



## INTRODUCTION

This week the battle between legislative leaders and Gov. Cooper intensified as the pace of the session continued to slowly gain speed. As the ongoing conflict about the Senate's authority to confirm Cooper's Cabinet Secretaries works its way through the courts, a third confirmation hearing was held for Sec. Larry Hall (Veterans and Military Affairs), who once again did not attend (Yes the same Larry Hall that served in the NC House of Representatives and was the Minority Leader). The Nominations Committee voted to subpoena Sec. Hall as the Governor's team reiterated their position that he is not legally obligated to appear. A three-judge panel has denied a preliminary injunction to stop the hearings but found that "the Advice and Consent Amendment require the Governor to begin the process by first notifying the Senate of the nominee, and the Senate cannot begin the advice and consent process until the Governor submits a nominee." The Governor has not yet formally submitted his nominees and insists he will not do so until after the March 7 trial which will determine the constitutionality of the confirmation process.

On Thursday, Rep. Chuck McGrady and a bipartisan trio of sponsors filed House Bill 186 (see below), the long-rumored House Bill 2 repeal bill. While LGBT rights advocates, Gov. Cooper, and leading Democrats have pushed for a vote on full repeal of HB2, Rep. McGrady has insisted that "the votes aren't there" for such a vote and offered HB186 as the best possible solution, or at least a starting point for further negotiation. With the State facing continued boycotts and the possibility of losing the chance to host NCAA and ACC game anytime in the next 8 years, the pressure has been mounting for action. H186 was immediately condemned by advocates, particularly because that it includes a provision that allows for citywide votes on LGBT rights, but was praised as a good start toward resolution by a number of business organizations. Whether negotiations can produce a compromise that earns the requisite support is yet to be seen, and the issue is expected to consume much of the legislative attention over the next week or two.



## NORTH CAROLINA COLLEGE OF EMERGENCY PHYSICIANS



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As the battles above played out, the number of bills being filed continued to pick up, with bills dealing with abortion, guns, immigration, and environmental regulations among the dozens filed. Committee hearings and floor votes continue to be rare, though much of the normal committee hearing time was consumed this week by joint meetings of the House and Senate Appropriations Subcommittees. Joint meetings were held in 2011 and allowed for a much more streamlined budget-writing process, unlike efforts in subsequent years in which one chamber reacted to the other's proposal before (occasionally protracted) negotiations produced a final document. There is some hope that these joint meetings will help recreate the comity and efficiency of the 2011 session. Regardless of how smoothly the budget process may be, this week demonstrated that this session is likely to have more than its share of conflict and action on a number of issues.

## **BILLS OF INTEREST**

HOUSE BILL 136, Lower Compulsory Attendance Age From 7 to 6, would lower the age when a child is required to begin attending school from seven years to six years of age. **Introduced by Representatives Lambeth, Dobson, Hanes, and Horn and referred to the House Education K-12 Committee.**

HOUSE BILL 142, Increase Oversight of OLBs, as recommended by the Joint Legislative Administrative Procedure Oversight Committee, would increase oversight of occupational licensing boards. The bill would direct the Joint Legislative Administrative Procedure Oversight Committee to continue to monitor and study the effects of the opinion in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* and other issues related to the scope of practice jurisdiction of occupational licensing boards, and would include provisions to:

- require each occupational licensing board to provide the Joint Legislative Administrative Procedure Oversight Committee with the name and contact information of the individual responsible for filing required reports and to keep this information current and notify the Committee within 30 days of any changes in this information;
- require each occupational licensing board to adopt rules for the receipt and resolution of complaints, for taking disciplinary or enforcement actions against its licensees, and for taking enforcement actions against persons not licensed by the board.
- provide that any interpretation, clarification, or other delineation of the scope of practice of an occupational licensing board must be adopted as a rule;
- give authority to an occupational licensing board to investigate unlicensed activity and notify unlicensed persons and entities of the possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court. The notification could not indicate that the occupational licensing board has made any finding of a violation but could indicate the board's belief or opinion that a particular act may violate the board's enabling statutes, include factual information regarding legislation and court proceedings concerning the potential violation, and provide notice of the board's intention to pursue administrative remedies or court proceedings with regard to the potential violation;
- require an occupational licensing board providing notification to unlicensed persons and entities of a possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court to include the following statement in the notification:

"You are hereby notified that the opinion expressed herein is not a legal determination. An occupational licensing board does not have the authority to order you to discontinue your current practices. Only a court may determine that

you have violated or are violating any law and, if appropriate, impose a remedy or penalty for the violation. Further, pursuant to G.S. 150B-4, you may have the right, prior to initiation of any court action by the occupational licensing board, to request a declaratory ruling regarding whether your particular conduct is lawful. You are further notified that any right to a declaratory ruling supplements any other legal rights that you may already have to establish the legality of your conduct with respect to the goods or services you offer or provide";

- provide that the venue for occupational licensing boards seeking a court order for injunctive relief or to show cause for failure to comply with a subpoena lawfully issued by the occupational licensing board is in the superior court of the county where the defendant resides or in the county where the occupational licensing board has its principal place of business;
- allow an occupational licensing board to appear in its own name in superior court in actions for injunctive relief to restrain the violation of the provisions of a statute administered by the board or a rule or order of the board, and provide that the superior court has the jurisdiction to grant these injunctions, restraining orders, or take other appropriate action even if criminal prosecution has been or may be instituted as a result of the violations, or whether the person is a licensee of the board. No board could issue such orders independently of the superior court unless specifically authorized to do so by law;
- provide that it is the policy of the State that jurisdictional disputes among occupational licensing boards be resolved through informal procedures, and that, if a jurisdictional dispute among occupational licensing boards cannot be resolved through informal procedures, any affected board may commence an administrative proceeding to resolve the jurisdictional dispute by filing a petition with the Office of Administrative Hearings and serve the petition on all affected boards. Once the petition is filed and the required fee is paid, the dispute would become a contested case and conducted by the Office of Administrative Hearings; and
- require each occupational licensing board to develop and implement a complaint process that provides for all of the following:
  - a description of the complaint process on the board's website, including the types of violations that are under the jurisdictional authority of the board;
  - electronic complaint submission via the board's website, including a prominently displayed link to a complaint form; and
  - the ability to provide complainants with a written description of the final disposition of each complaint.

**Introduced by Representatives Stevens and Jordan and referred to the House Judiciary III Committee.**

HOUSE BILL 145, Repeal Const. Reg. of Concealed Weapons, would amend the State Constitution, if approved by a majority of voters in a statewide election to be conducted in November of 2018, to repeal the provision which allows the General Assembly to prohibit the practice of carrying concealed weapons. **Introduced by Representatives Speciale, Pittman, and Adams and referred to the House Rules Committee.**

HOUSE BILL 146, Citizen's Allegiance to U.S. Constitution, would amend the State Constitution, if approved by a majority of voters in a statewide election to be conducted in November of 2018, to clarify that a citizen's allegiance is to the United States Constitution (currently, it states the United States Constitution and the United States Government).

**Introduced by Representatives Speciale, Cleveland, Pittman, and Presnell and referred to the House Rules Committee.**

HOUSE BILL 147, Amend NC Constitution - Remove Secession, would amend the State Constitution, if approved by a majority of voters in a statewide election to be conducted in November of 2018, to repeal the portion of the North Carolina Constitution that prohibits secession. **Introduced by Representatives Speciale, Cleveland, and Pittman and referred to the House Rules Committee.**

HOUSE BILL 148, Amend NC Constitution - Literacy Requirement, would amend the State Constitution, if approved by a majority of voters in a statewide election to be conducted in November of 2018, to repeal Section 4 of Article VI of the North Carolina Constitution, which requires every person registering to vote to be able to read and write any section of the Constitution in the English language. **Introduced by Representatives Speciale, Pittman, Steinburg, and W. Richardson and referred to the House Rules Committee.**

HOUSE BILL 157, Certifying Question Mechanism, would allow a federal court, on the motion of a party to a pending cause or its own motion, to certify a question of law to the North Carolina Supreme Court if:

- the pending cause involves a question to be decided under North Carolina State law;
- the answer to the question may be determinative of an issue in the pending cause; and
- the question is one for which no answer is provided by either a controlling statute or appellate decision of the State courts.

The North Carolina Supreme Court could answer a question of law certified to it by a federal court if the answer may be determinative of an issue in a pending cause in the certifying court and if there is no controlling statute or appellate decision of this State. The certification order would contain: (1) the question of law to be answered; (2) the facts relevant to the question, showing fully the nature of the controversy out of which the question arose; and (3) the names and addresses of counsel of record and unrepresented parties. If the parties could not agree upon a statement of facts, then the certifying court would determine the relevant facts and state them as a part of its certification order. The federal court certifying a question would issue the certification order and forward it to the North Carolina Supreme Court. The North Carolina Supreme Court would notify the federal court of its acceptance or rejection of the question within 30 days. If accepted, the question would have to be resolved within 60 additional days. **Introduced by Representatives Faircloth, Stevens, Jordan, and Davis and referred to the House Judiciary III Committee.**

HOUSE BILL 161, Divestment from Companies that Boycott Israel, would require the State Treasurer, no more than 30 days after October 1, 2017, to adopt a policy prohibiting the North Carolina Retirement Systems or the Department of State Treasurer from directly investing in any company engaged in a boycott of Israel, and to report to the Joint Legislative Commission on Governmental Operations each year by March 1 on information regarding investments sold, redeemed, divested, or withdrawn in compliance with this provision. The bill also would prohibit State agencies from contracting with companies that boycott Israel. **Introduced by Representatives Ross, Szoka, Hardister, and W. Richardson and referred to the House Pensions and Retirement Committee.**

HOUSE BILL 162, Amend Administrative Procedure Laws, is identical to Senate Bill 16, summarized in the January 27, 2017, Legislative Report. **Introduced by Representatives Jordan, Stevens, Hardister, and Floyd and referred to the House Judiciary III Committee.**

HOUSE BILL 163, Enact Right to Life at Conception Act, would declare that, in order to implement equal protection for the right to life of each born and preborn human person, and pursuant to the duty and authority of the General Assembly under the Constitution, the right to life is vested in each human being. The bill would define a human person or human being as including each member of the species homo sapiens at all stages of life, including the moment of fertilization or cloning, or any other moment at which an individual member of the human species comes into being. The bill would further provide that the provision may not be construed to do any of the following: (1) require the prosecution of any woman for the death of her unborn child; (2) prohibit in vitro fertilization; or (3) prohibit the use of birth control or another means of preventing human fertilization. **Introduced by Representative Boswell and referred to the House Health Committee.**

HOUSE BILL 164, Check-off Donation: Cancer Screening, would allow an individual entitled to a refund of income taxes to elect to contribute all or part of the refund to be used for early detection of breast and cervical cancer at the Cancer Prevention and Control Branch of the Division of Public Health of the Department of Health and Human Services. **Introduced by Representatives Dollar, Howard, Stevens, and S. Martin and referred to the House Finance Committee.**

HOUSE BILL 165, Citizens Review Boards Established, would authorize the use of citizen review boards to investigate or review allegations of certain police misconduct. The bill also would require that training be provided to members of neighborhood crime watch programs established by counties and cities that:

- emphasizes that the role of a neighborhood crime watch program is to observe and watch the community and report suspicious activities to law enforcement officials;
- develops effective methods for maintaining a visible presence in the community without engaging persons suspected of committing criminal activities;
- emphasizes that members of the neighborhood crime watch program are to adhere to the instructions given to them by law enforcement officials; and
- educates members of the neighborhood crime watch program about discriminatory profiling, and develops effective methods for ensuring that members of the neighborhood crime watch program perform their duties without engaging in discriminatory profiling.

**Introduced by Representatives R. Moore and Quick and referred to the House State and Local Government I Committee.**

HOUSE BILL 174, Concealed Carry/Church School Prop., would allow a person who has a concealed handgun permit to carry a handgun on educational property that is the location of both a school and a place of religious worship outside the operating hours of the school. **Introduced by Representative R. Turner and referred to the House Judiciary I Committee.**

HOUSE BILL 177, Eliminate Second Primaries, would remove current provisions in the law that allow for second primaries and enact new provisions that specify the procedures for instances where candidates receive the same number of votes. The bill would provide that: (1) when more than one person is seeking election to a single office and two or more candidates receiving the highest numbers of votes each receive the same number of votes, the board of elections will determine the nominee by lot; (2) when there are more persons seeking nomination to two or more offices (constituting a group) than there are offices to be filled, and two or more candidates receiving the lowest numbers of votes necessary for nomination each receive the same number of votes, the board of elections will, from among those candidates receiving the same number of votes, determine the nominee by lot; and (3) these provisions prevail over any local act. The bill

would require cities using the election and runoff method to determine results by the nonpartisan plurality election method. **Introduced by Representatives Floyd, Jordan, Michaux, and C. Graham and referred to the House Elections and Ethics Law Committee.**

HOUSE BILL 181, First Responders Act of 2017, would provide that anyone who has knowledge of an individual who has a mental illness and is either dangerous to self or dangerous to others or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. If the affiant has knowledge or reasonably believes that the respondent, in addition to having a mental illness has an intellectual disability, this fact shall be stated in the affidavit. If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent probably has a mental illness and is either dangerous to self or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, the clerk or magistrate shall issue an order to take the respondent into custody for examination by a physician or eligible psychologist. The order shall be issued to a law enforcement officer, a company police officer, a security officer, or any person authorized by statute. Notwithstanding the provisions of this section, in no event shall an individual known or reasonably believed to have an intellectual disability be admitted to a State psychiatric hospital except under special circumstances.

Part IV of the bill requires the Department of Transportation (DOT) to study the needs of law enforcement, emergency medical and emergency management personnel, and firefighters to improve access to or within the interstate system within this State for the benefit of public safety. The bill allows consultation with the Division of Emergency Management of the Department of Public Safety, the Office of State Fire Marshal of the Department of Insurance, the Office of Emergency Medical Services of the Department of Health and Human Services, and any other State or local government organizations the DOT determines may be of assistance in the course of the study and specifies steps DOT must take in performing the study.

Part VI of the bill Amends GS 207(a)(3), which provides that a Class C license authorizes the holder to drive a Class A or B fire fighting, rescue, or EMS motor vehicle or a combination thereof when the operator is a volunteer member of a fire department, rescue squad, or emergency medical service in the performance of duty. The bill also amends the law to waive a commercial driver's license for any vehicle when used as firefighting or emergency equipment for official business of a fire department, rescue squad, or emergency medical service that requires use of the vehicle.

Part VII enacts new law to make it a Class H felony to assault another person because the person is emergency personnel and inflict serious bodily injury on the first responder. The bill makes it a Class F felony to assault another person with a firearm because the person is emergency personnel and makes it a Class E felony to, with the intent of harming a person who is emergency personnel, lure the person to a location by falsely reporting or having another falsely report that emergency services are needed and then assaults that person because the person is emergency personnel. This section applies to offenses committed on or after December 1, 2017. **Introduced by Representatives Warren, Clampitt, Ford, and Potts and referred to the House Finance Committee.**

HOUSE BILL 182, Leadership Term Limits, would amend the State Constitution, if approved by a majority of voters at the general election on November 6, 2018, to limit the Speaker of the House of Representatives and the President Pro Tempore of the Senate to only serve for four consecutive two-year terms in those offices. **Introduced by Representatives Warren, Hardister, and Blust and referred to the House Judiciary I Committee.**

HOUSE BILL 185, Legalize Medical Marijuana, would provide that a qualified patient is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the possession or purchase of cannabis for medical use by the qualified patient if the quantity of usable cannabis possessed or purchased does not exceed an adequate supply, as determined by the qualified patient's physician. A physician could not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, or subject to disciplinary action by a business or occupational or professional licensing board or bureau for discussing with a patient the benefits or health risks of the medical use of cannabis or the interaction of cannabis with other substances. The bill includes various provisions regarding protections, prohibitions, restrictions, and limitations on medical use of cannabis; registry identification cards for qualified patients and designated caregivers; and a regulated medical cannabis supply system. The bill also would direct The University of North Carolina to create a North Carolina Cannabis Research Program to develop and conduct studies designed to ascertain the general safety and efficacy of using cannabis for medical treatment. **Introduced by Representatives Alexander, Carney, Harrison, and R. Moore and has not yet been assigned to a House committee.**

HOUSE BILL 186, Repeal HB2/State Nondiscrimination Policies, is the bi-partisan attempt to resolve the impasse regarding repealing House Bill 2 as mentioned above in the introduction. The legislation would:

- repeal House Bill 2;
- prohibit cities from passing legislation related to access to multiple occupancy bathrooms, showers, and changing facilities and specify that only the General Assembly can regulate access;
- expand the Equal Employment and Equal Access to Public Accommodations Act to protect people from discrimination based on race, sex, national origin, citizenship, religion, age, veteran status, genetic information, pregnancy, handicap, or disability;
- authorize the Human Relations Commission in the Department of Administration the authority to receive, investigate, and conciliate complaints of discrimination;
- expand on the specified discriminatory housing practices and the State Fair Housing Act to also prohibit discrimination based on citizenship, disability, genetic information, pregnancy, or veteran status;
- allow a city to enact an ordinance that expands within the city's territorial jurisdiction the protected classes established under by a majority vote of the governing board unless a petition to override the ordinance is presented to the governing board. If presented with a valid override petition, the county board of elections would be required to conduct a referendum on whether the ordinance should become effective;
- enhance the sentencing of a defendant who committed any of the specified felonies in a public changing facility or a changing facility in a place of public accommodation; and
- establish penalties for any person who secretly peeps into any room occupied by another person where the room is a public changing facility or a changing facility in a place of public accommodations.

**Introduced by Representatives McGrady, Lucas, Goodman and Davis and has not yet been assigned to a House committee.**

HOUSE BILL 187, Modernize Physical Therapy Practice, would change the definition of physical therapy to include manipulation of the spine without a prescription from a physician. **Introduced by Representatives Dollar, Torbett, S. Martin, and Dobson and has not yet been assigned to a House committee.**

HOUSE BILL 189, Search and Rescue Name/Funds, would amend the title of the Article to State Search and Rescue (was, Urban Search and Rescue). The bill also adds the term search and rescue team and defines it to mean a specialized team or group of teams, organized with capabilities equivalent to search and rescue teams established under the Federal Emergency Management Agency (FEMA) in order to assist in the removal of trapped victims during emergencies, including but not limited to collapsed structures, trench excavations, elevated locations, and other technical rescue situations. The bill also appropriates almost \$2.4 million in recurring funds for the 2017-18 fiscal year to be used to support the State Search and Rescue Program, and directs that the funds are to be used in partnership with units of local government to supplement local expenses to purchase equipment, maintain equipment, and provide other items necessary to ensure statewide search and rescue services. The bill also provides that any match requirement established by the Secretary of the Department of Public Safety can be satisfied by the sponsoring local agency with cash payments or in-kind contributions. **Introduced by Representatives Davis, Hardister, Clampitt, and Grange and has not yet been assigned to a House committee.**

HOUSE BILL 192, Establish Music Therapy Practice Act, would establish the NC Music Therapy Practice Act to regulate music therapy services offered to the public. The bill would define music therapy as the clinical and evidence-based use of music interventions to accomplish individualized goals within a therapeutic relationship by a credentialed professional. **Introduced by Representatives Warren, Blackwell, Corbin, and Williams and has not yet been assigned to a House committee.**

HOUSE BILL 193, Legislative Four-Year Terms, would amend the State Constitution, if approved by a majority of voters at the general election on November 6, 2018, to make the term of members of the General Assembly four years, with no more than three terms in a chamber, beginning with members elected in 2020. **Introduced by Representatives Warren, Hardister, and Yarborough and has not yet been assigned to a House committee.**

HOUSE BILL 196, Zip Lines/Challenge Courses/Sanders' Law, would enact the Zip Line and Challenge Course Safety Act of North Carolina and authorize the Commissioner of Labor, through the Chief of the Elevator and Amusement Device Bureau, to adopt, modify, or revoke rules as necessary to regulate zip lines and challenge courses. The rules could govern the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration, and relocation of these devices. The bill would require the design, manufacture, installation, operation, and maintenance of zip lines and challenge courses to conform to one of the specified standards, and includes provisions regarding civil and criminal penalties for violations. **Introduced by Representatives Davis and Howard and has not yet been assigned to a House committee.**



HOUSE BILL 197, Study/Distracted Driving & Road Rage, would direct the Division of Motor Vehicles, in consultation with the Department of Public Safety, to study issues related to distracted driving and road rage. The studies would examine:

- causes of distracted driving and road rage;
- how to define and types of behavior that constitute road rage;
- the average number of injuries and fatalities attributable to distracted driving and road rage over the past two calendar years;
- whether increased penalties should be imposed for acts of distracted driving and road rage;
- measures that can be taken to prevent incidents of distracted driving and road rage; and
- any other topic or issue the DMV determines to be relevant to the studies.

The DMV would report its findings from the studies, including any legislative recommendations, to the chairs of the Joint Legislative Transportation Oversight Committee and the Joint Legislative Oversight Committee on Justice and Public Safety by February 1, 2018. **Introduced by Representative Pierce and has not yet been assigned to a House committee.**

SENATE BILL 131, Regulatory Reform Act of 2016, would amend various environmental, natural resources, and other regulatory laws to, among other provisions, allow a public agency to satisfy the requirement to provide access to public records and computer databases by making those public records or computer databases available online in a format that allows a person to download the public record or computer database to obtain a copy. A public agency that provides access to public records or computer databases under this section would not be required to provide copies through any other method or medium. If a public agency, as a service to the requester, voluntarily elects to provide copies by another method or medium, the public agency could charge a reasonable fee. A public agency that makes those public records or computer databases available online in a format that allows a person to obtain a copy by download would also allow for inspection of any public records also held in a non-digital medium. **Introduced by Senators Wells, Cook, and Sanderson and has not yet been assigned to a Senate committee.**

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