

# The General Assembly

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Under the control of the Republican Party for the first time in more than 100 years, the 2011 General Assembly convened on January 26 and adjourned on June 18. The session totaled 87 legislative days, making it the shortest “long session” since the General Assembly began holding annual session in 1973. This initial convening did not include redistricting, which took place during an additional two and a half week reconvened session. The session was remarkable for changes in both in the makeup of the General Assembly and in the legislative process.

This chapter provides an overview of the 2011 session, including the organization of each house and major legislation enacted. Please note that School of Government (SOG) faculty members and experts are writing summaries of selected legislation of interest to state and local government officials. These summaries are available on the SOG’s 2011 legislative summaries website <http://dailybulletin.unc.edu/summaries11/>; the site will be updated as summaries are available.

## Overview of the 2011 Regular Session

Article II, Section 11, of the North Carolina Constitution provides for a biennial session of the General Assembly that convenes in every odd-numbered year. Until 1973 the General Assembly held a single regular session, convening in each odd-numbered year, meeting several months, and then adjourning sine die. Prior to 1974, legislative sessions in even-numbered years of the biennium were extra sessions and they were rare and of short duration.

Beginning with the 1973-74 biennium, the General Assembly began holding annual sessions. The General Assembly convenes in January of odd-numbered years. In these “long sessions,” which generally run through midsummer, a biennial budget is adopted and any legislative business may be considered. In even-numbered years the General Assembly convenes for a “short session,” which generally runs from May through July or August. In the short session the General Assembly considers budget adjustments for the second year of the biennium and generally deals with bills that have passed one house and a limited number of additional noncontroversial matters. Legally the short session is a continuation of the long session.

The 2011 session marked the first time Republicans had the majority in both the Senate and House of Representatives in more than a century. The November election resulted in the election of 45 new members. The Senate gained 11 Republican members while the House gained 15 Republicans. The long session was a record breaking session that included many new faces and a new take on legislative procedures.

The new leadership wasted no time in making their mark on the legislative process. Before session even began Speaker Tillis worked to reduce the number of House standing committees from 39 to 19. Committee meetings were also jump started this year—committee schedules and membership were announced much earlier than they have been in previous sessions and committees began meeting on the second day of session, weeks earlier than in previous sessions. The new majority also made a number of changes to the House and Senate rules. One significant change in the House was that each member was allowed to introduce (defined as being listed as

the first sponsor) only ten public bills<sup>1</sup>. This change could partly account for the record low number of bills introduced during the 2011 session. In the Senate, the rules included a provision establishing a Parliamentarian<sup>2</sup>. The Parliamentarian's role is to decide on appeals of the Presiding Officer's ruling on questions of order; the Parliamentarian's decision may then be appealed by any member, with a two-thirds vote of the membership present needed to sustain an appeal from the Parliamentarian's ruling.

During the 2011 session, Governor Perdue vetoed a record 15 bills and let a record 14 bills become law without her signature, illustrating the tension between the Governor and the Republican controlled General Assembly.

### The House of Representatives

The November 2010 election resulted in the election of 29 new House of Representatives members and a total membership of 67 Republicans, 52 Democrats, and one unaffiliated member (who caucuses with the Republicans), establishing a Republican majority that is just four members shy of being veto proof. Thom Tillis was elected Speaker of the House while former Speaker Joe Hackney was elected Minority Leader. Table 1-1 lists the 2011 House officers.

The demographics of the 2011 House can be broken down as follows<sup>3</sup>:

- 32 women, six less than in 2009
- 88 men
- 18 African Americans, three less than in 2009
- One Native American
- One Hispanic

Frank McGuirt was appointed to replace Representative Pryor Gibson who stepped down in March in order to take a position with the Governor's office. Following adjournment, Representative Jonathan Rhyne and Representative Jeff Barnhart announced their retirements; Jason Saine has been appointed as Rhyne's successor, while Barnhart's successor has yet to be named.

**Table 1-1. Officers of the 2011 House of Representatives**

Thom Tillis, Mecklenburg County, Speaker
Dale R. Folwell, Forsyth County, Speaker Pro Tempore
Paul Stam, Wake County, Majority Leader
Ruth Samuelson, Mecklenburg County, Majority Whip
Pat McElraft, Carteret and Jones counties; Jonathan Jordan, Ashe and Watauga counties; Deputy Majority Whips
Marilyn Avila, Wake County, Joint Caucus Leader
Mike Hager, Cleveland and Rutherford counties, Republican Freshman Leader
Joe Hackney, Chatham, Moore and Orange counties, Minority Leader
William Wainwright, Craven and Lenoir counties, Deputy Minority Leader
Rick Glazier, Cumberland County; Larry Hall, Durham County; Ray Rapp, Haywood, Madison, and Yancey counties; Debra Ross, Wake County; Michael Wray, Northampton, Vance, and Warren counties, Minority Whips
Diane Parfitt, Cumberland County, Democratic Freshman Leader
Denise Weeks, Principal Clerk
Clyde Cook, Sergeant-at-Arms
John Young, Acting Reading Clerk

<sup>1</sup> House Rule 31.1.

<sup>2</sup> Senate Rule 9.

<sup>3</sup> These statistics reflect House membership as of the end of the 2011 session and take into account the resignation or death of any members and the appointment of replacement members.

## The Senate

Sixteen new members were elected to the Senate during the 2010 elections. The November election resulted in a shift in power in the Senate; the 2011 Senate was made up of 31 Republicans and 19 Democrats, establishing a veto proof majority for the Republicans. The demographics of the 2011 Senate can be broken down as follows<sup>4</sup>:

- Six women
- 44 men
- Seven African Americans, two less than in 2009

The 2011 session saw the resignation of one of its most powerful members. Senator Marc Basnight resigned effective January 25, the day before the convening of the session. Basnight's retirement marked the end of a 14 term career, serving as President Pro Tempore for more than half of his career. Senator Basnight's seat was filled by Stan White. Following adjournment, Senator Debbie Clary announced her retirement; a successor has not been named at this time.

The 2011 Senate officers and leadership are shown in Table 1-2.

**Table 1-2. 2011 Senate Officers and Leadership**

Walter Dalton, Lieutenant Governor, President
Philip Berger, Guilford and Rockingham counties, President Pro Tempore
James Forrester, Gaston, Iredell, and Lincoln counties, Deputy President Pro Tempore
Harry Brown, Jones and Onslow counties, Majority Leader
Jerry Tillman, Montgomery and Randolph counties, Majority Whip
Fletcher Hartsell, Jr., Cabarrus and Iredell counties, Majority Caucus Secretary
Jean Preston, Carteret, Craven and Pamlico counties, Caucus Liaison
Martin Nesbitt, Buncombe County, Democratic Leader
Linda Garrou, Forsyth County; Floyd McKissick, Durham County; Don Vaughan, Guilford County, Deputy Democratic Leaders
Josh Stein, Wake County, Democratic Whip
Eleanor Kinnaird, Orange and Person counties, Democratic Caucus Secretary
Charles Dannelly, Mecklenburg County, Democratic Caucus Chair
Sarah Clapp, Principal Clerk*
Philip King, Sergeant-at-Arms
Lee Settle, Reading Clerk

\*Janet Pruitt held the position of Principal Clerk until retiring in March.

## Statistical Comparison

The 2011 long session convened on January 26 and adjourned June 18. During that short amount of time, several records were set.

A total of 1,721 bills were introduced during the 2011 legislative session, more than 1,000 fewer filings than during the 2009 long session<sup>5</sup>. In fact, the number reflects the lowest number of bills introduced during a long session, since the General Assembly began holding yearly sessions in 1973. This represents a marked shift from the earlier trend of increased bill filings. While the number of bills filed represented a significant decline, 23% of the bills were ratified, the highest percentage ratified since the 1994 long session. The fact that the session was remarkably short and that such high number of bills were ratified illustrates the fast pace of the session. The session also saw a record 15 vetoes by the Governor.

<sup>4</sup> These statistics reflect Senate membership as of the end of the 2011 session and take into account the resignation or death of any members and the appointment of replacement members.

<sup>5</sup> According to analysis of statistics compiled by the General Assembly library, available at <http://www.ncleg.net/library/Documents/LegStats1965-2010.pdf>.

Table 1-3 compares the 2011 session with other odd-year sessions of the past ten years.

**Table 1-3. Statistical Comparisons of Recent Odd-Year Sessions**

	<b>2001</b>	<b>2003</b>	<b>2005</b>	<b>2007</b>	<b>2009</b>	<b>2011</b>
<b>Date convened</b>	January 24	January 29	January 26	January 24	January 28	January 26
<b>Date adjourned</b>	December 6	July 20	Sept. 2	August 2	August 11	June 18
<b>Senate legislative days</b>	173	102	126	111	112	87
<b>House legislative days</b>	179	102	125	113	114	87
<b>Senate bills introduced</b>	1109	1028	1184	1573	1109	785
<b>House bills introduced</b>	1478	1340	1800	2072	1658	936
<b>Total bills introduced</b>	2587	2368	2984	3645	2767	1721
<b>Session Laws Enacted</b>	519	433	463	551	577	396
<b>Vetoes</b>	0	1	2	1	1	15

## Major Legislation Enacted in 2011

The 2011 General Assembly enacted a number of significant pieces of legislation, a few of which are listed below. Please note that several significant pieces of legislation passed by the General Assembly are discussed in the Governor's Veto section of this document.

### Billboards

There have been several attempts in previous legislative sessions to pass legislation regulating advertising billboards and the vegetation around those billboards. The 2011 session saw the passage of S.L. 2011-397 (Senate Bill 183). Among the act's provisions are those expanding the area around billboards within which trees and other vegetation can be removed. The act also establishes a Department of Transportation permitting system under which billboard owners must pay permit fees in an amount reflecting the value of any trees that the owner removes; the fees are then used to fund highway beautification projects. The permit may be revoked if the owner violates cutting provisions. For more information on this act, see <http://dailybulletin.unc.edu/summaries11/category03.html>.

### Charter Schools

Legislation regulating the state's charter schools underwent several changes this year—at one point proposed legislation expanded from a one page bill to a twenty-two page bill. In the end, the extensive changes proposed concerning the governance of charter schools were removed and ultimately the most significant impact of S.L. 2011-164 (Senate Bill 8) is the removal of the cap on the number of charter schools in the state. The act also modifies requirements for the approval of a charter school application, increases the enrollment growth cap for a charter school, allows a charter school to charge specified fees, directs the State Board of Education to adopt criteria for adequate performance by a charter school and identify charter schools with inadequate performance, and requires the State Board of Education to submit reports on the implementation of the act.

## **Justice Reinvestment Act**

The Justice Reinvestment Act, S.L. 2011-192 (House Bill 642) makes many changes, including the following. The act redefines community and intermediate punishment; allows probation officers to impose new conditions of probation, under specified conditions; repeals intensive supervision; limits probation revocation to instances of committing a new criminal offense and absconding; increases and establishes periods of post-release supervision for specified felonies; adds time to maximum sentences; makes changes to habitual felon laws; and requires that sentences requiring confinement of more than 180 days be served in the Department of Correction, 90 days or less in the local jail, and establishes a new program for people convicted of misdemeanors with sentences of confinement of 91 to 180 days. For more information see several blog entries at the following site: <http://dailybulletin.unc.edu/summaries11/category21.html>.

## **Annexation**

Another contentious issue at the General Assembly over the past several sessions has been annexation. Although legislators did not enact a moratorium this session, they did enact various annexation reforms in S.L. 2011-396 (H 845). Under the act, an annexation can be terminated if the owners of 60% of the parcels in the area to be annexed sign a petition denying the annexation. The act also now allows petitions for voluntary annexation of contiguous property in high poverty areas if the petition is signed by 51% of the households; petitioning is also allowed by residents in addition to the property owner in distressed areas. The act also modifies requirements for the timeframe within which cities that provide water and sewer services are required to extend water and sewer services to properties in the annexed areas.

In addition to annexation reform, legislators suspended several annexations and made them open to termination upon petition by owners of 60% of the annexed parcels. S.L. 2011-173 (S 27) and S.L. 2011-177 (H 56) suspend specified annexations in the following areas: Kinston, Lexington, Rocky Mount, Wilmington, Asheville/Biltmore Lake, Marvin, Southport, Fayetteville Gates Four, and Goldsboro. For more information on this session's annexation legislation, see <http://dailybulletin.unc.edu/summaries11/category13.html>.

## **Firearms**

Although several bills were filed affecting firearm regulation, the most significant changes were made by S.L. 2011-268 (House Bill 650). The act expands the instances in which the right to use deadly force against an intruder exists, without a duty to retreat, to include defending against intruders into a home, motor vehicle, or workplace (current law includes only homes). Concerning firearms, the act makes many changes, including the following: (1) allows individuals subject to domestic violence protective orders to own, but not possess, firearms; (2) makes it a felony to solicit an illegal gun sale or to give a gun dealer false information in order to deceive the dealer about the legality of a gun sale; (3) creates a limited exemption to the concealed handgun laws for district attorneys, assistant district attorneys, and district attorney investigators and for certain retired law enforcement officers who have concealed carry permits; (4) expands the areas where concealed carry permit holders are allowed to have weapons to include specified state property; and (5) allows local governments to prohibit carrying concealed weapons at specified recreational areas. For more information on the act, see <http://dailybulletin.unc.edu/summaries11/category05.html>.

## **Laura's Law**

Laura's Law, S.L. 2011-191 (House Bill 49), is named after 17-year-old Laura Fortenberry, who was killed in a car accident caused by an impaired driver who had previous DWI convictions. The act makes a number of changes that apply to individuals charged with and sentenced for DWI, including increasing the maximum punishment for impaired driving and the length of time that

continuous alcohol monitoring may be required as a condition of probation. For more a more in-depth discussion of this act, see <http://dailybulletin.unc.edu/summaries11/category05.html>.

### **Ethen's Law**

Ethen's Law, S.L. 2011-60 (House Bill 215), is named for the unborn son of Jenna Nielsen, who was stabbed to death while she was eight and a half months pregnant. The act creates five new offenses aimed at protecting unborn children. The new offenses are (1) murder of an unborn child, a Class A or B2 felony, depending on how the offense is committed; (2) involuntary manslaughter of an unborn child, a Class F felony; (3) voluntary manslaughter of an unborn child, a Class D felony; (4) assault inflicting serious bodily injury on an unborn child, a Class F felony; and (5) battery on an unborn child, a Class A1 misdemeanor. The act includes exceptions for a lawful abortion; diagnostic testing or therapeutic treatment; and acts by a pregnant woman, including acts that result in a miscarriage or stillbirth. For more information on this act, see <http://dailybulletin.unc.edu/summaries11/category05.html>.

### **E-Verify**

S.L. 2011-263 (House Bill 36) requires specified employers to use the E-Verify program (an electronic program that employers use to ensure that the individuals they hire may legally work in the US). The act requires counties, cities and businesses employing 25 or more individuals to use the E-Verify program and establishes a process for reporting violations to the Commissioner of Labor. Employers violating the act must signed an affidavit that the employers has requested a verification of work authorization through E-Verify, with failure to do so resulting in a \$10,000 penalty. Subsequent violations result in further monetary penalties. For more information on this legislation, see <http://dailybulletin.unc.edu/summaries11/category28.html> or <http://dailybulletin.unc.edu/summaries11/category13.html>.

### **Municipal Broadband**

The issue of whether or not local governments should be allowed to provide cable and internet services has been hotly debated the last few legislative sessions. This session saw the passage of S.L. 2011-84 (House Bill 129). The act places restrictions on the ability of municipalities to provide cable and Internet services but includes exceptions for existing municipal service providers and for services provided to unserved areas (defined as a census block in which at least 50 percent of the households either have no access to high-speed Internet service or have access to the service only from a satellite provider). The act requires a city to hold public hearings in order to get public input before providing communication services. Additionally, the act's provisions include prohibiting special treatment for municipal providers, requiring that cities provide access to communications networks by private providers, requiring approval via referendum for issuing debt or entering into contracts to purchase or construct, or finance the purchase or construction of, property for use in a communications network. For more detailed information on the act, see <http://dailybulletin.unc.edu/summaries11/category13.html>.

### **The Governor's Veto**

Governor Perdue exercised her veto power a record 15 times this session, including a first time budget veto. While the Senate Republicans hold a veto proof majority, the House

Republicans fall four members<sup>6</sup> short. At the time of this writing, six of the vetoes have been overridden by both chambers, with two additional vetoes overridden in the Senate.

### **Protect Health Care Freedom**

In response to federal health care legislation, legislators gave approval to House Bill 2, Protect Health Care Freedom. This act would have created the North Carolina Health Care Protection Act. The act prohibited laws (1) compelling a person to provide for health care services or medical treatment for that person, or compelling a person to contract with, or enroll in, a public or private health care system or health insurance plan; (2) interfering with a person's right to pay directly for lawful health care services or medical treatment to preserve or enhance that person's life or health; or (3) imposing a penalty, tax, fee, or fine on a person for providing for, or failing to provide for, health care services or medical treatment for that person, or for contracting with, or enrolling in, or failing to contract with or enroll in, a public or private health care system or health insurance plan. The bill also directed Attorney General Roy Cooper to bring or defend a state or federal action on behalf of the state's residents. Citing issues including unenforceability under the Supremacy Clause and conflicts between the legislation and existing state law, Governor Perdue vetoed the bill<sup>7</sup>. The House failed to meet the three-fifths vote need to override the veto, with a tally of 68-51, so the veto remains in effect.

### **Community Colleges Opting out of Federal Loan Program**

In 2010, legislators required community colleges to participate in the William D. Ford Federal Direct Loan Program by July 1, 2011<sup>8</sup>. House Bill 7 would have allowed a community college board of trustees to adopt a resolution opting out of participation in the loan program. Governor Perdue vetoed the bill stating that it would "harm students, deny them valuable opportunities to pursue their educations, and turn North Carolina in the wrong direction<sup>9</sup>." Instead of attempting to override the veto, legislators chose to enact a series of local bills allowing individual community colleges to opt out of the loan program. These local bills (House Bills 15, 58, 134, and 541) are not subject to the Governor's veto power. Under these acts, the following community colleges may opt out of the loan program: Caldwell Community College and Technical Institute, Martin Community College, Rockingham Community College, Sampson Community College, Beaufort County Community College, Brunswick Community College, Cleveland Community College, James Sprunt Community College, Lenoir Community College, Sandhills Community College, Surry Community College, Central Carolina Community College, Pamlico Community College, Rowan-Cabarrus Community College, South Piedmont Community College, Vance-Granville Community College, Alamance Community College, Central Piedmont Community College, Gaston College, Mitchell Community College, Montgomery Community College, Randolph Community College, Richmond Community College, Robeson Community College, Stanly Community College, and Wilkes Community College.

### **Appropriations Act of 2011**

Legislators passed their budget bill (S.L. 2011-145, House Bill 200) in a remarkably short time—the act was given final legislative approval on June 4, weeks before the end of the fiscal year. Legislators took a different approach while developing this session's budget bill. Joint

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<sup>6</sup> This number takes into account the fact that the one unaffiliated member, Representative Bert Jones, caucuses with the Republicans.

<sup>7</sup> See, the Governor's Objections and Veto Message for House Bill 2, <http://www.ncleg.net/Sessions/2011/H2Veto/letter.pdf>.

<sup>8</sup> This requirement is found in Section 8.5 of SL 2010-31, the 2010 Appropriations Act.

<sup>9</sup> See, the Governor's Objections and Veto Message for House Bill 7, <http://www.ncleg.net/Sessions/2011/H7Veto/letter.pdf>.

appropriations committees began meeting early in session, so consensus was already reached by the chambers by the time the House introduced their initial version of the budget. Once the Senate received the budget, the House and Senate worked out areas of disagreement before the Senate gave its final approval to the budget. This negated the need for a conference committee, eliminating a typical (and often lengthy) step in the budget development process.

The \$19.7 billion state budget continued the state employee pay freeze and made cuts to a number of areas, with the greatest percentage cuts made to Environment, General Government, and Health and Human Services budgets. Legislators filled budget gaps primarily through cuts and adjusting General Fund availability, letting temporary income and sales taxes expire. A more detailed summary of the budget bill can be found on the General Assembly's Fiscal Research Division's website at <http://www.ncleg.net/fiscalresearch/index.shtml>.

Governor Perdue vetoed the budget bill citing concerns over education funding, harm to the state's elderly and mentally ill populations, environmental damage, harm to public safety and other issues.<sup>10</sup> Legislators overrode the veto, allowing the act to become law.

### **Voter Identification**

One of the most controversial pieces of legislation during the 2011 session was House Bill 351, Restore Confidence in Government. This bill required voters to present photo identification before voting. The eight acceptable forms of photo identification included newly created voter identification cards that would have been issued for free by county board of elections. The act provided that if an individual did not present the required identification, the individual would have been allowed to cast a provisional ballot which would then be counted if specified conditions were met. Governor Perdue vetoed the bill, calling it "...an unnecessary and purely partisan intrusion on the right to vote that is nowhere sanctioned in our State Constitution and will serve only to reduce voting in this State—particularly among elderly, poor, and African American voters."<sup>11</sup> The veto override attempt failed in the House, with a vote of 67-52. That vote, however, included a no vote by Representative Stam who then made a motion to reconsider the override vote; that motion passed by a vote of 68-51. The override has not been taken up again, but it remains eligible for consideration during the reconvened session in September. As the July session came to a close, rumors were flying that legislators were going to rewrite a number of local bills and create a number of local voter identification bills. The rumored bills never materialized, but a number of local bills that were referred to committee are specifically eligible for consideration during the September session, so it remains to be seen if those bills will ultimately contain voter identification legislation.

### **Extend Unemployment Benefits/Continuing Resolution**

In April the State was notified that it would lose federal unemployment benefits for North Carolina's unemployed unless the State modified the formula that it uses to calculate the State's eligibility by the April 16 deadline. Legislators included a provision to fix the formula and thereby continue the unemployment benefits in House Bill 383. Along with the provision, however, legislators included a provision limiting the Governor's spending to 87% of the amount in her recommend 2011-13 budget until the enactment of the 2011 budget act, thereby limiting the Governor's spending power if a budget agreement was not met by the end of the fiscal year. The bill reached the Governor's desk on the same day that the unemployment benefits were set to expire. Despite the deadline, Governor Perdue vetoed the bill, claiming that the bill, "irresponsibly took the financial lifelines for 37,000 North Carolina citizens and families and hitched to them a

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<sup>10</sup> See, the Governor's Objections and Veto Message for House Bill 200, <http://www.ncleg.net/Sessions/2011/h200Veto/letter.pdf>.

<sup>11</sup> Governor's Objections and veto message for House Bill 351, <http://www.ncleg.net/Sessions/2011/h351Veto/letter.pdf>

budget play that will wreck the lives of millions more.<sup>12</sup> An override was not attempted and Governor Perdue issued Executive Order 93 altering the benefits formula<sup>13</sup>.

### **Water Supply Lines/Water Violation Waiver**

House Bill 482 directed the Secretary of Environment and Natural Resources to grant waivers to allow additional connections to a bond-funded water line within designated areas for the purpose of addressing an existing threat to public health or water quality, or providing water to a habitable structure located on a lot zoned for a single family residence. The act also required the Department of Environment and Natural Resources to remit any penalty assessed on a poor county between June 1, 2010, and July 1, 2011, for violations of the conditions of an NPDES permit issued to the county, violations for the unauthorized discharge of sludge into water, and violations of specified stream and wetland standards due to an unauthorized discharge of sludge, if the county satisfied certain specified conditions. Governor Perdue vetoed the bill, claiming that because the bill allows for civil penalties to be returned to counties instead of to the public school system, the bill is unconstitutional. As of now, legislators have not attempted an override of the veto.

### **Abortion-Woman's Right to Know Act**

One of the most hotly debated bills of the session, House Bill 854 (S.L. 2011-405) established the Woman's Right to Know Act. Among the act's provisions, it requires a 24-hour waiting period before an abortion may be performed, and that the physician conduct an ultrasound and point out the fetus' features to the woman seeking the procedure, play the fetal heartbeat for the woman, and provide specified information. The act also includes provisions concerning performing abortions on minors. Governor Perdue vetoed the bill, calling it "a dangerous intrusion into the confidential relationship that exists between women and their doctors."<sup>14</sup> After hours of debate, the House was able to override the veto with a vote of 72-47. The voting in the Senate, however, was more controversial. Based on the initial votes on the bill, which included an absence by Senator Stevens and a no vote from Republican Senator Stan Bingham, it appeared that the Senate would not have the 30 votes needed for an override. Despite being present in the Senate chamber earlier in the day, when it came time for the override vote, Senator Bingham was given an excused absence; his absence combined with the absence of Senator Stevens resulted in the veto being overridden by a vote of 29-19.

### **Balanced Budget Act of 2011**

Senate Bill 13 granted the Governor power to reduce expenditures and required the Governor to reduce recurring expenditures by at least \$400 million for the remainder of the 2010-11 fiscal year. The act also reverted and transferred funds from specified funds, including the One North Carolina Fund and the Job Development Investment Grants Fund, to the General Fund. Governor Perdue vetoed the bill stating that she had already used existing power to reduce expenditures by \$400 million for the fiscal year and that the remaining sections of the act were not needed and "interfere with the State's capacity to generate jobs and retain industry."<sup>15</sup> The veto was overridden by the Senate but was not taken up by the House.

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<sup>12</sup> Governor's Objections and Veto Message for House Bill 383, <http://www.ncleg.net/Sessions/2011/h383Veto/letter.pdf>

<sup>13</sup> <http://www.governor.state.nc.us/newsItems/ExecutiveOrderDetail.aspx?newsItemID=1870>

<sup>14</sup> See, Governors' Objections and Veto Message for House Bill 854, <http://www.ncleg.net/Sessions/2011/h854Veto/letter.pdf>.

<sup>15</sup> Governor's Objections and Veto Message for Senate Bill 13, <http://www.ncleg.net/Sessions/2011/s13Veto/letter.pdf>.

## **Tort Reform/Medical Malpractice**

Senate Bill 33 makes several significant changes to the state's malpractice laws, including the following. The act requires the court, upon motion, to order separate trials on the issues of liability and damages in actions in which the plaintiff is seeking damages in excess of \$150,000. The act also places a limit of \$500,000 on noneconomic damages (damages for pain, suffering, emotional distress, loss of consortium, inconvenience, and any other nonpecuniary compensatory damage) against all defendants in medical malpractice actions. Exceptions to the limit are made if the plaintiff suffered disfigurement, loss of use of part of the body, permanent injury or death and the defendant's acts or failure to act were the proximate cause of plaintiff's injuries and were committed in reckless disregard of the rights of others, grossly negligent, fraudulent, intentional, or with malice. The act requires that a verdict or award of damages in a malpractice action specifically indicate the amounts that are awarded for noneconomic damages and provides for a jury instruction. Governor Perdue vetoed the bill, stating in part, "I commend the legislature for addressing this important issue, but in its current form, the bill is unbalanced. I urge the General Assembly to modify the bill to protect those that are catastrophically injured. Once the bill is revised to adequately protect those that are catastrophically injured, I will proudly sign it into law."<sup>16</sup> Compromise legislation was not presented and legislators overrode the veto, enacting S.L. 2011-400. For more information on the act, see <http://dailybulletin.unc.edu/summaries11/category04.html>.

## **State Health Plan**

Senate Bill 265 made many changes to the State Health Plan, including transferring the Plan, appropriating funds for the Plan, establishing new subscriber contribution schedules, and providing additional provisions related to Plan operation. Citing her concerns that retired workers' and teachers' groups did not have the opportunity to comment on the bill, and calling the bill a "tax on teachers," Governor Perdue vetoed the bill, asking legislators to develop a more "inclusive" version of the bill<sup>17</sup>. The veto was overridden in the Senate, but not in the House. Legislators did, however, give approval to Senate Bill 323 (S.L. 2011-85), which made many changes, including appropriating funds to the Plan, adjusting plan premiums, deductibles, coinsurance and copays, and transferring the Plan to the Treasurer's Office. Among the differences, this version of the act dropped the monthly premiums for retired state employees. The act became law without the Governor's signature.

## **Medicaid and Health Choice Provider Requirements**

Senate Bill 496 enacts a new General Statute chapter, "Medicaid and Health Choice Provider Requirements" requiring the Department of Health and Human Services to enact various provisions to protect against fraud and abuse. While enacting provisions required by federal law, the act also transfers the authority to make a final decision in an appeal of an adverse determination from the Department of Health and Human Services to the Office of Administrative Hearing. Governor Perdue's veto objection stated that she supported many aspects of the bill, but vetoed it because of the transfer of authority, stating that, "the Attorney General has repeatedly declared that such a transfer of final authority from a stage agency to OAH is in violation of our State Constitution." She also claimed that the transfer would violate federal law.<sup>18</sup> The veto was successfully overridden in both the House and Senate, allowing the act to become law (S.L. 2011-399).

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<sup>16</sup> See Governor's Objections and Veto Message for Senate Bill 33, <http://www.ncleg.net/Sessions/2011/s33Veto/letter.pdf>.

<sup>17</sup> See Governor's Objections and Veto Message for Senate Bill 265, <http://www.ncleg.net/sessions/2011/s265veto/govobjections.pdf>.

<sup>18</sup> See Governor's Objections and Veto Message for Senate Bill 496, <http://www.ncleg.net/sessions/2011/S496Veto/govobjections.pdf>.

## ESC/Jobs Reform

Senate Bill 532 makes a number of changes to the state's employment security laws and transfers the duties of the Employment Security Commission to the newly created Division of Employment Security within the Department of Commerce. Although in favor of the transfer, Governor Perdue vetoed the bill because of the changes in the way that unemployment benefits would be administered under the act. The veto message reads, "...we have been informed by the United States Department of Labor that any finding of a lack of conformity between this bill and federal law will result in North Carolina's loss of money for its unemployment insurance program and that this bill will also raise taxes on all employers statewide who pay federal unemployment taxes. I cannot allow a bill to become law that will endanger our receipt of these much-needed federal funds for our unemployed citizens. Nor am I willing to approve this increased tax on our State's employers.<sup>19</sup>" Governor Perdue also issued Executive Order No. 95, placing the Employment Security Commission under the Department of Commerce, requiring the Secretary of Commerce to ensure that the employment security program is operated in accordance with GS Chapter 96 (Employment Security), and requiring the Employment Security Commission to make any changes necessitated by the Order.<sup>20</sup>

The House and Senate both overrode Governor Perdue's veto, allowing the act to become law (S.L. 2011-401).

## Energy Jobs Act

Senate Bill 709 opened the door for offshore oil and gas exploration. The act directed the Governor to develop an energy compact with South Carolina and Virginia to develop a strategy for the exploration, development and production of all commercially viable offshore energy resources. The act also required that any revenues and royalties paid to the state for offshore or onshore leasing, exploration, development and production of energy resources be used for any related emergency response and environmental protection or mitigation; once the fund reaches \$500 million, funds were to be distributed across a number of funds and departments. One of the act's most controversial provisions required researching the state's potential for inland gas production through the process of "fracking." The act required the Department of Environment and Natural Resources to report by May 1, 2012, on the commercial potential of onshore shale gas resources in the state and the regulatory framework that is needed to develop the resource. The act also renamed the North Carolina Energy Policy Act of 1975 as the North Carolina Energy Policy and Jobs Act and made a number of changes, including stating that it is the state's best interest to support the exploration, development, and production of domestic energy supplies.

The bill saw very vocal opposition from the environmental community. Governor Perdue vetoed the bill on the grounds that directing the Governor to enter into a compact is unconstitutional<sup>21</sup>. Governor Perdue also issued two related executive orders. Executive Order No. 96 reestablishes and expands the Scientific Advisory Panel on Energy to include examining onshore and offshore oil and gas production. Executive Order No. 97 establishes the Offshore Wind Economic Development Task Force to make recommendations on the investment and infrastructure needed for offshore wind resources. The Senate has overridden the Governor's veto, but the House has not yet taken up the veto, so the veto still stands as of this writing.

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<sup>19</sup> Governor's Objections and Veto Message for Senate Bill 532, <http://www.ncleg.net/sessions/2011/S532Veto/govobjections.pdf>.

<sup>20</sup> See, Executive Order No. 95, <http://www.governor.state.nc.us/newsItems/UploadedFiles/94bf19c9-c2ef-408c-bb25-bcc733d95ed0.PDF>.

<sup>21</sup> See, Governor's Objections and Veto Message for Senate Bill 709, <http://www.ncleg.net/sessions/2011/S709Veto/govobjections.pdf>.

### **No Dues Checkoff for School Employees**

Senate Bill 727 eliminated the dues checkoff option for active and retired public school employees. Many in the public characterized this bill as the Republican's attempt to punish teachers for their criticism of the state budget. Governor Perdue vetoed the bill, calling it unfair and unconstitutional because teachers were not being treated similarly to other employee associations, which are allowed a dues check off option.<sup>22</sup> The veto was overridden by the Senate, but after it became apparent that an override attempt would result in lengthy debate, was taken off of the House's calendar during July's reconvened session.

### **Regulatory Reform Act of 2011**

Another contested bill was Senate Bill 781, "An Act to Increase Regulatory Efficiency in Order to Balance Job Creation and Environmental Creation." Among its provisions, the act amends the Administrative Procedure Act to establish rules that agencies must follow in developing rules, including limiting rules to those that are expressly authorized by federal or state law and that are necessary to serve the public interest and requiring agencies to seek to reduce the burden on those that must comply with the rule. Agencies are also required to annually review agency rules to identify any rules that are unnecessary, unduly burdensome, or inconsistent with the act's requirements and repeal any of the rules identified during the review. The act further limits when new environmental rules may be put into place by prohibiting any rules that are more stringent than the federal law or rule, unless the rule is needed because of a serious and unforeseen threat to public health, safety or welfare; an act expressly requiring the rules; a change in budgetary policy; a federal regulation required by an act of Congress to be adopted or administered by the State; or a court order. Governor Perdue vetoed the bill stating that although she is in favor of regulatory reform, "it [Senate Bill 781] would take final decision-making authority in certain circumstances away from state agencies and instead give it to the Office of Administrative Hearings—a result that the Attorney General has repeatedly declared is in violation of the North Carolina Constitution."<sup>23</sup> The veto was overridden by both the Senate and the House, allowing the act to become law (S.L. 2011-398).

### **Reconvened Sessions**

Legislators reconvened on July 13 for a two and a half week session to focus on redistricting and consider other issues including veto overrides, elections bills, filling vacancies on the State Board of Community Colleges, appointments to public office and the adoption of conference reports for bills in conference as of June 18, 2011, if conferees had been appointed by both houses as of that date.

Legislators are scheduled to come back for a second reconvened session on September 12. During this session, legislation that may be considered is limited under the adjournment resolution, House Bill 938, to constitutional amendments, redistricting related bills, conference reports, veto overrides, election law bills, Board of Education appointments, bills pending in the House Rules committee, and bills related to a Tribal Compact negotiated by the Governor.

### **Redistricting**

Perhaps the most daunting task facing legislators during the 2011 session was redrawing the boundaries for the state's congressional, house, and senate districts. Performed once every ten years, this session's redistricting marked the first time in more than a century that Republicans

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<sup>22</sup> See, Governor's Objections and Veto Message for Senate Bill 727, <http://www.ncleg.net/sessions/2011/S727Veto/govobjections.pdf>.

<sup>23</sup> Governor's Objections and Veto Message, Senate Bill 781, <http://www.ncleg.net/sessions/2011/S781Veto/govobjections.pdf>.

controlled the redistricting process. The House Redistricting Committee was chaired by Representative Lewis while the Senate Redistricting Committee was chaired by Senator Rucho. Beginning in April, the redistricting committees held a series of public hearings. The first versions of the maps were release in June. Each set of maps saw five different proposed versions; the final Congressional districts are delineated in S.L. 2011-403 (Senate Bill 453), the House districts are delineated in S.L. 2011-404 (House Bill 937) and the Senate districts are delineated in S.L. 2011-402 (Senate Bill 455). The final maps are available for viewing on the General Assembly website; the Congressional [map](#) is found here, the House of Representatives map is [here](#) and the Senate map is [here](#). It is expected that in early September the maps will be submitted to the Justice Department for pre-clearance and that a lawsuit will be filed seeking separate approval of the maps through the US District Court. This dual track approach has been used in other states when one party feared that the Justice Department, controlled by the opposing party, may not approve the maps. The Justice Department will have 60 days to respond to the pre-clearance request.

## **Unfinished Business**

### **Elections Law**

In the adjournment resolution, legislators listed elections laws bills among those that may have been considered during the July reconvened session. While bills were discussed in committee, no elections law bills were discussed on the floor of either chamber during the session. The July adjournment resolution further allows the consideration of elections laws bills during the September reconvened session. Pending elections law legislation includes House Bill 658, Senate Bill 47, and House Bill 710. House Bill 658 would shorten the period for early voting. Senate Bill 47 makes a number of changes to the elections laws including amending the process for judicial elections, eliminating same day voter registration, shortening the period for early voting, doing away with straight-ticket voting, and limiting campaign contributions to political parties to \$250,000. House Bill 710 reorganizes the functions of the State Ethics Commission, the Secretary of State's Lobbying Section, and the State Board of Elections Campaign Finance Division under a new State Board of Ethics, Lobbying, and Campaign Finance.

### **Eminent Domain**

Eminent Domain has been a hot topic the last few legislative sessions. House Bill 8, proposing an eminent domain constitutional amendment remains eligible for consideration during the 2012 short session. The act proposes an amendment prohibiting the taking of private property by eminent domain except for a public use (no longer allowing the use of eminent domain for a public benefit) and requiring the payment of just compensation, as determined by a jury upon request.

### **Same Sex Marriage**

Although two bills were introduced this session that would have placed an anti-gay marriage constitutional amendment on the ballot (House Bill 777 and Senate Bill 106), the bills did not see any action during the session. That is all likely to change, however, during the reconvened session in September. Legislative leaders have listed the amendment among those that are expected to come up for a vote during the September session. Constitutional amendments require approval by three-fifths of the members of each house and are veto proof. Once a proposed amendment is placed on the ballot, the majority of voters must approve of the change.

## **Voter Identification**

Legislators have yet to override Governor Perdue's veto of House Bill 351, "Restore Confidence in Government," requiring voters to present photo identification before voting. The override remains eligible for consideration during the reconvened session in September, but it is possible that legislators are considering other voter identification legislation instead. A number of local bills that were referred to the House Rules Committee are specifically eligible for consideration during the September session and it has been rumored that the bills are going to be rewritten to include a number of local voter identification acts that would be exempt from veto. As of now, it remains to be seen if those bills will ultimately contain voter identification legislation.

## **The Legislative Institution**

### **House Pension Committee Duties**

S.L. 2011-14 (House Bill 6) provided that if the House did not have a Committee on Pensions and Retirement, then any statutory references to the Committee were to be construed to refer instead to the House Committee on State Personnel.

### **Modify NCGA Police Powers**

S.L. 2011-63 (House Bill 316), expands on the powers of the General Assembly police by extending their jurisdiction to include conducting a criminal investigation of a threat of physical violence against the General Assembly, a member or staff of the General Assembly, or their immediate family; accompanying a member of the General Assembly for the purpose of providing executive protection in response to a threat of physical violence; and serving a subpoena issued by the General Assembly or any General Assembly committee authorized to do so. The act also allows the President Pro Tempore of the Senate and the Speaker of the House of Representatives to waive the application to the Sergeants-at-Arms of any rule adopted by the Legislative Services Commission.

### **Reorganization of Legislative Committees and Commissions**

S.L. 2011-291 (House Bill 595) makes a number of changes to the structure, duties, and/or composition of the following commissions and committees: Legislative Services Commission; Joint Legislative Commission on Governmental Operations; Joint Regulatory Reform Committee; Joint Legislative Oversight Committee on Justice and Public Safety; Joint Legislative Education Oversight Committee; Joint Legislative Oversight Committee on Health and Human Services; Joint Legislative Transportation Oversight Committee; Joint Legislative Oversight Committee on Local Government; Joint Legislative Economic Development Oversight Committee; and Environmental Review Commission.

## **The 2012 Session**

The General Assembly is currently scheduled to return on September 12, 2011, to discuss a limited number of topics, with an emphasis on amendments to the State's Constitution. While additional reconvened or special sessions are still possible, it is anticipated that the General Assembly's short session will convene in May 2012.

*Christine B. Wunsche*