



Adjournment to Date Uncertain

The 2013-2014 session of the North Carolina General Assembly adjourned last Saturday morning, with the House completing their work roughly 36 hours after the Senate had finished up and left town. Rather than a joyful, "end of school" kind of feel that is usually the case when session winds down, the "end" of session was not much of an end at all. Special sessions are scheduled to convene later this month and in November, but the House and Senate could not even agree on which topics would be eligible for consideration when they meet. The Senate sent the House an adjournment resolution that would have allowed only a very limited number of topics to be taken up during the session beginning August 14th, including reconsideration of any bills the Governor chooses to veto. The Senate then wrapped up its business and adjourned, effectively stranding a number of measures important to the House, including an Autism insurance mandate, a \$40 million film tax credit, and various regulatory reform proposals. The Senate resolution would have allowed consideration of coal ash cleanup legislation along with Medicaid reform proposals, after action on both of those issues stalled toward the end of session.

The House responded by amending the adjournment resolution list to include a wide variety of topics, returning it to the Senate despite the fact that there was no one there to receive it. As such, no adjournment resolution has been passed and the General Assembly is essentially still in session and in limbo, required to convene session every four days until a compromise is reached. In keeping with the tone of this very contentious session, there is as yet no evidence of a deal forthcoming, and no clear end to yet another standoff in sight. Typically, short sessions adjourn "sine die" (without day), though when special sessions are planned adjournment is to "a date certain." This year, however, the only thing certain about what comes next is that no one seems to know. We delayed sending out this report to see if any progress would be made between the chambers this week; however, the Senate sent out a press release yesterday stating that they would not be back until the agreed upon November session to take up Medicaid Reform. The House has been stating that they are still working with the Senate and plan to have a regular session on August 14th to take up any issues that they can agree upon with the Senate. So basically still a mess.



NORTH CAROLINA COLLEGE OF EMERGENCY PHYSICIANS



THIS LEGISLATIVE REPORT IS A
PUBLICATION OF KOCHANЕК LAW GROUP
AND IS A MEMBER BENEFIT OF NCCEP.
ANY USE OR REPRODUCTION OF THIS
REPORT IS LIMITED TO NCCEP
AND ITS MEMBERS.

FOR MORE INFORMATION:

Colleen Kochanek
NCCEP Legislative Counsel
P.O. Box 12946
Raleigh, NC 27605
919.747.9988

colleen@kochaneklawgroup.com
www.kochaneklawgroup.com

BILL UPDATES

HOUSE BILL 761, Regulatory Reform Act of 2014. The provisions of this bill were removed completely in the Senate Rules Committee and replaced with new provisions that include a variety of administrative reforms, eliminate various boards and commissions, and make other statutory changes. Many of the provisions included in the bill have already been included in other bills, and we have summarized those in previous legislative reports this session. Some of these provisions include the following:

- eliminating the North Carolina Center for Nursing Board of Directors;
- clarifying the process for readoption of rules in accordance with the periodic review and exemption of existing rules provision of the Administrative Procedures Act;
- seeking to streamline the rule-making process by eliminating the requirement that an agency obtain a certification of adherence to rule-making principles prior to submitting the proposed text of a rule for publication. If the rule would have a substantial economic impact, then the agency would have to obtain from the Office of State Budget and Management a certification that the agency adhered to regulatory principles before adopting the permanent rule change;
- amending the statute regarding the periodic review and expiration of existing rules to provide that a rule will be considered necessary with substantive public interest if the rule imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule;
- amending the provisions regarding legislative appointments when the legislator is required to consult with a third party by providing that: (1) the recommendation or consultation is discretionary and is not binding upon the legislator; (2) the third party must submit the recommendation or consultation at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy, and (3) failure by the third party to submit the recommendation or consultation to the legislator within the required time period will be deemed a waiver by the third party of the opportunity;
- adding limited liability companies to the types of corporations that may lease or purchase hospital facilities;
- providing that, in order to be immune from liability for damages, a person, including a volunteer medical or health care provider at a facility of a local health department or at a nonprofit community health center or a volunteer member of a rescue squad, must *voluntarily and without expectation of compensation* render first aid or emergency health care treatment to a person who is unconscious, ill or injured;
- allowing the Guilford County and Mecklenburg County Boards of Elections to adopt a policy to provide for notices, advertisements, and publications to be given electronically;
- requiring the Department of Health and Human Services, Division of Medical Assistance, to charge a State Medicaid recredentialing fee every five years (instead of every three years);
- directing the Department of Health and Human Services to execute a memorandum of understanding with the National Association of Boards of Pharmacy to participate in PMP InterConnect; and
- changing the Intractable Epilepsy Alternative Treatment pilot study to a research study on the safety and efficacy of treating intractable epilepsy using hemp extract conducted by one or more registered neurologists, and requiring the registration of research studies, neurologists, caregivers, and patients to be accessible to law enforcement agencies for the limited purpose of verifying the names of registered caregivers, provided that no patient

identifying information or patient information protected under the federal Health Insurance Portability and Accountability Act (HIPAA) is disclosed.

The bill as amended was approved by the Senate Rules Committee, but was subsequently sent back to the Committee for further consideration.

HOUSE BILL 1133, Technical and Other Corrections. A variety of amendments were made to this bill in the Senate Rules Committee and on the Senate floor. One of the provisions would amend the requirements of the controlled substances reporting system by providing that a dispenser is not required to report instances in which a Schedule V non-narcotic, non-anorectic Schedule V controlled substance is provided directly to the ultimate user for the purpose of assessing a therapeutic response when prescribed according to indications approved by the United States Food and Drug Administration. **The bill as amended was approved by the Senate, and the House agreed to the changes made to the bill by the Senate. The bill has now been sent to the Governor for his signature.**

HOUSE BILL 1224, Local Sales Tax Options/Economic Development Changes. A variety of amendments were made to this bill in a Conference Committee appointed to settle the differences between the House and Senate versions of the bill. One of the provisions would provide that the local sales and use tax rate of a county may exceed two and one-half percent (up to two and three-quarters percent) if all of the following conditions are met:

- the county is Durham, Forsyth, Guilford, Orange, Mecklenburg or Wake County; and
- the county conducted one or more advisory referendums on or before December 31, 2014, in which a majority of the voters approved the levy of a local sales and use tax at the rate of one-quarter percent.

The bill as amended in the Conference Committee was approved by the Senate; however, the House has assigned the bill to the House Rules Committee.

HOUSE JOINT RESOLUTION 1266, Adjournment, is effectively identical to the House version of S881, summarized below. **The resolution was passed by the House and sent to the Senate for consideration.**

SENATE BILL 763, Revenue Laws Technical Changes and Other Changes. This bill was amended on the House floor to:

- clarify that the federal income tax credit for making qualified rehabilitation expenditures for a certified historic structure located in this State is allowed a credit equal to the sum of the base amount, development tier bonus, and target investment bonus (as defined);
- cap the maximum tax credit allowed for qualifying expenses of a film production company at \$40 million;
- reduces the allowed film production company tax credit to 22.5% of the taxpayer's qualifying expenses (currently, 25%); and
- direct the Program Evaluation Division to evaluate the income tax credits for qualifying expenses of a film production company, and submit its findings and recommendations to the Joint Legislative Program Evaluation Oversight Committee and Revenue Laws Study Committee on or before February 1, 2016. The study would include:
 - the return on investment of the credit to the State;
 - methods to increase the benefit to the State resulting from the credit; and
 - programs in other states, best practices of other states, and other ways used by other states to compete for film investment in the State.

The bill as amended was approved by the House, and has been assigned to the Senate Rules Committee to consider the changes made by the House.

SENATE JOINT RESOLUTION 881, Adjournment, is the adjournment resolution passed by the Senate and then amended by the House in the final days of session. As introduced by the Senate back on June 11, it called for adjournment “sine die” on June 27th.

Over a month after that date the Senate passed an amended version that would have adjourned session on August 2nd and reconvened a session beginning on August 14th and ending the next day, limited to only allow consideration of:

- Bills vetoed by the Governor, but solely for the purpose of considering overriding of the veto upon reconsideration of the bill.
- Bills relating to claims or orders in litigation to which the State, its instrumentalities, or its officers are parties.
- Bills in which the General Assembly makes an appointment or appointments to public office and which contain no other matter.

The Senate version would also have convened a special session on Monday, November 17, 2014, at 6:00 p.m., during which the issues above as well as the following could be considered:

- Bills related to the structure, operation, and funding of Medicaid.
- Confirmations
- Bills relating to coal ash management.
- A joint resolution adjourning the 2013 Regular Session of the General Assembly sine die.

NOTE: An earlier version of S881 would also have also allowed consideration of “matters in conference between the two houses where conferees have been appointed by both houses on or before August 2, 2014,” during the November session, but that provision was later amended out by the Senate.

The Senate passed this version and sent it to the House, then adjourned session and essentially left town, likely assuming the House would have no choice but to accept, pass, and send it to the Governor. Instead, the House amended the resolution and returned it to the Senate. The House amended S881 by adding to the list of issues that could be considered during the August 14th-15th session:

- Bills relating to coal ash management.
- Bills relating to environmental and natural resources laws.
- Bills relating to regulatory and administrative reforms.
- Bills relating to health benefit plan coverage for the screening, diagnosis, and treatment of autism spectrum disorder.
- Bills relating to technical and other changes to revenue laws.
- Bills relating to the confidentiality of unemployment compensation information.

The House’s amended version would not allow consideration of bills related to coal ash management during the November 17th session. House Speaker Tillis made clear in remarks made on the floor that he felt the November session should be focused on Medicaid reform and all other issues that have not passed by the end of the August session would need to wait until 2015. **The resolution as passed by the House was returned to the Senate for concurrence on August 2nd. The resolution was not taken up during either of the Senate “skeleton” sessions that have convened since August 2nd, therefore the 2013-2014 session of the General Assembly has not technically adjourned.**

SENATE BILL 884, 2014 Appointments Bill. This 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. The bill started in the Senate with the President Pro Tempore's appointments and then the House amended the bill to add the appointments from the Speaker of the House. However, the House did not approve their version until the Senate had already left, so it is unclear whether this bill will be finalized before next year and these appointments are on hold.

PRESIDENT PRO TEMPORE'S APPOINTMENTS

- Roger B. Moore of Wake County is appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for a term expiring on June 30, 2017.

SPEAKER'S APPOINTMENTS

- Dr. Thomas A. Brant of Mecklenburg County is appointed to the North Carolina Emergency Medical Services Advisory Council for a term effective January 1, 2015, and expiring on December 31, 2019.
- Joe M. Cabaleiro R.Ph. of Wake County, Michael A. Tramber of Forsyth County, and Cathy Swanson of Caldwell County are appointed to the License to Give Trust Fund Commission for terms effective January 1, 2015, and expiring on December 31, 2016.
- Justin K. Brackett of Cleveland County is appointed to the Commission for Mental Health, Development Disabilities, and Substance Abuse Services for a term expiring on June 30, 2017.
- Deputy Chief Dinah L. Jeffries of Alamance County and Sheriff Len D. Hagaman, Jr., of Watauga County are appointed to the 911 Board for terms effective January 1, 2015, and expiring on December 31, 2018, and Eric S. Cramer of Forsyth County is appointed to the 911 Board for a term expiring on December 31, 2016, to fill the unexpired term of Jean Thaxton.

BUDGET DEAL

In the days before session adjourned, both chambers passed the \$21.1 billion state budget update. This was essentially the only major compromise reached between the chambers as a deal on coal ash cleanup fell apart in the final hours, and deep divisions on how to reform the state Medicaid system led to a special session being called for November to tackle that problem (and to allow both chambers to hear from, and presumably raise money from, interested parties on both sides of the issue). The budget compromise was hard won, and was announced at a press conference at which leaders of the two chambers put the acrimony of the preceding weeks behind them, at least temporarily. Gov. McCrory announced he would sign the budget deal (and in fact signed the budget today), despite threats to veto during the negotiations. The chambers compromised on the promised teacher pay increase and settled on an average 7% raise, and the deep cuts to Medicaid eligibility previously considered were not included. Despite this, \$135 million was cut from the

Medicaid program, including further reductions to provider reimbursement and reduced spending on childcare subsidies. Our final legislative report will contain a detailed summary of the budget, and some key provisions are summarized below:

- The budget includes a provision that would eliminate the “shared savings plan” established for Medicaid providers in last year’s budget, and convert the plan’s 3% withholding to a 3% reduction, and includes an additional 1% reduction for Medicaid service providers. (The Senate proposed a 2% reduction, and the House budget did not include an additional reduction.)
- Additionally, the budget implements a statewide hospital base rate as proposed by the Senate (the House proposal was to study the issue). The budget also increases the state’s annual Medicaid assessment on hospitals from 25.9% to 28.85%. The budget did not include moving the Division of Medical Assistance out of DHHS as proposed by the Senate.
- The budget also did not include the drastic cuts to the blind, disabled, and elderly, but does include a change to the income eligibility rules for the state-county special assistance for the ABD population in the future.

- Colleen Kochanek
NCCEP Legislative Counsel
P.O. Box 12946
Raleigh, NC 27605
919.747.9988
colleen@kochaneklawgroup.com
www.kochaneklawgroup.comⁱ

ⁱ THIS LEGISLATIVE REPORT IS A PUBLICATION OF KOCHANЕК LAW GROUP AND IS A MEMBER BENEFIT OF NCCEP. ANY USE OR REPRODUCTION OF THIS REPORT IS LIMITED TO NCCEP AND ITS MEMBERS.
