



## North Carolina NOW Legislative Update #1—11 February 2018

### **This week**

It is difficult to report on legislative matters because so many of the most important developments take place behind in secret and are never documented. As an article in NC Policy Watch summarizes:

“Whether it’s cutting off debate on legislation, holding surprise, late night sessions, regularly ignoring the committee process, burying new and controversial laws that were never previously discussed in omnibus budget bills that cannot be amended, holding an endless series of “special” legislative sessions, refusing to record and archive all sorts of important proceedings, or even directly and blatantly punishing lawmakers who dare to speak up during debate, Republicans have evidenced little shame. Much as has been the case with gerrymandering, legislative leaders have not so much invented new tactics and tricks as they have cynically perfected and expanded the use of old ones.”

<http://www.ncpolicywatch.com/2018/02/06/darkness-descends-general-assembly/>

This unhealthy pattern continues.

### **They’re Baaaaaack!**

This week the General Assembly reconvened, and legislators lost no time ramming through complex, multi-issue legislation with almost no discussion. House Bill 90 was voted out of the Appropriations Committee and passed the Senate on the same day. This omnibus bill offers a fix for the unfunded class size mandate, takes away the governor’s control of the Atlantic Coast Pipeline mitigation fund, and reorganizes the State Board of Elections (for the third time)--three unrelated issues in a single bill.

### **The Problems with House Bill 90**

Last year the General Assembly created a crisis by passing legislation mandating a reduction in class size and a reduction of student/teacher ratios in kindergarten through third grade without appropriating any funds to make implementing the mandate possible without serious strain to school budgets and sacrificing special area programs.

House Bill 90, contains a plan, endorsed by the N. C. Association of School Administrators, that addresses the problem by phasing in the changes over a period of four years and appropriating 70 million additional dollars to fund special areas teachers whose jobs were at risk. The bill also increases funds for pre-K programs up to 91 million dollars a year. The plan was announced with much pomp and circumstance on February 8 at a joint Press conference by House Speaker Tim Moore and Senate leader Phil Berger.

House Bill 90 would be relatively non-controversial if this proposed fix were all it contained. Unfortunately, it has morphed into an omnibus bill that contains two poison pills--unrelated and highly controversial matters that Governor Cooper and Democratic legislators are certain to oppose.

The first poison pill concerns the \$58 million Atlantic Coast Pipeline mitigation fund that developers were required to pay the state to mitigate any environmental damage the pipeline would create. House Bill 90 removes that money from the Governor's control and instead of being used for mitigation, it would be routed to school systems in counties where the Atlantic Coast Pipeline will run.

The second poison pill is even bigger. It is a new salvo in the ongoing attempt by the General Assembly to take away the Governor's control of the state elections board. Having lost in court twice over attempts to remake the state elections board, the Republicans are making a third attempt. In this proposal the State Board of Elections would consist of four Democrats, four Republicans, and one unaffiliated or third party voter. The state parties would nominate their members and these members would submit to the governor a list of third party or unaffiliated voters to choose from. This proposal is certain to trigger a third lawsuit.

The bill was pushed through the Appropriations Committee, and the Senate passed it on Friday, February 9. The House will vote on Tuesday, February 12.

### **Redistricting**

In 2016 a federal judges ruled that 28 of North Carolina's legislative districts were racially gerrymandered. The legislature redrew the districts in ad 2017, but a new lawsuit alleged that some of the redrawn districts were still racially

gerrymandered. The Court appointed Nathaniel Persily of Stanford University to redraw the contested districts. Persily redrew nine districts to eliminate racial gerrymandering. His map was appealed to the U. S. Supreme Court which upheld some districts, but rejected districts in Wake and Mecklenburg Counties that were alleged to violate the N. C. state constitution. It is expected that the Wake and Mecklenburg districts will be appealed to the state Supreme Court. See: <http://www.newsobserver.com/news/politics-government/state-politics/article198736149.html>, 2/6/18

NOTE: There was misplaced rejoicing when the U. S. Supreme Court allowed a Pennsylvania state court's decision against partisan gerrymandering to stand. This action did not signal the Supreme Court's aversion to partisan gerrymandering; instead, it expressed the Court's unwillingness to rule on a state constitutional matter since the Pennsylvania challenge was based on the state, not the federal constitution.

Even though a federal court has ruled that our congressional districts have been unconstitutionally gerrymandered (along partisan lines) the U.S. Supreme Court has stayed the lower court's order to re-draw the districts. That means that we will hold our 2018 elections using unconstitutional districts. See: <http://www.wral.com/congressional-maps-will-stand-for-2018-nc-elections-despite-federal-court-s-gerrymander-finding/17317715/>, 2/6/18

## **Judges**

The legislature is in a state of paralysis for the time being over what to do to combat the power of state judges to overturn their unconstitutional laws. The House wants to redraw judicial districts to eliminate targeted judges with gerrymandering and double bunking (placing two incumbent office holders in the same district). The House has passed their redistricting plan, but it has not been taken up by the Senate. The Senate wants a more radical solution—to amend the state constitution to get rid of electing judges in favor of appointing them with the legislature playing a key role in the judicial appointment process.

A federal judge has ruled against a 2018 law that would eliminate primaries for statewide judicial races. Not having primaries would prevent parties from running their strongest candidate for a judgeship. Under the law, multiple

candidates for a single seat could allow a candidate to win with only a plurality of votes—as few as 30 percent. The ruling was not applied to district races because the judge noted the legislature is considering re-drawing these districts. For other pernicious changes in the invalidated law, see:

<http://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article197672199.html>, 1/31/18

This article details the alarming Republican effort to take over North Carolina courts: <https://www.dailykos.com/stories/2018/1/23/1735299/-North-Carolina-s-GOP-is-trying-to-take-over-the-state-s-judiciary-now>, 1/23/18

-Robin Davis

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