



North Carolina NOW Legislative Update—7 May 2017

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This Week

After frantically passing more than 200 bills last week to meet the crossover deadline, the legislature did very little this week to move bills along. We are still sorting out what occurred last week and looking forward to what to expect in the coming weeks.

The budget is where the action is. Senate leadership says the Senate is on track to pass its version of the budget next week. A \$581 million budget surplus is projected for the fiscal year ending June 30, which gives legislators some flexibility to expand spending and/or cut taxes. The goal is to pass a two-year budget before the beginning of the next fiscal year on July 1—a goal that often is not attained. The House will pass its version of the budget, and then a conference committee will be appointed to iron out differences between the House and Senate budgets before a final vote. The governor also drew up a budget, but the legislature probably won't pay too much attention to it. See: <https://www.usnews.com/news/best-states/north-carolina/articles/2017-05-05/n-carolina-revenue-surplus-ticks-up-slightly-after-april-15>

On April 25 the Senate passed a bill (SB676) that exempts bills that ratify an amendment to the U.S. Constitution and bills to amend the North Carolina Constitution from the April 27 crossover deadline—which means that any of these bills passed by the House after April 27 may be taken up by the Senate. It will be instructive to look at the exact bills in the House that this rule change will impact.

Of course the bill to ratify the ERA is the only bill that would ratify an amendment to the U. S. Constitution. Under the old version of the rules, HB102 would have died after crossover; however, the rule change means the both the House bill and the Senate bill (S85) are still alive.

There are some pretty amazing proposals to amend the state constitution that are being kept viable by this rule change. The proposed amendment that has been called the most dangerous is a proposal to cap the state income tax rate at 5.5%. Presently, the state constitution caps the rate at 10%. The knee-jerk

reaction of many voters may be to support anything that looks like a measure to keep taxes down, but this particular proposal is a wolf in sheep's clothing. If there is a constitutional provision that essentially freezes the state income tax at its present level, then revenue will have to be raised through other sources—and increasing the sales tax is the most likely alternative. In short, a regressive tax that hits low and middle income people disproportionately would be substituted for a progressive income tax that hits the wealthy harder. It amounts to a tax break for the wealthy. This proposal is included in HB3, an omnibus constitutional amendment bill that also limits eminent domain, establishes an emergency savings revenue fund that can be tapped only through a 2/3 vote of each house, and establishes a constitutional right to hunt, fish, and harvest wildlife.

The rule change also keeps HB147 alive—a bill that would remove language in the N. C. Constitution that prohibits secession from the United States. HB146 amends the N. C. constitution by removing language stating the citizens of the state owe allegiance to the government of the United States. HB145 removes language that allows the state to enact laws against carrying concealed weapons. Finally, HB148 would repeal the literacy requirement as a condition to register and vote—a provision that is unenforceable under present federal law, but which could cause embarrassment, to say the least, if it were voted down in a statewide referendum.

There is also a proposal to enshrine the anti-union right to work law in the state constitution (HB819), which has already passed the House. Two bills propose constitutional amendments to limit terms: HB413 limits service in the General Assembly to 16 years and HB105 limits the governor and lieutenant governor to two terms (presently, the limit is two consecutive terms).

ERA UPDATE

Following Women's Mobilization Monday, ERA bills H102 and S85 in the NCGA became a hot topic of conversation at the inaugural forum of "Community Voices" during a News & Observer and ABC11 WTVD panel on Wednesday at the James B. Hunt Jr. Library on N.C. State's Bicentennial Campus in Raleigh: "Women's rights organizations and supporters of the Equal Rights Amendment, buoyed by the recent pro-ratification vote in Nevada, are pushing for similar action in North Carolina. In an effort to push a local ERA bill through the state House of Representatives, forum participants shared the phone number for Tim Moore, the House speaker, and urged the audience to let him hear their support." See: <http://www.newsobserver.com/news/politics-government/state-politics/article141659664.html> , 3/30/17.

On the heels of that public discussion, in a significant move, the editorial board of the News and Observer endorsed the ERA. See:

<http://www.newsobserver.com/opinion/editorials/article142178804.html>, 4/1/17

Advocates are called to focus on H102 because a recent change to the Senate Rules exempted it from the April 27 crossover deadline. ERA bill S85 is also exempt from crossover deadline and will be active until the end of the session. Call Speaker of the House Tim Moore at 919-733-3451 and urge him to prioritize ERA bill H102 to be heard by committee. Advocates should also continue to call the members of the House and Senate committees urging that H102 and S85 be heard in committee. <http://www.nc4era.org/alerts.html>

Lawsuit Updates

Since our Republican-dominated General Assembly has been passing law after law that is being or has been challenged in court, in addition to keeping up with new legislation introduced this session, I believe it is equally important to track the status of the various challenges to laws that have already been passed.

Vote ID/Voter Suppression Law

After a Fourth Circuit Court of Appeals panel ruled key provisions of a 2013 elections law unconstitutional (noting that it targeted African American voters "with almost surgical precision"), Governor McCrory hired private attorneys to appeal the ruling to the U. S. Supreme Court on behalf of the state because then-Attorney General Roy Cooper refused to do so. Governor Cooper and Attorney General Josh Stein have dismissed these private attorneys and removed the state from the appeal of the law. This action will not end the suit because the State Board of Elections is also a party.

Republican legislative leaders are crying "foul," claiming that both the Governor and Attorney General have exceeded their authority in the matter. For more information, see: <http://www.newsobserver.com/news/politics-government/state-politics/article134017644.html>, 2/21/17.

Expanding Medicaid under the Affordable Care Act

Governor Cooper has emphasized that expanding Medicaid under the Affordable Care Act, which would provide medical insurance coverage for up to 500,000 North Carolinians, is one of his highest legislative priorities. He has already begun the process of expanding Medicaid even though the General

Assembly passed a law in 2013 prohibiting a governor from doing so without approval from the legislature. The Governor maintains that this law is unconstitutional because it violates the separation of powers and unlawfully restricts the powers of the governor. Medicaid expansion is still before the courts as Governor Cooper and the Republicans in the General Assembly continue their fight. This article gives a good summary of the history of the issue and where it stands today: <https://nondoc.com/2017/01/24/medicaid-expansion-north-carolina/>

HB2/HB142 Lawsuits

The ACLU and other parties that have filed lawsuits challenging the constitutionality of HB2 are seeking to amend their suits in light of the new law based on HB142 on the grounds that the new legislation retains some of the discriminatory aspects of HB2. The Justice Department has withdrawn its suit after the partial repeal of HB2, but the ACLU and Lambda Legal suits are continuing.

2017 Legislative Election on Hold

A Federal Appeals Court ordered new legislative districts be drawn by March 15 because 28 of our legislative districts are racially gerrymandered. New elections were ordered to be held for the redrawn districts in November, but the U. S. Supreme Court has now put the lower court order to redraw NC legislative districts and hold new elections in 2017 on hold. See: <http://nccapitolconnection.com/2017/01/11/scotus-issues-stay-on-2017-legislative-elections/?gclid=CMbxj9n-5NECFdgBgQodgBwF9w>

Lawsuits filed as a result of the special session legislative power grab

A three-judge panel of the Superior Court has found the law that gave Republicans majorities on both the local and state elections boards unconstitutional. See: <http://electionlawblog.org/?p=91663>

Jack Nichols has written an excellent article summarizing and explaining the various lawsuits that have been filed in response to the legislative efforts to strip the governor of his traditional (some would argue constitutional) powers. Here is the link: <http://www.newsobserver.com/opinion/op-ed/article129015444.html>, 1/26/17. He cautions that this list is probably not complete because there likely will be more suits to come.

BILL TRACKER

House Bills

HB62, Woman's Right to Know Addition/Ashley's Law: Would require doctors to give women false and misleading information about non-surgical abortions (the abortion pill); namely, that the procedure can be reversed halfway through. Also requires that fetal death be verified before completing the procedure. Referred to Health; if favorable Judiciary IV 02/09/2017
Did not survive crossover

H63, Citizens Protection Act of 2017: An omnibus bill cracking down on undocumented people with economic sanctions leveled against "sanctuary" cities that do not comply with its provisions. Referred Judiciary II; if favorable Finance; if favorable Appropriations 03/07/2017

HB102/SB85: NC Adopt Equal Rights Amendment: Title says it all. Referred to Rules 02/16/2017

HB125, Threatened Weapon Included in First Degree Rape: Adds the threat to use a weapon to the elements of first degree rape. Under the current law there must be an actual weapon used or displayed. Referred to Judiciary II 02/20/2017
PASSED HOUSE 03/30/2017
Referred to Senate Rules 03/30/2017

HB152, Hate Crimes/Increase Scope and Penalty: Expands the scope of the hate crimes law to include gender, sexual orientation, gender identity, or disability and increases the penalty. Referred to Judiciary II 02/22/2017
Did not survive crossover

HB163, Enact Right to Life at Conception Act: Would have the effect of outlawing abortion because although it would not "require" a woman to be prosecuted for terminating her pregnancy, doctors are not protected from prosecution at all. The bill does not specify the penalties for terminating a pregnancy nor does it explain how to determine the moment of conception. Referred to Health; if favorable, Judiciary I 02/23/2017
Did not survive crossover

HB238, Economic Security Act of 2017: An omnibus bill that is a progressive economic wish list. Would raise the state minimum wage to \$15/hr in phases over five years; mandate equal pay for equal work; require paid sick leave and family medical leave; increase the tipped minimum age; "ban the box" requiring people to disclose criminal histories on job applications; repeal public employee collective bargaining restrictions; and restore the earned income tax credit and tax credits for child care and certain employment related expenses.
Referred to Rules 03/06/2017
Did not survive crossover

HB303, Voter Freedom Act (SB228): Makes needed reforms to the process of challenging a person's eligibility to vote to prevent voter intimidation through the threat of a challenge and to stop specious challenges.
Referred to Rules 03/13/2017
Did not survive crossover

HB505, Expand Grandparent Visitation Right: Would allow grandparents (broadly defined) to sue parents to obtain visitation rights with grandchildren. Among other conditions, parents would have to prove to the court that their reasons for denying or restricting visitation in the past were reasonable.
Referred to Aging; if favorable, Health; if favorable, Judiciary IV 03/28/2017
Did not survive crossover

HB543 (SB556), Healthy Families and Workplaces/Paid Sick Days: Would require employers to provide paid sick days for some employees.
Referred to Health; if favorable, Commerce; if favorable, Appropriations 04/03/2017

HB563, Whole Woman's Health Act: Repeals North Carolina laws that are in conflict with the Supreme Court decision Whole Woman' Health v. Hellerstedt.
Referred to Rules 04/05/2017
Did not survive crossover

HB575, Require Info about Abortion Pill Reversal: Would require doctors who perform non-surgical abortions to provide women with information provided by the Department of Health and Human Services concerning the possibility of "reversing" the procedure by not administering the second drug in the two-step process and giving the woman progesterone. There is no medical evidence that a non-surgical abortion can be "reversed" by administering progesterone.

The “reversals” are actually normal failure rates of the procedure if the second medication is not administered. There is no evidence that there is much demand for “reversing” these abortions.

Referred to Health; if favorable, Judiciary I 04/06/2017
Did not survive crossover

HB594 (SB639), Healthy Mother/Healthy Child: Would prohibit use of restraints on pregnant prisoners during labor or delivery except under extraordinary circumstances that must be reported.

Referred to Health; if favorable, Appropriations 04/06/2017

HB662, Carolina Cares: Would extend Medicaid coverage to low-income adults but would charge premiums and carries a work requirement. Modeled on Indiana’s Medicaid expansion passed under Pence. A new tax on hospitals would cover the cost. A federal waiver would be required to implement the program since Medicare expansion under the Affordable Care Act does not include premiums or a work requirement.

HouseRef To Com On Health Care Reform 04/11/2017

HouseSerial Referral To Insurance Added 04/17/2017

HouseSerial Referral To Finance Added 04/17/2017

HB731, Act Requiring Inventory of Untested Sexual Assault Evidence: Would require law enforcement agencies to inventory untested rape kits and report how many they have and why they were not tested.

Appropriations 04/13/2017

HB 780, Uphold Historical Marriage Act: Declares that Obergefell v. Hodges Supreme Court decision legalizing same-sex marriage is null and void in NC and that the state constitutional amendment banning same-sex marriage must be enforced. After a national outcry, Speaker Moore publicly announced that this bill will not be heard in committee, that it is dead.

Rules 04/13/2017

Senate Bills

SB85/HB102, NC Adopt Equal Rights Amendment: Title says it all.

Referred to Rules 02/15/2017

SB109, Hate Crime against Emergency Worker: Makes assaulting an emergency responder, such as a law enforcement official, firefighter, or medical responder, a hate crime with enhanced penalties. Also includes making a false report in order to assault an emergency worker.

Referred to Rules

02/20/2017

Did not survive crossover

SB 145, Government Immigration Compliance: Targets sanctuary cities and sanctuary public universities that do not enforce federal immigration laws by withholding state funding. Also prohibits local law enforcement from issuing ID to undocumented people.

Referred to Rules

03/01/2017

Did not survive crossover

SB210, Living Wage by 2022: Would increase the state minimum wage to \$15/hr in steps over a five-year period and thereafter adjust the minimum wage annually based on increases in the US Consumer Price Index.

Referred to Rules

03/08/2017

Did not survive crossover

SB 228, Voter Freedom Act (HB303): See HB 303

Referred to Rules

03/14/2017

Did not survive crossover

SB424, Increase Funding for Behavioral Health Svcs (HB536): SB424 had its name and mission changed on 04/11/17. From Unborn Child Protection from Dismemberment Act (HB536), which had been a terrible bill that was stalled in Rules, to Increase Funding for Behavioral Health Svcs. In the new version, a lot of money is being allocated for the establishment of new facility-based 'crisis centers', statewide expansion of the community paramedicine pilot program, and the continuation of the community paramedic mobile crisis management program.

Re-ref to Appropriations/Base Budget. If fav, re-ref to Health Care. If fav, re-ref to Rules and Operations of the Senate

04/11/2017

SB500, Strengthen Human Trafficking Law: Amends the human trafficking statute by adding sections on Profiting from Human Trafficking and Obstruction of Investigation of Human Trafficking.

Referred to Senate Rules

03/30/2017

Did not survive crossover

SB516, State Employees/Paid Parental Leave: Would allow a state or public school employee to voluntarily share leave with another state or public school employee for the purpose of providing paid parental leave with a limit of no more than six weeks.

Referred to Senate Rules 03/30/2017
Did not survive crossover

S537, North Carolina Equal Pay Act: Would prohibit discrimination in wages based on the gender of the employee.

Referred to Senate Rules 04/3/2017
Did not survive crossover

SB553, Revoke Consent for Intercourse: Would make it a crime to continue vaginal intercourse after consent has been withdrawn.

Referred to Senate Rules 04/03/2017
Did not survive crossover

SB556, Healthy Families and Workplaces/Paid Sick Leave: See HB543.

Referred to Senate Rules 04/03/2017
Did not survive crossover

SB588, Whole Woman's Health Act: See HB563.

Referred to Senate Rules 04/05/2017
Did not survive crossover

SB639, Healthy Mother/Healthy Child: See HB593.

Referred to Senate Rules 04/06/2017
Did not survive crossover

Ratified Bills

HB100/SB136, Restore Partisan Elections/Sup and Dist Courts: Would roll back reforms that made these judicial races non-partisan and identify judicial candidates with party labels on the ballot.

RATIFIED 03/09/2017
VETOED 03/16/2017
VETO OVERRIDDEN 03/23/2017

HB142, Act to Reset SL2016-3: Repeals the law known as HB2; gives the General Assembly the power to regulate restrooms, showers, and changing facilities in state facilities; and prohibits local governments from enacting or amending an ordinance regulating private employment practices or regulating public accommodations until the act expires on December 1, 2020.

RATIFIED/SIGNED BY GOVERNOR

03/30/2017

HB239, Reduce the Number of Appeals Court Judges to Twelve: Would reduce the number of state appeals court judges from 15 to 12.

RATIFIED

04/11/2017

VETOED

04/20/2017

VETO OVERRIDDEN

04/26/2017

SB68, Bipartisan Board of Election and Ethics Enforce: Combines the State Board of Election and Ethics Board and evenly divides the members between Republicans and Democrats with a Republican chair during presidential election years and a Democratic chair in off-years.

RATIFIED

04/11/2017

VETOED

04/21/2017

VETO OVERRIDDEN

04/25/2017