant provision, which eliminate the automatic funding increase for schools based on Average Daily Membership (ADM), which has been in place since 1933. Budget writers told the media that the change was made because in recent years enrollment growth was less than expected, and the resulting reduction in district budgets appears to be a funding cut. For example, this year the projected number of students was over by 6,286, resulting in an ADM adjustment of \$37.5 million statewide. What eliminating the automatic funding increase means for local districts is they will not longer receive the planning documents that have gone out each March, with the projected funding numbers used for planning, hiring, etc. Theoretically, the budget numbers will be available by July 1 of each year; however, in years the state budget is not passed by that date, some districts will start the school year without a solid budget number to work from (for example, this year's budget was signed by the Governor on August 7<sup>th</sup>). In addition, since the full funding of enrollment growth will now be optional, it will become another item subject to reductions as future budget battles unfold.

### **Health and Human Services**

Well Water Testing Fee. The budget increases the fee charged to test samples from newly constructed wells from \$55 to \$74, and authorizes the State Public Health Laboratory to analyze water samples from existing private wells for a fee of \$74. The fee change will cover the costs of supplies used to analyze water samples. In addition, the budget directs the Department of Health

and Human Services, Division of Public Health, in consultation with local health departments and the Department of Environment and Natural Resources, to study options for reducing or waiving the private well-water testing fee for households with incomes at or below 300% of the current federal poverty level. The Department will report its findings and recommendations, including any recommended legislation, to the Joint Legislative Oversight Committee on Health and Human Services, the Environmental Review Commission, and the Fiscal Research Division by December 1, 2014.

### **Natural and Economic Resources**

Agriculture Water Resource Assistance Program. The budget provides an additional \$1 million this year to support agriculture water resource development projects. The budget also amends the criteria for the allocation of funds to local soil and water conservation districts to include the development of agricultural wells.

Clean Water Management Trust Fund. The budget provides an additional \$500,000 this year to the Clean Water Management Trust Fund, which will be used for the remediation and mitigation of stormwater impacts to lakes subject to a Nutrient Management Strategy approved by the Environmental Management Commission. The budget also redirects the Fund's interest earnings, (which are approximately \$260,000 each year) to the General Fund on a permanent basis.

In addition, the budget declares that "it is the intent of the General Assembly that moneys from the Fund created under this Article shall be used to help finance projects that enhance or restore degraded surface waters; protect and conserve surface waters, including drinking supplies, and contribute toward a network of riparian buffers and greenways for environmental, educational, and recreational benefits; provide buffers around military bases to protect the military mission; acquire land that represents the ecological diversity of North Carolina; and acquire land that contributes to the development of a balanced State program of historic properties."

Noncommercial Fund. The budget provides \$3.4 million each year for the Non-commercial Leaking Petroleum Underground Storage Tank Fund to assist homeowners with the cleanup cost of petroleum releases from home heating oil tanks and small farm tanks. The budget reduces the program's requirements by \$70,000 to reflect the loss of interest earnings that are being directed to the General Fund on a permanent basis.

Drinking Water State Revolving Fund. The budget reduces funding by \$1.4 million for the Drinking Water State Revolving Fund.

Water Infrastructure Grants. The budget requires the Department of Environment and Natural Resources, Division of Water Infrastructure, and the State Water Infrastructure Authority to give priority to loan and grant applications received from a local government for a water infrastructure grant meeting all of the following criteria: (1) the local government is located in a development tier one area; (2) the application seeks funding for a project that is required to be completed due to an EPA administrative order; and (3) the application is deemed complete by the Division and meets the minimum requirements for the program from which it is seeking funding. In addition, the Division of Water Infrastructure must require all local governments applying for loans or grants for water or wastewater purposes to certify that no funds received from water or wastewater utility operations have been transferred to the local government's general fund for the purpose of supplementing the resources of the general fund.

Water and Sewer Grants. The budget provides an additional \$1 million for water and sewer infrastructure development projects in Tier I and II counties. The funds will be allocated as follows:

- \$500,000 for grants to local governments in development tier one and two areas for water and sewer infrastructure development projects. The grants must be used for projects that serve a public purpose related to the provision of water and sewer service to local government or educational facilities; and
- \$500,000 for loans and grants to a local government located in a development tier one area meeting each of the following criteria: (1) the application seeks funding for a project that is required to be completed due to an EPA administrative order; and (2) the application is deemed complete by the Division and meets the program's minimum requirements.

Film and Entertainment Grant Fund. The budget provides \$10 million to the Department of Commerce for a Film and Entertainment Grant Fund, which will be used to encourage the production of motion pictures, television shows, and commercials and to develop the film-making industry within the State. This Grant Fund is in place of the previous tax credit which was over \$60 million in the last fiscal year.

Bernard Allen Drinking Water Fund. The budget redirects interest earnings credited to the Bernard Allen Memorial Emergency Drinking Water Fund to the General Fund on a permanent basis.

Drinking Water State Revolving Fund. The budget transfers \$800,000 from the cash balance of the Drinking Water State Revolving Fund to the Division of Water Infrastructure, as the funds were not needed in FY 2013-14.

## **Justice and Public Safety**

Director of the State Bureau of Investigation. The budget provides for appointment of the director of the State Bureau of Investigation by the Governor for a term of 8 years subject to confirmation by the General Assembly by joint resolution. If the Governor fails to submit a name as required, the President Pro Tempore of the Senate and the Speaker of the House of Representatives will jointly submit a name of an appointee to the General Assembly, and the appointment will then be made by enactment of a bill.

Three-Judge Panel. The budget provides for a three-judge panel based in Wake County to rule on claims that an act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law. The budget also provides that appeal lies of right directly to the State Supreme Court from any order or judgment of a court, either final or interlocutory, that holds that an act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law.

## **Transportation**

Driver License Examiner Facilitators. The budget provides \$822,000 for 14 driver license examiners to reduce customer wait times at high volume Division of Motor Vehicles offices.

Remote Drivers License Renewal. The budget authorizes the Division of Motor Vehicles to offer remote drivers license renewal by mail, telephone, electronic device, or other approved secure

means of a drivers license to a license holder who meets specified requirements. These requirements include that the person's license is valid and unexpired and has no restrictions, other than corrective lenses.

Regulation of Unmanned Aircraft Systems. The budget provides for the regulation of unmanned aircraft systems (drones), and includes provisions regarding crimes committed using unmanned aircraft systems, interference with manned aircraft by unmanned aircraft systems, unlawful possession and use of unmanned aircraft systems, training required for operation of unmanned aircraft systems, and a license requirement for the commercial operation of unmanned aircraft systems.. We have reported on these provisions in previous summaries of House Bill 1099, Unmanned Aircraft Regulation.

### **Capital**

Water Resource Development Projects. The budget provides \$5.8 million for the State's share of Water Resource Development projects.

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