



INTRODUCTION

There has been a lot of activity this week at the General Assembly as the “short” session rolls on with increasing speed. Some highlights:

HB2 Impasse

On Monday, the Charlotte City Council was expected to take up a discussion of the impact of HB2 on the city’s economy, and possibly vote on a resolution that would have rescinded all or part of the nondiscrimination ordinance that HB2 was ostensibly passed to preempt. Those Council members in favor of such a move, which was backed by the Charlotte Chamber of Commerce, publicly expressed hope that their action may serve to encourage the General Assembly to repeal or alter HB2 (though neither Speaker Moore or Senate Leader Berger had agreed to what some described as a “deal” to do so). LGBT rights groups rejected the suggestion that Charlotte must act before the will to address HB2 could be summoned in Raleigh, and urged the City Council and Mayor Roberts to stand firm. In the end, the HB2 discussion was removed from the City Council’s agenda, and the current impasse has continued. A high-profile group including conservative businessman Art Pope, former Democratic Lt. Governor Dennis Wicker, and former Republican Governor Jim Martin has formed to find a common-ground solution, though anti-HB2 groups continue to insist only a full repeal will suffice and legislative leaders have said some of the most contentious provisions are non-negotiable. Many are concerned about the short term and long term affects of cancellations and boycotts on businesses around the state and the State's image. Whether the group can help bridge the divide, and do so before the end of this legislative session, remains to be seen.

Coal Ash

On Wednesday, the House passed legislation to reconstitute the Coal Ash Management Commission, which was the source of a lawsuit (*McCrory v. Berger*) in which the State Supreme Court ruled for the Governor, finding that the legislature had unconstitutionally assigned



NORTH CAROLINA COLLEGE OF EMERGENCY PHYSICIANS



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itself disproportionate control of the Commission. The new bill seeks to address that ruling by giving Gov. McCrory the majority of appointments, yet the Governor called this new bill unconstitutional as well and vowed to veto it. In a statement, he said, "It's disappointing to see legislation of this magnitude drafted behind closed doors. This bill is a blatant attempt to bypass state regulators and seek more favorable treatment from an unaccountable and unneeded bureaucracy that further delays the cleanup process." Duke Energy supports the bill and is joined by the State Chamber of Commerce, which has warned that the Department of Environmental Quality's recommendations that Duke be made to excavate all 33 coal ash ponds would result in "irrational costs." Built into the legislation is a backup plan: if the bill becomes law through a veto override and the Governor refuses to appoint members, the oversight of coal ash cleanup would transfer to the Environmental Management Commission, an independent body, though the Governor is expected to file suit to prevent that from happening. With an 86-25 margin in the House and a similar margin expected in the Senate, the issue of *McCrory v. Berger* is almost certainly headed back to court.

Big Bills Moving

This week, the 2016 Farm Act, Regulatory Reform Act, and several other major pieces of legislation with multiple sections and provisions, moved through Senate Committees, while the House Education Committee passed a controversial plan to allow private charter school companies to take over some low-performing public schools. More action is expected next week, including the Medicaid Reform Waiver and the Senate budget as the pace of action on Jones Street continues to lend credence to an early adjournment.

Teacher Pay

Senate President Pro Tem Phil Berger held a press conference on Wednesday to announce a teacher pay plan that would bring the average annual teacher salary to about \$54,000 in two years, and which would cost the State \$538 million. Berger did not release any details about how the Senate planned to adjust the state budget to cover the cost, saying that information would be released along with his chamber's spending plan next week. The plan would provide a substantially bigger salary increase than the one passed by the House last week, which echoed the 2014 budget process. That year the Senate proposed an 11% raise, to be paid for by eliminating Teacher Assistant positions among other cuts. The compromise budget eventually passed included a roughly 7% raise, but took a number of weeks to come together as the chambers engaged in a very public battle over the final figure. Senate leaders have said they do not intend to include any cuts to TA positions in this year's budget, however the cuts they will have to make in other areas may create similar resistance among their House counterparts.

Senate Budget

With the announcement of an ambitious teacher pay plan and passage of a bill that calls for a \$2,000 increase in the standard deduction over two years (as opposed to 4 in the House plan), the Senate has created significant anticipation for the release of their budget plan. As we've reported the chambers agreed to a \$22.22 billion spending limit, meaning the proposals outlined by the Senate will have to be paid for with cuts to other areas of the House budget. What will be cut, and by how much, is the question on everyone's mind, and Senate budget writers are keeping their cards very close to the vest. While some gamesmanship is expected to set the table for negotiations with the House, the release of the Senate spending plan is expected to dominate

political discussions next week. The full plan will be in committee on Tuesday with floor votes expected Wednesday and Thursday, at which point the most significant work on the budget will begin – between the chambers, behind closed doors and, we hope, ahead of schedule.

BILL UPDATES

HOUSE BILL 169, Regulatory Reduction Act of 2016. The provisions of this bill were removed in the Senate Commerce Committee and replaced with a new bill that would enact a variety of administration reforms, business regulations, State and local government regulations, and agriculture, energy, environmental, and natural resources regulations. These would include provisions to:

- prohibit an agency from adopting a permanent rule or set of rules with a projected aggregate financial cost to all persons affected equal to or greater than \$100 million during any five-year period. The agency's determination of the projected aggregate financial cost of a permanent rule or set of rules would include any financial benefits of the permanent rule or set of rules;
- require that if an agency determines that a proposed permanent rule or set of rules will have a projected aggregate financial cost to all persons affected equal to or greater than \$10 million during any five-year period, the adoption of the permanent rule or set of rules must comply with the following:
 - if the agency is a board, a commission, a council, or other similar unit of government, a certification that the adoption of the rule or set of rules must be approved by at least 60% of those voting on the rule or set of rules;
 - for an agency headed by a member of the Council of State, the adoption of the rule or set of rules must be accompanied by a certification signed by the member of the Council of State indicating the member's review and support of the rule or set of rules; and
 - for all other agencies, the adoption of the rule or set of rules must be accompanied by a certification signed by the Governor indicating the Governor's review and support of the rule or set of rules;
- provide that a permanent rule or set of rules subject to the limitation above is subject to the provision in law that a rule or set of rules received written objections from 10 or more persons and a bill specifically disapproving the rule or set of rules was introduced in a house of the General Assembly before the thirty-first legislative day;
- allow an agency to incorporate by reference in a rule without repeating the text of the referenced material all or part of a code, standard, or regulation adopted by the federal government if the agency establishes a procedure by which any change by the federal government is reviewed and approved by the agency within 30 days of the change;
- prohibit an agency authorized to implement and enforce State and federal environmental laws from adopting a *permanent* rule for the protection of the environment or natural resources that imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule, if a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of the rule is required. *A permanent rule required by a serious and unforeseen threat to the public health, safety, or welfare would be subject to the limitation and legislative review provisions;* and
- direct the Medical Care Commission to adopt the recommendations of the American Society of Healthcare Engineers Facility Guidelines Institute "Guidelines for Design and Construction of Hospitals and Outpatient Facilities." Before the effective date of the

repeal of the Hospital Facilities Rules, the Medical Care Commission would adopt temporary rules to replace the Hospital Facilities Rules and incorporate by reference all applicable rules, standards, and requirements of the most current edition of the Guidelines. If temporary rules are not adopted before the repeal of the Hospital Facilities Rules, the Commission would use the 2014 Edition of the Guidelines until such time as temporary rules are adopted. The Commission would also adopt permanent rules pursuant to this section. Until such time as the Hospital Facilities Rules are repealed, the Hospital Facilities Rules would be exempt from the periodic review process (the North Carolina Hospital Association is supportive of this provision).

The bill as amended was approved by the Senate Commerce Committee and will next be considered by the full Senate.

HOUSE BILL 959, DOT Proposed Legislative Changes, was amended in the House Transportation Committee to:

- require bicycles to be equipped with both of the following when operated at night on any public street, public vehicular area, or public greenway:
 - a lighted lamp on the front thereof, visible under normal atmospheric conditions from a distance of at least 300 feet in front of such bicycle; and
 - a lamp on the rear, exhibiting a red light visible under like conditions from a distance of at least 300 feet to the rear of such bicycle, or the operator must wear clothing or a vest that is bright and visible from a distance of at least 300 feet to the rear of the bicycle;
- require the Department of Transportation to develop and implement a program by October 1, 2016, to provide education to bicyclists, motorists, and other users of the highways of this State on the following and report no later than December 1, 2016, to the Joint Legislative Transportation Oversight Committee on its development:
 - best practices that should be followed by bicyclists for safe riding, both riding individually and in a group;
 - best practices that should be followed by motorists that encounter bicyclists on the road, including how motorists can safely pass bicyclists on the road; and
 - the dangers of riding a bicycle while distracted, with a focus on the dangers of using a cell phone or wearing headphones while riding a bicycle; and
- provide that the prohibition on a driver overtaking and passing another vehicle in a no passing zone does not apply when the overtaking and passing is done in accordance with all of the following:
 - the slower moving vehicle to be passed is a bicycle or a moped;
 - the slower moving vehicle is proceeding in the same direction as the faster moving vehicle;
 - the driver of the faster moving vehicle either (1) provides a minimum of four feet between the faster moving vehicle and the slower moving vehicle or (2) completely enters the left lane of the highway;
 - the operator of the slower moving vehicle is not (1) making a left turn or (2) signaling that he or she intends to make a left turn; and
 - the driver of the faster moving vehicle complies with all other applicable requirements.

The bill as amended was approved by the House Transportation Committee and will next be heard by the full House.

SENATE BILL 838, Medicaid Transformation Modifications, was amended in the House Health Committee to:

- provide that the capitated contracts will not cover:
 - services provided directly by a Children's Developmental Services Agency (CDSA) or by a provider under contract with a CDSA if the service is authorized through the CDSA and is included on the child's Individualized Family Service Plan; or
 - services for Medicaid program applicants during the period of time prior to eligibility determination;
- amend the categories that do not have to be covered by capitated PHP contracts to also exclude recipients who participate in the North Carolina Health Insurance Premium Payment (NC HIPP) program;
- authorize DHHS to seek approval from CMS through the required 1115 waiver to allow parents to retain Medicaid eligibility while their child is being served temporarily by the foster care program, and state the intent of the General Assembly to expand Medicaid eligibility to cover this population upon implementation of the 1115 waiver, if CMS approves this coverage in the waiver; and
- clarify that the Secretary of the Department of Health and Human Services must administer and operate the Medicaid and NC Health Choice programs, provided that the total expenditures, net of agency receipts, do not exceed the authorized budget for *the Medicaid program and NC Health Choice program*.

The bill as amended was approved by the House Health Committee and the full House. The bill has been sent back to the Senate to agree to the changes made by the House.

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