



INTRODUCTION

The big news in Raleigh last week was the state budget. The week began with a bit of negotiating and a lot of posturing by legislative leaders and Governor Cooper. By the week's end, the General Assembly had sent its budget to the Governor, and he had vetoed it, calling it an "astonishing failure of common sense and common decency."

As expected, the major hang up with the budget is that it does not include Medicaid expansion, something Governor Cooper has made a priority. Republican leaders did include language in the budget encouraging a special session to discuss Medicaid and access to health care. House leaders have revived discussion about a vote for Carolina Cares, Rep. Donny Lambeth's Medicaid expansion bill that included work requirements. But Senate leadership has made it clear there are not the votes in that chamber for any kind of Medicaid expansion.

With the state's fiscal year having ended on Sunday, there are a lot of unanswered questions about the budget's next steps. The House is scheduled to take the week of July 1 off for the Independence Day holiday, so a vote to over-ride Cooper's veto would have to wait until July 8. Assuming the over-ride votes fail, everyone will likely be back at the drawing board, or the negotiating table. However, North Carolina's government won't grind to a halt. Unlike the federal budget, North Carolina will automatically continue to operate based on last year's budget levels.

In non-budget news, the U.S. Supreme Court ruled last week that partisan gerrymandering is beyond the authority of federal courts, placing responsibility for challenging the practice with Congress or state legislatures. That means that North Carolina won't have to draw new congressional districts for the 2020 elections. A lower court had previously ruled that North Carolina's Republican-led state legislature violated the U.S. Constitution when it drew the congressional districts to the state's 13 seats in the U.S. House of Representatives, by increasing the power of Republicans.

The issue isn't closed yet, though. There is still a pending state court case on the issue, which challenges whether the maps violate the state constitution. That case is scheduled to be heard July 15th.



APARTMENT ASSOCIATION OF NORTH CAROLINA



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BILLS OF INTEREST

HOUSE JOINT RESOLUTION 1019, Confirm Floyd McKissick/Utilities Commission, would confirm the appointment of Floyd B. McKissick, Jr., of Durham County to the North Carolina Utilities Commission for a new term beginning July 1, 2019, and expiring June 30, 2025. Sen. McKissick is a long-term member of the Legislature. **Introduced and approved by the House Rules Committee, and placed on the House calendar for July 8, 2019.**

SENATE BILL 683, Combat Absentee Ballot Fraud, would make a variety of changes to the laws governing mail-in absentee ballots, increase and add penalties for criminal violations, and restore the last Saturday of early one-stop voting. The bill would direct the State Board, with respect to each early "one-stop" absentee ballot voted, to approve an official register in which the county board of elections in each county would record the following information: (1) name of voter for whom application and ballots are being requested; (2) number of assigned voter's application when issued; (3) the precinct in which the voter is registered; (4) the date the voter voted early "one-stop"; (5) the voter's party affiliation; and (6) whatever additional information and official action may be required. The official register would be confidential and not a public record until the opening of the voting place at which time the official register would constitute a public record. Any copies of any photographic identification associated with the request for absentee ballots, or the returned application and ballots, would not be a public record. The bill was further amended in the Senate Redistricting and Elections Committee, including to: (1) require the State Board of Elections or county board of elections to inform the voter of the status of that voter's request for mail-in absentee ballots upon inquiry by the voter or the voter's near relative or verifiable legal guardian; and (2) make it a Class F felony to commit, attempt to commit, or conspire to commit a specified crimes with the intent to unlawfully influence or interfere with a primary or election, or to otherwise unlawfully gain. **Introduced by Senators Daniel, McKissick, and Hise and, as amended, was approved the Senate Redistricting and Elections Committee. The bill is scheduled to be heard by the full Senate on July 8th.**

BILL UPDATES

HOUSE BILL 135, Enjoin Sanctuary Ordinances, was heard as a proposed committee substitute (PCS) in the House Rules Committee. The PCS deletes the content of the third edition and replaces it with the following:

- amends the statute to declare null and void any county policy, ordinance, or procedure that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law and adds that any person may bring action seeking an injunction;
- amends the statute to declare null and void any city policy, ordinance, or procedure that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law. Gives the General Court of Justice jurisdiction to enter mandatory or prohibitory injunctions to enjoin violations of the statute and adds that any person may bring an action seeking an injunction;
- provides that the plaintiff does not need to allege or prove special damages different from that suffered by the public at large; also that it is not a defense that there is an adequate remedy at law;
- sets out additional requirements of the injunction and requires that these actions be set down for immediate hearing with subsequent proceedings in those actions given priority by the trial and appellate courts;

- allows recovery of reasonable attorneys' fees in any action in which a party successfully obtains injunctive relief;
- prohibits assessing attorneys' fees against the governmental body or governmental unit if the court finds that the body or unit acted in reasonable reliance on (1) a judgment or order of a court applicable to the governmental unit or governmental body or (2) the published opinion of an appellate court, an order of the North Carolina Business Court, or a final order of the Trial Division of the General Court of Justice;
- requires the court to assess reasonable attorneys' fees against the person instituting the action when an action is filed in bad faith or was frivolous; and
- appropriates from nonrecurring funds for 2019-2020 from the unappropriated fund balance: (1) \$10,000 to the North Carolina Department of Labor to provide public education as to this act and (2) \$5,000 to the North Carolina Office of State Budget and Management to provide grants to the North Carolina League of Municipalities in the amount of \$3,000 and to the North Carolina County Commissioners Association in the amount of \$2,000 to provide education for local governments as to this act.

The bill as amended was approved by the House Rules Committee and the Full House and will next be considered by the Senate Rules Committee.

HOUSE BILL 226, 2019 AOC Legislative Changes, was heard as a proposed committee substitute (PCS) in the Senate Judiciary Committee. The PCS would enact a new section to the statute which does the following:

- provides for unsworn, written declarations under penalty of perjury to have the same force and effect as sworn declarations in all court proceedings or pursuant to any rule, regulation, order, or requirement requiring or permitting matters to be supported or proved in writing by oath or affirmation;
- excludes oral testimony; oaths of office; and any statement under oath or affirmation required to be taken before a specified official other than a notary public;
- sets forth the form for sufficient declarations under the statute;
- provides for electronic declaration if the Supreme Court declares rules authorizing filing and electronic signatures in any court proceeding;
- amends statute, which sets forth the offense of perjury as a Class F felony, to include the willful and corrupt commission of perjury in any unsworn declaration in the form prescribed by this new section;
- enacts new sections to statute to provide for unsworn declarations in civil pleadings and criminal actions; and
- would be effective 30 days after the Director of the Administrative Office of the Courts (AOC) certifies to the NC Supreme Court that the AOC is ready to begin implementation of an integrated case management system adopted pursuant to the e-Courts initiative.

The bill as amended was approved by the Senate Judiciary Committee and the Full Senate and will be sent to the House to consider the changes made by the Senate.

HOUSE BILL 511, North Carolina First Step Act, was heard as a proposed committee substitute (PCS) in the Senate Judiciary Committee. The PCS would do the following:

- require the Department of Information Technology, Government Data Analytic Center, and the Administrative Office of the Courts to conduct a statewide study to identify the criminal justice data elements currently collected and maintained by jail, courts, and prisons in order to identify gaps in data and accessibility of data for research purposes and for use by judicial officials and other stakeholders and identify solutions for improving availability and accessibility of data to inform public policy through an integrated tool or other system;

- allow the Department to seek input from specified entities and stakeholders;
- set out seven issues that must be examined in the study, including:
 - the data elements currently being collected by each local and regional detention facility with regard to each individual admitted to jail and each facility's operation and the current system for collecting, recording, maintaining, and searching these data elements;
 - the data elements needed for policymakers to understand the criminal justice system, including the demographics, reasons for involvement, and outcomes for individuals involved in the system at the county and statewide levels;
 - steps that would be necessary to create a statewide program to collect county-level criminal justice data to inform policymakers and other stakeholders, including solutions for integrating data from different systems including options for integrating data that currently are collected, as well as for addressing any data gaps identified, and options for making data elements available to judicial officials and other stakeholders, as well as for research purposes, in an open electronic format; and
 - a review of best practices of other states that collect local-level criminal justice data and integrate them with data from the court system and other state systems.
- require a report by March 15, 2020.

The bill was approved by the Senate Judiciary Committee and will next be considered by the Senate Rules Committee.

SENATE BILL 86, Small Business Healthcare Act. The provisions of this bill were removed in the House Health Committee and replaced with new provisions that would establish standards for association health plans. The bill would enact a new GS Chapter 58, Article 50A, Association Health Plans to help small businesses and associations provide health care insurance. The bill would:

- define the following:
 - "association health plan" as a fully-insured health insurance policy sold to a sponsoring association;
 - "employer member" as any employer, including a sole proprietorship, which is a member of a sponsoring association;
 - "sponsoring association" as an association of one or more employer members that provides an AHP to those members;
- require sponsoring associations to:
 - be employers as defined by the Employee Retirement and Income Security Act of 1974 (ERISA). have bylaws that provide for regular meetings, dues collection, and a board of trustees;
 - have a substantial business purpose that is unrelated to offering insurance;
 - register as a MEWA with the Commissioner; and
 - have a commonality of interest among employer members that is based on either (1) being in the same trade, industry, line of business, or profession, or (2) being members of a statewide association;
- require employer members to be domiciled or headquartered in North Carolina and commit to remaining in the sponsoring association for at least two years;
- allow employer members to only provide coverage to employees as defined in G.S. 58-51-80(c), individuals who are paid on an I.R.S. Form 1099, or the spouses and dependent children of either of those two groups;
- require AHPs issued in North Carolina to:

- not be offered to the general public;
- provide a level of coverage equal to that provided by a bronze plan on the Affordable Care Act exchange;
- provide coverage for hospital and physician services;
- comply with G.S. 58-3-150;
- **provide coverage for the essential health benefits required by the Affordable Care Act;**
- establish solvency requirements for sponsoring associations and require all sponsoring associations obtaining an AHP to:
 - have been in existence for at least five years;
 - have at least 500 individuals eligible for coverage;
 - enforce provisions designed to deter employer members from leaving the sponsoring association;
 - maintain in trust a net worth equal to at least one month's premium; and
 - maintain a plan against insolvency that is acceptable to the Commissioner;
- prohibit AHPs and sponsoring associations from imposing limitations based on pre-existing conditions and from conditioning coverage eligibility on the following factors: health status; medical condition; claims experience; receipt of health care; medical history; genetic information; evidence of insurability; or disability;
- require all individuals receiving coverage through an AHP to pay the same premium, unless a reduction is offered for adherence to programs of health promotion and disease prevention; and
- clarify that sponsoring associations can contact licensed brokers for assistance in obtaining an AHP.

The bill as amended was approved by the House Health Committee and will next be considered by the House Rules Committee.

SENATE BILL 420, NC Servicemembers Civil Relief Act, was heard as a proposed committee substitute (PCS) in the House Judiciary Committee. The PCS makes the following changes to the second edition:

- clarifies that concerning the rights provided to servicemembers to extend residential lease agreements which expire while the servicemember is engaged in State active duty or service under an order of the governor of another state that is similar, that the provisions apply to servicemembers who are members of the NC National Guard, or who are members of the National Guard of another state and reside in this state; and
- makes conforming deletions to current statute concerning early termination of rental agreements by certain military personnel, surviving members, or lawful representatives, which would now be covered under the proposed Act.

The bill was approved by the House Judiciary Committee and will next be considered by the House Rules Committee. This bill was modified at the request of the Apartment Association of North Carolina and we no longer oppose the bill with the changes included.

SENATE BILL 553, Regulatory Reform Act of 2019, was heard as a proposed committee substitute (PCS) in the House Regulatory Reform Committee of the House on June 25th and was further modified as another PCS in the House Rules Committee on June 28th. The PCS on June 25th made the following changes to the prior edition:

- requires the Building Code Council and local governments enforcing the 2018 NC Fire Prevention Code to enforce the specified exit obstruction and waste accumulation provisions;

- requires code enforcement authorities with jurisdiction over apartment occupancies to permit doorstep refuse and recycling collection containers which stand upright on their own and do not leak liquids when standing upright in exit access corridors as described with respect to apartment occupancies with enclosed corridors, and in apartment occupancies with open-air corridors or balconies served by exterior exit stairs;
- authorizes the code enforcement authority having jurisdiction to approve alternative containers and storage arrangements that are demonstrated to provide an equivalent level of safety as described;
- provides apartment occupancies a phase-in period until December 31, 2020, to comply with the implementation provisions and requires the Council to revise the exit obstruction and waste accumulation provisions of the Code and adopt substantively similar permanent rules to go into effect on July 1, 2019.

The PCS on June 28th makes the following changes to the prior edition:

- concerning the directive to the Building Code Council and local governments enforcing the 2018 NC Fire Prevention Code to enforce the specified exit obstruction and waste accumulation provisions as provided in the act, eliminates the distinct conditions between apartment occupancies with enclosed corridors and apartment occupancies with open-air corridors or balconies served by exterior stairs. Instead, consolidates the conditions, application with respect to apartment occupancies in general, requiring the maximum doorstep refuse and recycling collection container size not to exceed 15 gallons and the number of containers not to exceed one refuse and one recycling collection container for a total of two containers per dwelling unit; and
- concerning the Council's rulemaking directive, requires the Council to revise the specified rules in a manner similar to the implementation directives provided.

The bill as amended was approved by the House Regulatory Reform Committee and the House Rules Committee and will next be considered by the Full House on 07/08/19.

SENATE BILL 590, Modify Continuing Ed for Real Estate Brokers, was heard as a proposed committee substitute (PCS) in the Senate Commerce and Insurance Committee. The PCS makes the following changes:

- requires a broker-in-charge of a real estate office to complete an education program not to exceed 12 hours of instruction and removes the requirement that those hours be in classroom instruction;
- amends the continuing education requirements for real estate brokers under statute to no longer require that the eight hours of instruction be classroom hours;
- makes it illegal to engage or assume to engage in the business of a time share developer or time share salesperson to sell or offer to sell a time share located in the state without the time share developer first obtaining a certificate of registration for the time share project;
- requires a time share salesperson to be a licensed real estate broker unless the time share salesperson (1) meets the requirements for exemption under statute which includes any partnership, corporation, limited liability company, association, or other business entity that, as owner or lessor, shall perform any of the specified acts with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment or (2) is an employee of the registered time share developer, whose income is reported on IRS Form W-2 of the registered time share developer; and

The bill was approved by the Senate Commerce and Insurance Committee and the Senate Rules Committee and will next be considered by the Full Senate.

SENATE BILL 594, Register of Deeds Updates, was amended in the House Rules Committee to prohibit a person from including in an assumed business name the terms "corporation," "incorporated," "corp.," or "inc.," unless the entity is a corporation organized under GS Chapters 55 or 55A, along with the terms "limited liability company," "limited partnership," and "limited liability partnership. **The bill as amended was approved by the House Rules Committee, the full House and Senate, and has been sent to the Governor for his signature.**

LEGISLATION ENACTED

HOUSE BILL 131, Repeal Map Act. This legislation (1) repeals the Transportation Corridor Official Map Act, which authorized the North Carolina Department of Transportation, local governments, and transportation authorities to adopt maps for future transportation projects and placed restrictions on properties within mapped corridors, and (2) amends the exemptions from the statute's mapping requirements for the registration of certain plats and subdivisions, to provide that the statute does not apply to the registration of highway right-of-way plans of plats acquired by the North Carolina Turnpike Authority. **Effective: June 21, 2019.**

HOUSE BILL 432, Water/Sewer to Contiguous Dwelling Units. This legislation provides that if the Utilities Commission approves a flat rate to be charged by a water or sewer utility for the provision of water or sewer services to contiguous dwelling units, the lessor may pass through and charge the tenants of the contiguous dwelling units the same flat rate for water or sewer services, rather than a rate based on metered consumption, and the statutory administrative fee. Bills for water and sewer service sent by the lessor to the lessee shall contain the same information as required on metered consumption bills. **Effective: June 26, 2019.**

HOUSE BILL 531, Protect. Tenants at Foreclosure Act Restored, makes changes to the current statute to reflect the restoration of the federal Protecting Tenants at Foreclosure Act. The legislation repeals the current statute concerning the effect of foreclosure on preexisting tenancy and makes conforming changes throughout by changing references to the current statute to now refer to the federal Protecting Tenants at Foreclosure Act. **Effective: October 1, 2019, and applies to petitions filed on or after that date.**

BUDGET OVERVIEW

Included below is information on the \$24 billion budget passed by the House and Senate and vetoed by Governor Cooper. While this budget is unlikely to go into effect, it is useful to get a sense of where legislative leadership stands and the compromises that have been made. The budget includes a 2.5% average raise for most state employees in each of the next two years and a 0.5% one-time bonus for state retirees.

- Building Code Inspector Fund: Provides \$61,000 this year and \$88,000 next year for an additional Building Code Inspector position within the Office of the State Fire Marshal to assist with local government inspections upon request, pursuant to requirements in S.L. 2018-29, Building Code Regulatory Reform.

- Workforce Housing Loan Program: The Joint Conference Committee report coincided with the House budget's proposal and appropriated \$20 million for FY 2019-2020 alone, half of what the program will receive this biennium.

Under the program, a taxpayer "allocated a federal low-income housing tax credit to construct or substantially rehabilitate a qualified North Carolina low-income housing development" is eligible for a loan under the Workforce Housing Loan Program if the taxpayer satisfies the loan criteria established by the Agency. The loan criteria are developed "in partnership with developers of low-income housing in the State who receive a federal low-income housing tax credit." The Agency is directed to take into consideration all eligible sources of funding for each development project, including whether there are other eligible sources of funding available for the development project.

Other Funding: Amendment #26, offered by Senator Harry Brown, remained in the conference report budget. This amendment directs the Office of State Budget and Management to allocate the following in nonrecurring funds from funds appropriated to the Project Reserve in the General Fund: \$2.5 million to the Department of Commerce to provide 1:1 matching grants to nonprofits to fund the planning and construction of affordable housing projects. It also directs the Department of Commerce to develop guidelines and procedures for the affordable housing grant program's administration.

Rather than redirecting unmatched funds to the General Fund, the joint conference report proposes allowing the Department of Commerce and the Department of Environmental Quality to quickly deploy surplus federal administrative funds as they are identified throughout the program year as follows:

- (1) funds allocated to the Department of Commerce and any surplus federal administrative funds, as provided for, may be used by the Department for all of the following:
 - a. To issue grants in the CDBG economic development or neighborhood revitalization program category.
 - b. For providing training and guidance to local governments relative to the CDBG program, its management, and administrative requirements.
 - c. For any other purpose consistent with the Department's administration of the CDBG program if an equal amount of State matching funds is available.
- (2) funds allocated to the Department of Environmental Quality and any surplus federal administrative funds, as provided for, may be used by the Department for all of the following:
 - a. To issue grants in the CDBG infrastructure program category.
 - b. For any other purpose consistent with the Department's administration of the CDBG program if an equal amount of State matching funds is available.

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