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Focusing on Legislative Representation

## LEGISLATIVE REPORT May 13, 2014

### Short Session Begins

On Wednesday, May 14<sup>th</sup>, the North Carolina General Assembly will convene the 2014 “short” legislative session, a continuation of the two-year session that began in January 2013. Eligible for consideration during the coming months will be legislation which was still under consideration (the bill must have been approved by at least one chamber) when the “long” session adjourned last summer; new legislation recommended to the General Assembly by the many study and oversight committees that met during the interim (see below); and an update to the State budget that was passed last July.

As usual, the budget update will be the dominant issue of the short session. Since last summer a number of factors have combined to create a particularly difficult challenge to the House and Senate budget writers. Among these are the recently announced revenue shortfall of \$445 million, a projected Medicaid shortfall of \$120-\$180 million or more, and a health care provider payment backlog resulting from the troubled implementation of the State’s new electronic billing system, NCTRACKS. In addition, both Governor McCrory and legislative leaders have publicly announced their intention to push for raises and/or bonuses for State employees and teachers in this budget, with the obvious question of how to pay for them so far unanswered.

Gov. McCrory’s budget recommendations are expected on Wednesday, and legislative budget writers and staff are understood to have been working to ready their chamber’s proposals in recent months. Despite this, the public battle for funds and against the cuts necessary to pay for all that has been promised is set to begin, and is expected to be uncommonly fierce even by the standards of the bruising battles of years past.



### NORTH CAROLINA COLLEGE OF EMERGENCY PHYSICIANS



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## Primary Election

Last Tuesday, May 6<sup>th</sup>, the State held the primary election for most local, state and national offices. As expected, House Speaker Thom Tillis won the Republican Party's nomination for U.S. Senate. Less certain in the weeks leading up to the election was whether his margin of victory would reach 40%, which would allow him to avoid a July 15<sup>th</sup> runoff election with his closest competitor. In the end, the Speaker received over 45% of the primary vote, avoiding a runoff and setting the stage for a November showdown with Democratic Sen. Kay Hagan. Despite the unpredicted amount of money spent on the race (mostly by outside groups) and the exhaustive pace of the campaign, there was no reprieve as general election ads attacking the Speaker began running the day after the primary.

The Hagan/Tillis race is seen as pivotal as the major parties battle for control of the U.S. Senate, and both sides are investing heavily in what is expected to be one of the most competitive and expensive elections in the country this year. The battle lines have been clearly drawn, with Republicans attempting to tie Sen. Hagan to Congress, the President and Obamacare, all of which receive very low marks from the state's voters. Meanwhile, Democrats will attempt to tie Speaker Tillis to the legislature, which currently has an approval rating of 28%, and the controversial legislation passed last session regarding tax cuts, abortion clinics, and hydraulic fracturing, among others.

Aside from Speaker Tillis' highly publicized win, the election had other, less visible impacts on the state legislature. While significant attention is given to the contests between the two major parties set for November, much of what the General Assembly membership will look like next session was determined in the primary. Given the abundance of "safe" seats created by the 2011 redistricting process, the vast majority of contests were effectively decided by the time the ballots were counted last week. Despite the legislature as a whole being very unpopular with voters, most seem to approve of their individual representatives, as almost all incumbents who had primary challenges won their contests, and most did so easily. There were exceptions, as Rep. Robert Brawley (R), Rep. Annie Mobley (D), Sen. Clark Jenkins (D) and appointed Rep. Roger Younts (R) all came up short in their races and will not return for the 2015-16 session – though they will serve out their terms during this short session, potentially setting them up as spoilers in their respective caucuses.

While many incumbents will face elections in November, the vast majority of these will take place in "safe" districts where an upset of the party in power would be surprising, leaving those incumbents and those without general election opponents free to raise money for other uses. Some will support other candidates, others will give to the caucuses to raise their stature among their peers – and perhaps be elevated to a leadership position or important committee chairmanship – and still others will build war chests to ward off future challenges. Of course, the savviest and most prolific fundraisers among each caucus will do all three.

The number of truly competitive races set for the fall being fairly minimal, and given the significant financial advantage held by the Republicans, most observers expect their majorities in each chamber to remain effectively unchanged, which would likely continue the current dynamic between Gov. McCrory, Senate President Pro Tem Phil Berger, and the new House Speaker into the next session. Who will replace Tillis as the chamber's leader is a constant question among insiders, with most potential candidates insisting they are solely focused on the policy issues before the legislature while clearly maneuvering behind and, in some cases, in front of the scenes. Regardless of who is eventually elevated, Sen. Berger is expected to retain, at least for a

time, his current position as being almost universally considered the most powerful politician in North Carolina. Having passed on the chance to challenge the Speaker in the U.S. Senate primary, the Pro Tem has set himself up to continue leading the “conservative revolution” he and Tillis began in 2010, for at least the next several years.

### **Interim Committees and Eligible Bills**

In the roughly 10 months since the end of the 2013 session, dozens of “interim” oversight and study committees have been meeting regularly to consider an extremely broad assortment of issues, from teacher compensation and Medicaid Reform to energy exploration and the state’s Certificate of Need law. Many of these committees passed final reports containing findings and recommendations, in the form of draft legislation that will be eligible for introduction in the short session. To be clear, these draft bills may be considered by the General Assembly, but are not required to be, and those that are introduced will start the process as new legislation. These new bills will have to move through committees in both chambers, be passed by a majority of the House and Senate and, if necessary, have compromise versions crafted by joint conference committees. As such, changes to the language, scope, and effective dates of these bills are as likely as for any other legislative proposals which means those that make it through the full process are likely to be altered, either subtly or substantively, before they reach the Governor’s desk.

One of the most visible issues studied during the interim was reform to the state’s Medicaid system. Gov. McCrory and Health and Human Services Sec. Aldona Wos announced last year their preference for a Medicaid reform package that moves the state to a delivery system coordinated by a series of Managed Care Organizations (MCOs). This idea was met with sufficient resistance by the provider community, advocates for recipients, and the appointed Medicaid Reform Advisory Group. A change in direction resulted in a recommendation to transition to a reform model based on service coordination and delivery on a series of provider-led Accountable Care Organizations (ACOs). This proposal was presented to the General Assembly last month, yet in the weeks since several high ranking members of both chambers have expressed skepticism about its potential cost savings and the likelihood that substantive action will be taken on the issue during the short session. Certainly Medicaid, the annual overrun in spending on the program, and potential reform ideas will continue to factor heavily into budget and policy discussions, but most observers do not expect a full reform package to be attempted or passed this year.

Another of the major issues tackled during the short session was that of the Common Core curriculum standard in public schools, which the state has adopted but which has become a lightning rod for many activists and politicians, including Lt. Gov. Dan Forest. An interim committee studied the issue at length and recommended opting out of the Common Core in favor of a standard created by a proposed committee of education experts. Gov. McCrory has publicly stated his support Common Core, and the state Chamber of Commerce, a group traditionally aligned with the Republican majorities, is advocating for keeping the standard. These divisions set the debate over Common Core as a potential fault line among the factions within the Republican Party, and it seems a real possibility that the conflict, which many would like to keep behind closed doors, is set to spill into the public square.

The issue of energy exploration, particularly the move to authorize the use of hydraulic fracturing (“fracking”) in natural gas development, has been a hot topic in recent years and shows no sign of abatement. Outside groups opposed to the technology have already begun

running ads against legislators who voted to approve its use, and supporters continue to push to relax the regulations passed by the legislature in 2011, even before the final authorization to begin exploration has been given. Specifically, the interim Energy Policy Committee passed a set of recommendations, including that the current requirement for baseline water quality testing to be conducted within 5000 ft. of each well be reduced to 2500 ft., which advocates say is more in line with industry standards. The relative merit of that argument aside, the recommendations reignited the debate of those concerned about potential contamination caused by fracking and those who tout the economic benefits it may provide. Expect this issue to be another source of conflict this session, between and among both parties.

Continued changes to the tax code and to regulations on businesses are expected this session, though the scope of what is possible to get through the process is unclear. We've previously reported the proposed changes to the business tax structure contained in the "Fair and Flat Local Business Tax" draft legislation. While some have used the loss of local tax revenue that would result from that proposal as a pretext to push for more reform of the tax code, specifically a broadening of the sales tax base, major reform on the scale of that passed last year is not expected in 2014.

Proposals dealing with a multitude of other issues may be considered, and we will update you as relevant bills are introduced and move through the process. Issues as diverse as changes to the rules regarding nonprofits' use of state funds, greater practice autonomy for Advanced-Practice Nurses, limitations on the use of drones in law enforcement and agriculture, controlled substance reporting requirements, and cost transparency in health care may be considered, adding an additional layer of complexity to what will already be an intense and dynamic session.

### **When Will Session End?**

Many observers have predicted the session to be quite short, even for a "short" session, as legislators cannot raise funds for their campaigns or their caucuses until adjournment and are typically motivated to wrap up General Assembly business and get back to the campaign. The conventional wisdom suggests that this year Speaker Tillis will push for an early end to the work so he can get back on the campaign trail, while Sen. Berger will try to exploit this desire to extract concessions in policy and budget priorities from the Speaker. While this makes for good fodder for the capital press and outside prognosticators, it's not likely to be so simple. First, Speaker Tillis won his party's nomination outright, taking the pressure of a mid-July runoff election out of the equation. In the race for the Republican nomination to replace retiring Congressman Howard Coble in the 6<sup>th</sup> District, however, Sen. Berger's son Phil Berger Jr. does face what is likely to be a competitive runoff, which may encourage the Pro Tem to wrap up legislative business early so he can assist his son's campaign. Finally, Speaker Tillis knows Sen. Hagan and the Democrats will use any and all controversial legislation passed by the General Assembly against him, and will likely be unwilling to provide any fresh fodder for those efforts, even if blocking such legislation favored by the Senate or members of his caucus forces a delay in the eventual completion of session. Therefore, the answer to the most common question in the halls of Jones St. – how long will session last – is certain to be the same this year as it is every year, until the days before adjournment "sine die" ("without day" – the true end of the two-year session): no one knows for sure.

Regardless of how short or long the short session eventually becomes, we will be there until the final gavel falls, and as always will keep you informed as things develop, issues are decided, and the inevitable surprises develop. It is our privilege to represent you and your members, and we look forward to working with you in the hectic, exciting, and very full months ahead.

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