



Session Adjourns Early as Chambers Clash

At 11:58 p.m. on Friday July 1st, the House and Senate joined in a ceremonial “dropping of the hankie” as the 2015-2016 session of the North Carolina General Assembly adjourned “sine die.” This was the earliest adjournment in many years, and (just) met the goal of leaders in both chambers to be finished with the people’s business before the July 4 holiday weekend began. The months ahead will be a whirlwind of political activity as hard-fought campaigns for every major political office truly heat up, and legislative candidates in competitive districts work to have their message heard in a very crowded electoral field. Despite this bi-cameral urge to adjourn as quickly as possible, the final week of session, and in particular the final day, was marked by a breakdown between the chambers that left a number of priorities stranded.

On Friday morning, the House Finance Committee met to consider a bill that would allow the City of Jacksonville to use a portion of the occupancy tax to fund the construction of a sports complex. Normally occupancy taxes are required to be used “to promote travel and tourism,” however Sen. Harry Brown argued that there is little to promote in Jacksonville, which makes the complex a sound investment for the city. On the surface, this was a simple measure and, having been introduced by the Senior Appropriation Chair of the Senate, was expected to pass. The Committee members chafed at the process as much as the policy, as Sen. Brown made clear if his measure did not pass, House-sponsored occupancy tax bills would likely not be moved by the Senate. Rep. Julia Howard, a veteran member and former Finance Chair, spoke forcefully against moving the bill when similar measures had been rejected, saying the bill was only being considered because Sen. Brown is someone “with the power to intimidate you” but that “the boys have gone into a corner office and done a deal” so the bill would likely pass. The kind of horse-trading and power-brokering Rep. Howard spoke of is a significant part of how legislation moves in Raleigh, especially at the end of session, but it is rarely discussed in this way - in public, by a member of the majority, with cameras rolling. The bill was voted down by a vote of 9-18, and as Sen. Brown left the committee room, the prospects for several other pieces of legislation – unrelated, but definitely connected – dimmed significantly. By the end



NORTH CAROLINA COLLEGE OF EMERGENCY PHYSICIANS



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of the night, another Senate bill sponsored by a powerful committee Chair – Rules Chair Sen. Apodaca’s plan to change Asheville City Council districts – was shot down by the House after passionate, bipartisan pushback against what many saw as an abuse of power meddling in local affairs. The defeat of that bill seemed to be the final straw for the Senate. Shortly after that defeat, the chamber passed its adjournment resolution, stranding several high-profile pieces of legislation – including a regulatory reform package, an anti-immigration measure and a trio of Constitutional amendments that would have appeared on the November ballot.

While these measures were casualties of the breakdown several significant measures were taken up in the last days of session. A compromise was reached between Governor McCrory and the General Assembly after McCrory vetoed the original Coal Ash legislation that passed last month, though several Republicans joined Democrats in opposing the measure they saw as too lenient on Duke Energy. The new bill requires Duke to cap coal ash ponds rather than excavating and moving them to lined storage. The bill additionally removes an independent oversight committee that Gov. McCrory claimed was unconstitutional for infringing on his executive authority. Environmental groups criticized the bill for not requiring Duke Energy to excavate and safely store the basins at the coal ash ponds. Another measure that passed in the final week is a controversial plan to hand over management of five low-performance public schools to charter school operators, while another would place restrictions on access to footage captured by police body-cams.

H2 “Fix” Abandoned, Only Minor Changes Made

After a proposed “fix” that would respond to House Bill 2 was leaked to the press, many expected to see republicans propose a Bill to repeal parts of the controversial legislation that passed earlier this year. The NBA and the Charlotte Hornets both criticized the leaked “fix” for not going far enough to restore the rights of the LGBTQ community in North Carolina and called for full repeal HB2. A solution never made it to the floor however and instead a section was passed near midnight, which restores the right of individuals to sue over workplace discrimination. That right had been repealed by HB2 but shortened the statute of limitations on these claims from three years to one year. There are currently no plans to hold a special session to further address HB2, and if any changes are to occur, they will likely have to wait until the long session begins in January. The fallout from the legislature’s failure to address the most controversial parts of HB2 is expected to begin in the coming days, with the NBA’s decision regarding the All-Star Game looming and a number of companies likely to speak out about cancelled projects. The political fallout is also expected to be significant, as HB2 is seen as an important, and potentially decisive, issue in many election contests, including the gubernatorial race. Gov. McCrory’s staff worked diligently in the final days of session to whip votes for the proposed “fix,” underscoring how important he knows the issue to be. Expect to hear more about HB2, and many more of the measures passed during this short, but very eventful “short session,” as the fall campaigns heat up.

This is the last legislative report you will receive before your Final Legislative Report summarizing all legislation that was approved during the short session. Please keep in mind that many bill topics changed bill numbers as both chambers scrambled to approve legislation before adjournment. You will notice at the end of the bill summaries that the bill has either been sent to the Governor to be signed into law or it was not completed before adjournment and therefore is dead for this session. When the 2017-2018 session begins in January, legislators will have to file all legislation over again, no matter how far bills from this session advanced - it is a clean slate.

BILL UPDATES

HOUSE BILL 169, Restore State Claim for Wrongful Discharge, repeals a section of House Bill 2 that had repealed the state tort claim for wrongful discharge. The legislation establishes a right of action for employment discrimination or abridgement “on account of race, religion, color, national origin, age, biological sex or handicap by employers which regularly employ 15 or more employees,” and establishes a one-year statute of limitations. NOTE: Prior to the passage of House Bill 2, employment nondiscrimination actions could be brought within three years, so this legislation does not fully restore the right of action repealed by HB2. **Since this legislation was in a conference Committee, the House and Senate removed all the prior provisions and put this language in the bill on the last day of session. It was approved by both chambers on an up or down vote (no amendments allowed). The legislation is effective: July 1, 2016.**

HOUSE BILL 728, Amend Various Licensing Board Laws/Fees, was amended in the Senate Finance Committee to include the provisions of HOUSE BILL 543, Amend Laws Pertaining to NC Medical Board, which was summarized in the April 10, 2015, Legislative Report. **The bill as amended was approved by the Senate Finance Committee and the full Senate. The House agreed to the changes made by the Senate, and the bill has been sent to the Governor for his signature.**

HOUSE BILL 804, Kelsey Smith Act, was amended in the Senate Rules Committee to authorize a law enforcement agency that believes the user of a telecommunications device is in imminent risk of death or serious physical harm or criminally involved in the imminent risk of death or serious physical harm to another to apply for and be issued a call location warrant to obtain call location data from a wireless service provider. The warrant would have to be in writing upon oath and affirmation and contain: (1) the name and title of the applicant; (2) identification of the telecommunications device and user for which the call location data is requested; (3) the allegations of fact establishing probable cause to believe that the user of the telecommunications device is in imminent risk of death or serious physical harm or is criminally involved in the imminent risk of death or serious physical harm to another; and (4) a request that the court issue a warrant authorizing the applicant to obtain call location data for that telecommunications device and user from a wireless service provider. There would be no cause of action against a wireless service provider, its officers, directors, employees, agents, or other specified persons for providing mobile communications tracking information to a law enforcement agency as required. **The bill as amended was approved by the Senate Rules Committee and the full Senate, but the House failed to agree to the changes made by the Senate and the bill was not approved prior to adjournment.**

HOUSE BILL 972, Law Enforcement Recordings/No Public Record, was amended in the Senate Judiciary I Committee to add a new provision (from another bill) that would authorize any governmental or nongovernmental organization, including a local or district health department or an organization that promotes scientifically proven ways of mitigating health risks associated with drug use and other high-risk behaviors, to establish and operate a needle and hypodermic syringe exchange program. The bill would:

- state the objectives of the program as the following: (1) to reduce the spread of HIV, AIDS, viral hepatitis, and other bloodborne diseases in this State; (2) to reduce needle stick injuries to law enforcement officers and other emergency personnel; and (3) to encourage individuals who inject drugs to enroll in evidence-based treatment;
- require programs to offer all of the following:
 - disposal of used needles and hypodermic syringes;

- needles, hypodermic syringes, and other injection supplies at no cost and in quantities sufficient to ensure that needles, hypodermic syringes, and other injection supplies are not shared or reused; however, no public funds could be used to purchase needles, hypodermic syringes, or other injection supplies;
- reasonable and adequate security of program sites, equipment, and personnel. Written plans for security would be provided to the police and sheriff's offices with jurisdiction in the program location and updated annually;
- educational materials on all of the following:
 - overdose prevention;
 - the prevention of HIV, AIDS, and viral hepatitis transmission;
 - drug abuse prevention;
 - treatment for mental illness, including treatment referrals; and
 - treatment for substance abuse, including referrals for medication assisted treatment;
- access to naloxone kits that contain naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of a drug overdose, or referrals to programs that provide access to naloxone hydrochloride that is approved for the treatment of a drug overdose; and
- for each individual requesting services, personal consultations from a program employee or volunteer concerning mental health or addiction treatment as appropriate;
- provide that no employee, volunteer, or participant of the program will be charged with or prosecuted for possession of (1) needles, hypodermic syringes, or other injection supplies obtained from or returned to the program, or (2) residual amounts of a controlled substance contained in a used needle, used hypodermic syringe, or used injection supplies obtained from or returned to the program;
- provide that this limited immunity provided would apply only if the person claiming immunity provides written verification that a needle, syringe, or other injection supplies were obtained from an established needle and hypodermic syringe exchange program. In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer who, acting on good faith, arrests or charges a person who is thereafter determined to be entitled to immunity from prosecution would not be subject to civil liability for the arrest or filing of charges;
- require the governmental or nongovernmental organization, prior to commencing operations of the program, to report to the NC Department of Health and Human Services, Division of Public Health, on: (1) the legal name of the organization or agency operating the program; (2) the areas and populations to be served by the program; and (3) the methods by which the program will provide the required services; and
- require each organization to report to the Division of Public Health no later than one year after commencing operations and then every 12 months on:
 - the number of individuals served by the program;
 - the number of needles, hypodermic syringes, and needle injection supplies dispensed by the program and returned to the program;
 - the number of naloxone kits distributed by the program; and
 - the number and type of treatment referrals provided to individuals served by the program, including a separate report of the number of individuals referred to programs that provide access to naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of a drug overdose.

After further amendment on the Senate floor, the bill as amended was approved by the Senate. The House agreed to the changes made by the Senate, and the bill has been sent to the Governor for his signature.

HOUSE BILL 1030, 2016 Appropriations Act. The budget was approved by both the House and the Senate last week and has been sent to the Governor for his signature. Although the fiscal year for the State ends on June 30th, as of July 6th, the Governor has yet to sign the budget into law.

HOUSE BILL 1074, Schools/CC Facilities, was amended on the House floor to:

- establish the House Select Study Committee on Health and Safety in Outdoor Water Recreation Sites to study necessary health and safety requirements for water recreation attractions including recommendations for required testing of the water used in the attraction for the presence of physical, biological, or chemical substances. The Committee would report its findings and recommendations, including any draft legislation, to the General Assembly by December 31, 2016;
- add the regulation of water recreation attractions to the statutes that regulate public swimming pools in the State as they may affect the public health and safety;
- define the term "water recreation attraction" as a public bathing or swimming facility with design and operational features that provide patrons recreational activity that is different from that associated with a conventional swimming pool. Water recreation attractions would include, but not be limited to, water slides, wave pools, water amusement lagoons, and recirculating artificial whitewater rivers where contact between the patron and the water either occurs or is intended to occur; and
- direct the Commission for Public Health to amend its rules regulating water recreation attractions to: (1) include artificial whitewater river facilities using recirculating water where body contact with the water occurs or is intended to occur; and (2) require artificial whitewater river facilities using recirculating water to test for physical, biological, or chemical substances in the water that may adversely affect the health or safety of facility patrons, as may be deemed necessary by the Commission.

These amendments are in response to the death of an Ohio teenager from a brain-eating amoeba called *Naegleria fowleri* she contracted during a visit to the US National Whitewater Center in Charlotte earlier this month. The bill was further amended on the House floor to:

- require the Department of Health and Human Services, with funds available, to (1) reimburse schools and child care facilities for the costs associated with testing drinking water for the presence of lead as required, and (2) pay for the costs associated with the Department or a local health department conducting sampling and analysis of drinking water on behalf of schools and child care facilities. DHHS would reimburse each school and child care facility upon receipt of appropriate documentation that authenticates the payment for and completion of the required sampling and analysis for lead in drinking water;
- require the Divisions of Public Health and Child Development and Early Education in the Department of Health and Human Services, the Department of Environmental Quality, and the Department of Public Instruction to use funds available to each agency, respectively, to support the administration and implementation of lead testing;
- direct the Department of Health and Human Resources to, with funds available, coordinate with the North Carolina Government Data Analytics Center in order to develop and implement the database and reporting infrastructure necessary to support these requirements; and

- allow DHHS, with funds available, and only after all costs associated with testing drinking water for the presence of lead are reimbursed, to reimburse schools and child care facilities for the costs incurred for (1) the provision of alternative drinking water; (2) identification and removal of drinking water infrastructure that contains lead conducted in accordance with this act; and (3) installation of replacement infrastructure or water treatment devices upon receipt of documentation that authenticates the installation of replacement infrastructure or such treatment devices. Schools would be required to design and install any replacement infrastructure or treatment devices required.

The bill as amended was approved by the House and was referred to the Senate Health Care Committee. The legislative session adjourned without approval of the bill.

SENATE BILL 349, Amend Various Laws. The provisions of this bill were removed in the House Rules Committee and replaced with new provisions to create a 10-member Joint Legislative Study Committee on Public Records and Open Meetings to study ways to improve transparency of State and local government in North Carolina and report, including findings and legislative recommendations, to the 2017 General Assembly. The Committee would examine existing State laws regarding public access to government records and meetings and legislation enacted in other states that allow greater public access than currently exists in North Carolina, including:

- strategies for the executive branch of North Carolina State government and for local government entities to streamline the processes by which the public may access government records and meetings; and
- the development of legislative alternatives to existing provisions of the North Carolina Public Records Act and Open Meetings Law that restrict or entirely prohibit public access to government records of meetings.

The bill as amended was approved by the House Rules Committee and was next scheduled to be considered by the full House. The session was adjourned before this legislation was approved.

SENATE BILL 838, Medicaid Transformation Modifications, as amended by the Conference Committee, will:

- require the Department of Health and Human Services (DHHS) to report to the Joint Legislative Oversight Committee on Medicaid and NC Health Choice and the Fiscal Research Division by October 1, 2016, on the following:
 - the status of the 1115 waiver submission to the Centers for Medicare and Medicaid Services (CMS), as well as any other submissions to CMS related to the transition of Medicaid and NC Health Choice from fee for service to capitation, and specifically address the timeliness of the submission or submissions to CMS, responses received from CMS, and strategies necessary to ensure approval of a waiver for Medicaid transformation.
 - a detailed Work Plan for the implementation of the transformation of Medicaid and NC Health Choice programs. The Work Plan shall provide sufficient detail to allow the Joint Legislative Oversight Committee on Medicaid and NC Health Choice to monitor progress and identify challenges and impediments to the implementation of the transformation of Medicaid and NC Health Choice programs. The detailed Work Plan must identify key milestones, tasks, and events necessary to the transition of the programs. For each milestone, task, and event, the Work Plan must specify the expected completion dates and identify the

- individual who is assigned responsibility for accomplishing or ensuring the accomplishment of the milestone, task, or event;
 - a sufficiently detailed description of any developments or changes during the planning process to enable the General Assembly to address any barriers to successful implementation of the Medicaid and NC Health Choice transformation;
- update and replace *DHHS through the Division of Health Benefits* with *DHHS* to reflect that DHHS only is responsible for the planning and implementation of the Medicaid transformation;
- amend the definition of a “provider-led entity or PLE as an entity that meets all of the following criteria:
 - a majority of the entity's ownership is held by an individual or entity that has as its primary business purpose the ownership or operation of one or more *capitated contracts described in subdivision (3) of this section* or Medicaid and NC Health Choice providers;;
 - a majority of the entity's governing body is composed of *individuals who (i) are licensed in the State as physicians, physician assistants, nurse practitioners, or psychologists and (ii) have experience treating beneficiaries of the North Carolina Medicaid program*; and
 - holds a PHP license issued by the Department of Insurance;
- provide that the following services that will not be covered by the capitated PHP contracts:
 - behavioral health services for Medicaid recipients currently covered by the local management entities/managed care organizations (LME/MCOs) for four years after the date capitated contracts begin;
 - dental services;
 - services provided through the Program of All-Inclusive Care for the Elderly;
 - audiology, speech therapy, occupational therapy, physical therapy, nursing, and psychological services prescribed in an Individualized Education Program (IEP) and performed by schools or individuals contracted with Local Education Agencies;
 - 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; and
 - services for Medicaid program applicants during the period of time prior to eligibility determination;
- amend the provisions regarding populations covered by PHPs to add six new classes of individuals that are not covered:
 - qualified aliens subject to the five-year bar for means-tested public assistance under 8 U.S.C. § 1613 who qualify for emergency services under 8 U.S.C. § 1611;
 - undocumented aliens who qualify for emergency services under 8 U.S.C. § 1611;
 - medically needy Medicaid recipients;
 - members of federally recognized tribes. Members of federally recognized tribes shall have the option to enroll voluntarily in PHPs;
 - presumptively eligible recipients, during the period of presumptive eligibility;
 - recipients who participate in the North Carolina Health Insurance Premium Payment (NC HIPP) program;

- allow up to 12 (instead of 10) contracts between the Division of Health Benefits and PLEs for coverage of regions;
- add State Veterans Homes to the list of those designated as essential providers;
- authorize DHHS to seek approval from CMS through the 1115 waiver to allow parents to retain Medicaid eligibility while their child is being served temporarily by the foster care program. It is 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;
- require DHHS to remain the Medicaid single State–agency and to be responsible for implementing the required Medicaid transformation and to administer and operate all functions, powers, duties, obligations, and services related to the transformed Medicaid and NC Health Choice programs;
- allow the Secretary of DHHS to appoint a Director of the Division of Health Benefits prior to the effective date;
- provide that, upon the elimination of the Division of Medical Assistance, the Division of Health Benefits will be vested with all functions, powers, duties, obligations, and services previously vested in the Division of Medical Assistance;
- provide that DHHS will continue to administer and operate the Medicaid and NC Health Choice programs through the Division of Medical Assistance until the Division of Medical Assistance is eliminated at which time all functions, powers, duties, obligations, and services vested in the Division of Medical Assistance are vested in the Division of Health Benefits;
- add new provisions regarding the cooling-off period for certain Department employees to define a former employee as a person who, for any period within the preceding six months, was employed as an employee or contract employee of DHHS and personally participated in any of the following: (1) the award of a contract to the vendor; (2) an audit, decision, investigation, or other action affecting the vendor; or (3) regulatory or licensing decisions that applied to the vendor;
- authorize DHHS, notwithstanding any statute that requires a reduction within the Division of Medical Assistance, to establish, maintain, or adjust all Medicaid program components, except for eligibility categories and income thresholds, within the appropriated and allocated budget for the Medicaid program, provided that the total Medicaid expenditures, net of agency receipts, do not exceed the authorized budget for the Medicaid program; and
- provide that, if DHHS intends to maintain any program components as authorized, then no later than 60 calendar days after Senate Bill 838 becomes law, DHHS must request that the Office of State Budget and Management (OSBM) certify that there are sufficient recurring Medicaid funds to maintain the program component. Within 30 calendar days after receiving DHHS's request, OSBM must respond to the request. If OSBM does not certify by the end of the 30-day period that there are sufficient recurring Medicaid funds to maintain the program component, then DHHS will implement the reduction required.

The bill as amended was approved by the House and Senate and has been sent to the Governor for his signature.

SENATE BILL 867, Protect Students in Schools, was amended in the House Finance Committee to:

- require the State Board of Education to create a database maintained by the Department of Public Instruction for high school and middle school personnel to report catastrophic illnesses and injuries and concussions occurring during athletic activities involving student athletes;
- direct the State Board to assign a school code for each high school and middle school for the purposes of reporting information to be included in the database, and require at least the following information be included in a report by high school and middle school personnel: (1) the school code for the high school or middle school; (2) age group of the student athlete; (3) gender; (4) sport that the student athlete was playing when becoming ill or injured; (5) type of event; (6) the date of illness or injury; (7) the date of return to play, if applicable; (8) the category of illness or injury; and (9) whether the illness or injury resulted in a fatality;
- require the athletic director or designee, each month in which student athletes are participating in an athletic activity at a high school or middle school to report to the Department of Public Instruction on whether a catastrophic illness or injury or a concussion has occurred involving a student athlete; and
- allow the Department of Public Instruction to only provide access to the information contained in the database to local boards of education, the North Carolina High School Athletic Association, and the National Center for Catastrophic Sport Injury Research and the Matthew A. Gfeller Sport-Related Traumatic Brain Injury Research Center housed at UNC - Chapel Hill. The information contained in the database would not contain personally identifiable student data and would not be considered a public record.

The bill as amended was approved by the House Finance Committee, and after further amendment on the House floor, was sent back to the House Rules Committee. Session adjourned before this bill was approved.

SENATE BILL 898, 2016 PPT Appointments Bill, would appoint persons to various public offices upon the recommendation of the speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Minority Leader of the Senate as follows.

- Keith Holtsclaw of Mitchell County and Dr. Penney Burlingame Deal of Onslow County appointed to the North Carolina Institute of Medicine Board of Directors for terms to expire on December 31, 2017 (in order to stagger terms of board members);
- Joshua T. Brown of Durham County, Jeffrey H. Ledford of Cleveland County, Charles D. Greene of Forsyth County and Eric S. Cramer of Wake County are appointed to the 911 Board for terms effective January 1, 2017, and expiring on December 31, 2020;
- Dr. Brian B. Sheitman of Wake County and Robin Todd-Hall of Caldwell County are appointed to the North Carolina Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for terms expiring on June 30, 2019;
- Craig Fitzgerald of Wake County is appointed to the North Carolina Brain Injury Advisory Council for a term effective October 1, 2016, and expiring on September 30, 2020;
- Tammy B. Owens of Wake County, Joe M. Cabaleiro of Wake County, Michael Tramber of Forsyth County, and Cathy L. Swanson of Caldwell County are appointed to the License to Give Trust Fund for terms effective January 1, 2017, and expiring on December 31, 2018.

The bill as amended was approved by the House. The Senate agreed to the changes made by the House, and the bill has been sent to the Governor for his signature.

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