The General Assembly

The 2014 short session convened on May 14 and, following a week and a half delay during which skeleton sessions were held, adjourned on August 20. The session totaled 99 legislative days, the longest short session since 2002. This session was not without its share of delays and disputes between the two chambers, including differences over when to adjourn. Although there were disagreements between the chambers, the Governor vetoed only one bill and allowed two other bills to go into law without his signature.

This chapter provides an overview of the 2014 session, including 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 legislative reporting service website. The summaries are available directly at: https://lrs.sog.unc.edu/lrs/legsumms/2014; the site will be updated as new summaries are available.

Overview of the 2014 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 2014 short session convened on May 14 and adjourned August 20.

The 2013 adjournment resolution, (Ch. Res. 2013-23; HJR 1023), limited the matters that may be considered during the short session to the following:

(1) bills affecting the budget, as described, provided the bill is submitted to the Bill Drafting Division by May 16, 2014, and introduced in the House or filed for introduction in the Senate by May 27, 2014;

(2) bills amending the NC Constitution;

(3) bills and resolutions introduced in 2013 that passed the crossover deadline and were not disposed of in the other house by tabling, unfavorable committee report, indefinite postponement, or failure to pass any reading and which do not violate the receiving house's rules;

(4) bills and resolutions implementing recommendations of specified commissions and committees, provided the bill is submitted to the Bill Drafting Division by May 14, 2014, and filed for introduction in the Senate or introduced in the House by May 21, 2014;

(5) any noncontroversial local bill, as described, that is submitted to the Bill Drafting Division by May 21, 2014, and introduced in the House or filed for introduction in the Senate by May 28, 2014, accompanied by a certificate saying no public hearing will be required or asked for, the bill is noncontroversial, and that the bill is approved for introduction by each member of the House and Senate whose district includes the area to which the bill applies;

(6) selection, appointment, or confirmation of state board and commission members;

(7) any matter authorized by joint resolution;

(8) a joint resolution authorizing the introduction of such a bill;

(9) any bill affecting state or local pension or retirement systems, provided the bill is submitted to the Bill Drafting Division by May 21, 2014, and introduced in the House or filed for introduction in the Senate by May 28, 2014;

(10) joint, House, or Senate resolutions authorized under Senate Rule 40(b) or House Rule 31;

(11) bills concerning redistricting;

(12) bills vetoed by the Governor, to consider overriding the veto;

(13) election law bills;

(14) bills to disapprove rules under GS 150B-21.3 [effective date of rules provision under Administrative Procedure Act]; and

(15) a joint resolution adjourning the 2013 Regular Session, sine die.

A list of the bills that made it through the crossover deadline can be found here on the North Carolina General Assembly's website: http://www.ncleg.net/documentsites/legislativepublications/Research%20Division/Crossover/Crossover%20List%202013.pdf .

The adjournment resolution also authorized the Speaker of the House or the President Pro Tempore of the Senate to allow committees or subcommittees to meet when the General Assembly was not in session to review matters related to the 2013-15 budget, prepare reports, and consider other matters as appropriate, other than resolutions, bill, or proposed committee substitutes that originated in the other house. Conference committees were also allowed to meet with approval from the Speaker or President Pro Tem.

Statistical Comparison

The 2014 short session convened on May 14 and adjourned August 20, making it the longest short session since 2002. Despite the length of the session, a total of 410 bills were introduced during the 2014 legislative session, 49 fewer than the previous short session, continuing with the trend of fewer filed bills. Legislators were unable to reach an agreement on an adjournment date for several weeks, so the sessions from August 3 through 13 consisted of skeleton sessions, during which no votes were taken.

Table 1-1 compares the 2014 session with other even-year sessions of the past ten years.

Table 1-1. Statistical Comparisons of Recent Even-Year Sessions

	2004	2006	2008	2010	2012	2014
Date convened	May 10	May 9	May 13	May 12	May 16	May 14
Date adjourned	July 18	July 28	July 18	July 10	July 3	August 20
Senate legislative days	44	48	40	35	29	56
House legislative days	44	47	40	36	29	55
Senate bills introduced	415	881	597	354	165	157
House bills introduced	466	1,093	733	426	294	253
Total bills introduced	881	1,974	1,330	780	459	410
Session Laws Enacted	203	264	229	227	203	122
Vetoes	1	1	1	0	3	1

The Legislative Institution

Membership Changes

The 2014 session was marked by the absence of several longtime members and saw cancer take the lives of two legislators. Senator Brunstetter, who had served more than four terms in the Senate, resigned in January in order to work as executive vice president and chief legal counsel for Novant Health. Joyce Krawiec was named as Senator Brunstetter's successor. After serving more than five terms in the Senate, preceded by 11 terms in the House, Senator Nesbitt passed away after a brief battle with stomach cancer on March 6, 2014. Terry Van Duyn was named as his successor. Senator Clodfelter, after serving 8 terms, resigned in April to become Charlotte's mayor after Mayor Patrick Cannon stepped down after being arrested on federal theft and bribery charges. Jeff Jackson was appointed to fill Senator Clodfelter's seat. Near the end of the 2014 session, Senator Goolsby, who was not seeking re-election, decided to retire from his seat early. Michael Lee, named as Senator Goolsby's successor, was sworn in and conducted votes on the final day of session.

The House of Representatives welcomed three new members since the long session. Graig Meyer was named as Representative Foushee's successor; Representative Foushee, now a Senator, left the House to fill the vacancy created by Representative Kinnaird's retirement. Deb McManus, who had served one term, resigned in December of 2013 after she was charged with three counts of embezzlement of state property. Robert Reives, II was named as her successor in January. Representative Fulghum, who was serving in his second term, passed away after a brief fight with stomach and esophagus cancer on July 19, 2014. Brig. Gen. Gary Pendleton has been named as Representative Fulghum's successor.

Building Rules

The Legislative Services Commission's (Commission) responsibilities include establishing the policy for the use of the State legislative buildings and grounds (G.S. 120-32.1). The Commission held a rare meeting in May to review and amend the Legislative Complex rules, which were adopted in 1984 and last changed in 1987. The changes start off by shifting the stated purpose of the Legislative Building and Legislative Office Building. The introduction to the rules stated that the buildings were "designed to be a center of interest to visitors to the State government headquarters in Raleigh." The revised introduction states that the primary function of the buildings is to "house the legislative branch of state government. The State Legislative Building is also a center of interest to visitors to the State government headquarters in Raleigh."

The changes include deleting the prohibition on visiting the second floor of the Legislative Building. The rules add a prohibition on congregating on or using the grassy area surrounding the State Legislative Building without a permit. While the new rules prohibit signs on handsticks and placing signs on structures or equipment, the new rules no longer prohibit posting, displaying, or carrying signs in the Legislative Complex.

The most significant addition to the rules is that visitors are explicitly prohibited from acting in a manner that will imminently disturb the General Assembly, one of the houses, committees, members, or staff in the performance of their duties. Visitors who act in a manner that will imminently disturb such activities will be asked to stop the behavior and if they do not, they will be asked to leave. Stated examples of behaviors that may disturb the General Assembly include, (1) "Making noise that is loud enough to impair others' ability to conduct a conversation in a normal tone of voice while in the general vicinity and may include singing, clapping, shouting, playing instruments, or using sound amplification equipment while inside either the State Legislative Building or the Legislative Office Building"; and (2) "Creating any impediment to others' free movement around the grounds, impeding access to and from offices, committee rooms, elevators, stairwells, hallways, public areas, the chambers, or creating an impediment to others' ability to observe the proceedings in either house or in a committee meeting.[1]"

[1] The full text of the rules can be found at: http://www.ncleg.net/ncgainfo/BuildingRules5-15-2014.pdf.

Other changes to the rules include clarifying the responsibilities of person authorized to use the Legislative Complex, prohibiting denying use of the Legislative Complex on the content of the speech expressed, clarifying the areas that may be reserved for activities that educate or engage participants as well as the procedure for reserving such space, setting parameters for the use and reservation of the area between Jones Street and the South entrance to the State Legislative Building, and other technical, clarifying and administrative changes.

Violations of the rules are a Class 1 misdemeanor. The new rules add that nothing in the rules limits the General Assembly Police's authority to maintain order and provide adequate security to the Legislative Complex.

Study Committees and Commissions

The 2014 session ended without a studies bill, but new committees and commissions were established in other legislation.

S.L. 2014-100 (S 744, the Appropriations Act of 2014) creates the 14 member Joint Legislative Oversight Committee on the North Carolina State Lottery (Oversight Committee). The Oversight consists of seven members of the Senate and seven members of the House of Representatives; at least one member from each chamber must be a member of the minority party. The purpose of the Oversight Committee is to examine the operation of the North Carolina State Lottery on a continuing basis and make ongoing recommendations to the General Assembly on ways to improve the lottery's operations and success. The act specifies four activities that the Oversight Committee must undertake in examining the lottery.

S.L. 2014-100 also requires the cochairs of the Joint Legislative Oversight Committee on Health and Human Services to establish a Traumatic Brain Injury (TBI) Subcommittee (Subcommittee). The Subcommittee is charged with examining eight issues, including: existing TBI services and any deficiencies in service array, quality of services, accessibility, and availability of services across each age group of persons with TBI regardless of the age at which the trauma occurred; current inventory, availability, and accessibility of residential facilities specifically designed to service individuals with TBI; existing TBI-specific service definitions for children and adults who receive services through federally funded programs; and the State's current organizational model for providing comprehensive needs assessment, information management, policy development, service delivery, monitoring, and quality assurance for children and adults with TBI as compared to TBI organizational structures in other states. The Subcommittee must submit a final report to the Joint Legislative Oversight Committee on Health and Human Services no later than December 15, 2014, at which time the Subcommittee terminates.

Finally, S.L. 2014-100 establishes the 12 member Joint Legislative Oversight Committee on General Government (Committee). The Committee consists of six members of the Senate and six members of the House of Representatives, with at least three of the members from each chamber required to be members of the appropriations committee or subcommittee that has jurisdiction over 17 specified agencies. The Committee's purpose is to examine the services provided by the specified agencies and make recommendations to the General Assembly on how to improve the effectiveness, efficiency, and quality of state government services. The Committee's nine duties include: studying the programs, organization, operations, and policies of the specified agencies; reviewing compliance of budget actions directed by the General Assembly; reviewing policy changes as directed by law; monitoring the quality of services by the agencies to other agencies and the public; and identifying opportunities for agencies to coordinate and collaborate.

S.L. 2014-42 (H 1043) establishes the 12 member Blue Ribbon Commission to Study the Building and Infrastructure Needs of the State (Commission). The Commission consists of members appointed by the Speaker of the House of Representatives, the Speaker Pro Tempore of the Senate, and the Governor. The Commission is tasked with studying eight matters related to the state's building and infrastructure needs, including new repairs, renovations, expansion, and new construction.

Major Legislation Enacted in 2014

The 2014 General Assembly enacted a number of significant pieces of legislation, a few of which are listed below. Please note that additional legislation passed by the General Assembly is discussed in the Governor's Veto section of this document.

Hemp Oil Extract

S.L. 2014-53 (H 1220) establishes the Epilepsy Alternative Treatment Act. The purpose of the act is to allow medical professionals to study the safety and efficacy of treating intractable epilepsy using hemp extract. Among the act's findings, is that there are children in the state suffering from intractable epilepsy for which currently available treatment options are ineffective and that hemp extract shows promise in treating children with intractable epilepsy. Committee meetings where the bill was heard were often emotional, with parents tearfully telling legislators about watching their children suffer from multiple seizures with no effective medical treatment available[2].

The act allows possession or use of hemp extract to treat intractable epilepsy, so long as the individual also possesses a certificate of analysis indicating the extract's ingredients, and a registration card. Individuals legally possessing the extract are also allowed to administer the extract to another person under the individual's care if the individual is registered with the Department of Health and Human Services (DHHS) to administer the extract. The act requires the DHHS to create an Intractable Epilepsy Alternative Treatment Pilot Study database registry to house information on pilot studies, neurologists conducting pilot studies, caregivers, and patients. Registration cards are also to be issued to caregivers of patients suffering from intractable epilepsy, who are under the care of a neurologist, may benefit from hemp extract treatment, and are eligible for participating in a registered pilot study. Neurologists conducting a registered pilot study are allowed to approve of a dispensation of hemp extract acquired from another jurisdiction, to a registered caregiver. DHHS is required to establish and adopt temporary rules to implement these provisions by October 1, 2014. The act also allows UNC-Chapel Hill and East Carolina University, while encouraging Duke University and Wake Forest University, to conduct research on hemp extract development, production and use for the treatment of seizure disorders, and to participate in clinical studies or trials.

NC Education Endowment Fund

S.L. 2014-100 (S 744, the Appropriations Act of 2014) establishes the North Carolina Education Endowment Fund (Fund). The Fund is supported by specified proceeds from the sale of an "I Support Teachers" license plate; gifts, grants, or contributions designated for inclusion in the Fund; appropriations made to the Fund by the General Assembly; and interest. The act also allows taxpayers to contribute all or part of their income tax refund to the Fund. Money appropriated to the Fund from the General Fund for 2-14-15 must be used to provide local board of education with additional State funds to provide local programs for differentiated pay for high effective teachers. Funds are allowed to be expended from the Fund for differentiated pay upon an act of appropriation by the General Assembly.

A separate provision in the act requires local boards of education to submit proposals to establish a local program to provide differentiated pay for highly effective teachers to the specified legislative committees by January 15, 2015. Proposals are required to limit eligibility for differentiated pay to classroom teachers (those spending at least 70% of his or her work time in

[2] More details on these families' stories can be found at http://www.wral.com/-we-need-this-now-nc-parents-seek-marijuana-oil-for-children-with-seizures/13423813/ and http://www.claytonnewsstar.com/2014/07/07/3989547/clayton-youngster-might-benefit.html; http://www.wcti12.com/news/bill-to-legalize-compound-in-cannabis-moving-through-nc-house/26227184.

classroom instruction and who are not employed as instructional support personnel) and instructional coaches.

Virtual Charter School Pilot Program

S.L. 2014-100 (S 744, the Appropriations Act of 2014) requires the State Board of Education (State Board) to establish a pilot program authoring the operation of two virtual charter schools serving students in kindergarten through twelfth grade. The pilot program allows student enrollment beginning with the 2015-16 school year and operating for four school years, ending with the 2018-19 school year. The act specifies rules and requirements to be met by the participating schools. The State Board is required to report on the implementation of the program to the Joint Legislative Education Oversight Committee by November 15, 2016, and on findings from the pilot program by November 15, 2018.

Oil and Gas Exploration

In 2012, S.L. 2012-143 required the development of a regulatory program for the management of oil and gas exploration and development activities, including the use of horizontal drilling and hydraulic fracturing, also known as fracking. The act authorized fracking but prohibited issuing permits for such activity until future legislative action was taken, with the intention of giving the Mining and Energy Commission sufficient time to develop a program for the management of oil and gas exploration and development and the use of horizontal drilling and hydraulic fracturing treatments, and for adoption of appropriate environmental standards. The following year, S.L. 2013-365 prohibited the issuance of fracking permits until (i) all rules required to be adopted by the Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health according to the requirements of S.L. 2012-143 become effective, and (ii) the General Assembly takes affirmative legislative action to allow the issuance of such permits. The General Assembly took the necessary affirmative action in 2014; S.L. 2014-4 (S 786) allows the issuance of permits for fracking on or after the 61st calendar day following the date that all rules adopted under S.L. 2012-143 Section 2(m) [requiring all rules required to be adopted by the Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health under the act to be adopted no later than January 1, 2015, with the deadline extended by S.L. 2014-4] have become effective.

The act makes information obtained by the Mining and Energy Commission and the Department of Environment and Natural Resources under Article 27 of GS Chapter 113, Oil and Gas Conservation, confidential if it is shown that if the information was made public, it would divulge methods or processes entitled to protection as confidential information. Knowing and willful disclosure of confidential information is a Class 1 misdemeanor. The act also renames the NC Mining and Energy Commission as the NC Oil and Gas Commission and restructures the Commission's membership. The act removes the administration of mining from the Commission's duties, placing those duties with the reenacted NC Mining Commission, with modified membership.

The act prohibits the subsurface injection of fracking waste materials; violations are a Class 1 misdemeanor. A new severance tax is also established in S.L. 2014-4. The act requires the study of specified issues related to energy minerals and taxation, as well as the effect of the development of the oil and gas industry on property tax revenues of local government. Other issues authorized to be studied are a liquefied natural gas export terminal; issues surrounding energy-related traffic; community college programs to prepare students for employment in the oil and natural gas drilling, gathering, and field operations industry; compulsory pooling and dormant mineral statutes; development of midstream infrastructure; long range state energy policy to achieve maximum effective management; and the use of present and future energy sources.

Finally, the act amends provisions related to notice to owner of subsurface oil or gas resources, liability for damages, pre-drilling testing of water supplies, invalidation of local

ordinances prohibiting oil and gas exploration, development and production, and environmental compliance reviews.

Common Core

S.L. 2014-78 (S 812) requires the State Board of Education to: (1) continue to exercise its authority to adopt academic standards for public schools; (2) review all English Language Arts and Mathematics standards and propose modifications to ensure that they increase students' level of academic achievement, meet and reflect North Carolina's priorities, are age and developmentally appropriate and understandable to parents and teachers, and will be among the highest standards in the nation; (3) not enter into any agreement, understanding, or contract that would cede control of the Standard Course of Study and related assessments; (4) involve and survey a representative sample of parents, teachers, and the public to help determine academic content standards that meet and reflect North Carolina's priorities and the usefulness of the content standards; and (5) consult with the Academic Standards Review Commission before making changes.

The act establishes the 11 member Academic Standards Review Commission The Commission's duties are to: (1) conduct a comprehensive review of the academic standards for English Language Arts and Mathematics that were adopted by the State Board of Education; (2) recommend new academic standards or propose changes to these academic standards; (3) recommend to the State Board of Education assessments aligned to proposed changes and modifications that would also reduce the number of high-stakes assessments administered to public schools; and (4) consider the impact on educators when making any of the recommendations.

The act requires the State Board of Education (State Board) to report to the Joint Legislative Education Oversight Committee by July 15, 2015, on the acquisition and implementation of a new assessment instrument or instruments to assess student achievement. Local boards of education are required to continue teaching the course content required by the Standard Course of Study; the current Standard Course of Study is in effect until official notice is provided to all public school teachers, administrators, and parents or guardians of students enrolled in the public schools of any changes made in the Standard Course of Study by the State Board.

Escheat Savings Bond Trust

S.L. 2014-93 (H 27) allows the Treasurer, within 365 days after a United States savings bond is unclaimed and presumed abandoned, to commence a civil action in the Superior Court of Wake County for a determination that the savings bond escheats to the State of North Carolina. A savings bond is unclaimed and presumed abandoned if the owner of the savings bond does not redeem the savings bond within three years after the savings bond has fully matured. The Treasurer must make sufficient efforts to locate the owner of the savings bond before bringing an action, may not bring an action until a sufficient amount of United States savings bonds have accumulated owing to persons with a last known address of North Carolina, and may not bring an action as to a specific savings bond if a claim has been filed for that savings bond. The court must enter a judgment that the United States savings bonds have escheated to the State and that all property rights and legal title to and ownership of the savings bonds or proceeds from the bonds vest in the State if: (1) no one files a claim or appears at the hearing to substantiate a claim; (2) the court determines that a person who has filed a claim or appears at the hearing to substantiate a claim is not entitled to the property claimed by the claimant; and (3) the court is satisfied that the Treasurer has substantially complied with the law. A person claiming ownership for a savings bond that has escheated to the State, or for the proceeds from a savings bond that has been redeemed by the Treasurer, may file a claim. After providing proof of the validity of a person's claim, the Treasurer may pay the claim.

The Escheat Savings Bond Trust Fund is established as a separately accounted fund within the Escheat Fund. The net proceeds from redemption of United States savings bonds must be credited

to this Fund. The Escheat Savings Bond Trust Fund body may only be spent for investment and to pay funds to potential claimants, while the interest and investment earnings on the Trust Fund is to be used to provide scholarships to worthy and needy students who are State residents and are enrolled in public institutions of higher education in this State.

Tax Law Changes

S.L. 2014-3 (H 1050) makes many changes to the state's tax laws. One of the most significant changes made in the act is the repeal of the privilege license tax. The act repeals the authority for cities and counties to impose a privilege license tax, effective July 1, 2015.

A second change made in the act is the new excise tax on vapor products. Vapor products are defined as any nonlighted, noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to produce vapor from nicotine in a solution. Effective June 1, 2015, vapor products are taxed at a rate of five cents per fluid milliliter of consumable product.

Among the other many changes made by the act, the act amends the way prepaid meal plans are taxed and the way admissions taxes are administered and implemented, including clarifying what qualifies as admission charges. The act also makes changes to the taxation of services contracts, and specifies when a retailer-contractor is considered the consumer and therefore responsible for payment of the sales tax. Additional changes were made to net loss provisions, income tax, agricultural exemption certificates, sales tax, excise tax, tax law compliance, property tax, and license plate agent compensation.

Department of Commerce Partnership and Collaboration for Prosperity Zones

S.L. 2014-18 (H 1031) allows the Department of Commerce (Department) to enter into an agreement with a North Carolina nonprofit organization, under which the nonprofit is allowed to perform specified Department duties. The purpose of the act is to allow a nonprofit to assist the Department in "fostering and retaining jobs and business development, international trade, marketing, and travel and tourism.[3]" The act specifies four areas that the Department may not contract away. The contract will be monitored by the newly established Economic Development Accountability & Standards Committee. The act sets out conditions that must be met before contracting, mandatory contract terms, and reporting requirements. These provisions became effective July 1, 2014. More information on this partnership is available in a blog post written by SOG faculty member Tyler Mulligan, here: http://ced.sog.unc.edu/?p=4958 .

S.L. 2014-18 divides the state's counties into eight "collaboration for prosperity" zones. The stated purpose of these zones is "facilitating collaborative and coordinated planning and use of resources, to improve cooperation with other governmental and nonprofit entities at the local and regional level, to facilitate administrative efficiencies within State government, to receive advice on economic development issues by local boards established by a North Carolina nonprofit corporation with which the Department of Commerce contracts, and, to the extent feasible, to establish one-stop sources in each region for citizens and businesses seeking State services at a regional level."[4] The act also requires that by January 1, 2015, the Departments of Commerce, Environment and Natural Resources, and Transportation to have at least one employee physically located in the same office in each zone. The Community Colleges System Office and the State Board of Education are required to have at least one representative serve as a liaison in each zone.

[3] S.L. 2014-18, Section 1.1(a), G.S. 143B-431A(a)
[4] S.L. 2014-18, Section 3.1.

State Bureau of Investigation and Alcohol Law Enforcement Section Transfers

S.L. 2014-100 (S 744, the 2014 Appropriations Act) transfers the Division of Criminal Information from the Department of Justice to the Department of Public Safety. The remainder of the State Bureau of Investigation is also transferred to the Department of Public Safety as a new section within the Law Enforcement Division. The act transfers the Alcohol Law Enforcement Section to a branch under the State Bureau of Investigation. New G.S. 143B-928 states that the Alcohol Law Enforcement Branch is a separate and discrete branch of the State Bureau of Investigation. These transfers are effective July 1, 2014.

Role of the Attorney General

S.L. 2014-100 (S 744, the 2014 Appropriations Act) specifies in G.S. 120-32.6 that when the validity or constitutionality of an act of the General Assembly or a provision of the State Constitution is the subject of a court action, if the General Assembly hires outside counsel to represent the General Assembly in connection with that action, the General Assembly is also deemed a client of the Attorney General for purposes of the action. When the General Assembly employs counsel in addition to, or other than, the Attorney General, the Speaker of the House of Representatives and the President Pro Tempore of the Senate may jointly designate the counsel employed by the General Assembly as lead counsel, having final decision making authority with respect to the representation, counsel, or service for the General Assembly. The act also amends the Attorney General's duties in G.S. 114-2 to include conformance with Rule 1.2 of the Rules of Professional Conduct of the North Carolina State Bar when the Attorney General represents a state department, agency, institution, commission, bureau, or other organized State activity receiving support from the State. Rule 1.2 governs the scope of representation and allocation of authority between a client and lawyer and states, in part, "a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation."[5]

The act also adds the requirement that where a dispute, claim, or controversy names a state department, agency, or institution, or officer is named as a party, a consent judgment or proposed settlement agreement must be approved by the head of the department, agency, or institution, or by the State officer, before the judgment or agreement may be entered.

Three Judge Panels

S.L. 2014-100 (S 744, the 2014 Appropriations Act) amends G.S. 1-267.1, effective September 1, 2014, to require facial challenges to the validity of an act of the General Assembly (excluding challenges to plans apportioning or redistricting state legislative or congressional districts) to be heard by a three judge panel of the Wake County Superior Court. In these cases, the Chief Justice of the Supreme Court must appoint three resident superior court judges to hear the challenge; the process for assigning judges ensures that members are drawn from different regions of the state. G.S. 7A-27 is also amended to provide that appeal lies of right directly to the Supreme Court from any order or judgment holding that an act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law.

Unmanned Aircraft

S.L. 2014-100 (S 744, the 2014 Appropriations Act) creates new Article 16B, Use of Unmanned Aircraft Systems, in G.S. Chapter 15A. Effective October 1, 2014, the act prohibits the use of an unmanned aircraft system to (1) conduct surveillance of a person or dwelling occupied by a person and that dwelling's curtilage without the person's consent, and private real property without the consent of the property owner, easement holder, or lessee; or (2) take a photo of a

[5] The text of Rule 1.2 is available at: http://www.ncbar.com/rules/rules.asp.

person without consent for the purpose of publishing or publicly disseminating the photo. The act allows the use of unmanned aircraft systems by law enforcement agencies (1) to counter a high risk of a terrorist attack if the US Secretary of Homeland Security or the Secretary of the NC Department of Public Safety determines that there is credible intelligence of such a risk; (2) to conduct surveillance in an area that is within a law enforcement officer's plain view when the officer is in a location the officer has a legal right to be; (3) if the law enforcement agency first obtains a search warrant allowing the use; (4) if the law enforcement agency has reasonable suspicion that swift action in needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, to conduct pursuit of an escapee or suspect, or to facilitate the search for a missing person; or (5) to photograph a gathering to which the general public is invited. Any person who is the subject of unwarranted surveillance, or whose photograph is taken in violation of these provisions has a civil cause of action against the person, entity, or State agency that conducts the surveillance or that uses an unmanned aircraft system. Instead of actual damages, the person whose photograph is taken may decide to recover $5,000 for each photograph or video that is published or disseminated, as well as reasonable costs and attorneys' fees and injunctive or other relief as determined by the court. Evidence obtained or collected in violation of this section is not admissible as evidence in a criminal prosecution except when it is obtained or collected under the objectively reasonable, good-faith belief that the actions were lawful.

The act allows commercial and private unmanned aircraft systems to have infrared or other thermal imaging technology for the purpose of scientific investigation; scientific research; mapping and evaluating the earth's surface, including terrain and surface water bodies and other features; investigation or evaluation of crops, livestock, or farming operations; investigation of forests and forest management; and other similar investigations of vegetation or wildlife.

Effective December 1, 2014, the act establishes new G.S. 14-7.45, which provides that all crimes committed by use of an unmanned aircraft system while in flight over this State are governed by State laws, and that the question of whether the conduct by an unmanned aircraft system while in flight over this State constitutes a crime by the owner is be determined according to State law.

New G.S. 14-280.3 makes it a Class H felony to willfully damage, disrupt the operation of, or otherwise interfere with a manned aircraft through use of an unmanned aircraft system, while the manned aircraft is in motion. New G.S. 14-401.24 makes it a Class E felony to possess or use an unmanned aircraft or unmanned aircraft system that has a weapon attached, and makes it a Class 1 misdemeanor to fish or to hunt using an unmanned aircraft system. Under new G.S. 14-401.25 it is a Class A1 misdemeanor to publish or disseminate recorded images taken by a person or non-law enforcement entity through the use of infrared or other similar thermal imaging technology attached to an unmanned aircraft system and revealing individuals, materials, or activities inside of a structure without the property owner's consent. It is also a Class 1 misdemeanor under G.S. 113-295 to use an unmanned aircraft system to intentionally interfere with the lawful taking of wildlife resources or to disturb any wildlife resources for the purpose of disrupting the lawful taking of wildlife resources, or to take or abuse property, equipment, or hunting dogs that are being used for the lawful taking of wildlife resources. These provisions are effective December 1, 2014.

The act also creates new Article 10, Operation of Unmanned Aircraft Systems, in G.S. Chapter 63, requiring the Department of Transportation's Division of Aviation to develop and administer a knowledge and skills test for operating an unmanned aircraft system. State agents and agencies or agents or agency of a political subdivision of the state must complete the test before operating an unmanned aircraft system. The new Article also requires a license to operate an unmanned aircraft system for commercial purpose. Licensure requirements include that the person be at least 18 years old and have passed the knowledge and skills test. The Division of Aviation is required to develop and implement the test no later than May 31, 2015. The Division must implement the licensing system within 60 days of issuance of the FAA guidelines and authorization by the FAA for commercial operations to begin.

The act also extends the prohibition, until December 31, 2015 (was, July 1, 2015), on a State or local governmental entity or officer from procuring or operate an unmanned aircraft system or disclose personal information about any person acquired through the operation of an unmanned aircraft system unless the State CIO approves an exception specifically granting disclosure, use, or

purchase. Any exceptions allowed must be reported immediately to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division.

Coal Ash

One of only two bills to become law without the Governor's signature, S.L. 2014-122 (S 729) addresses the cleanup of coal ash ponds in the state. In February, coal ash leaked from a coal ash pound at Duke Energy's retired Dan River Steam Station in Eden, contaminating 70 miles of the Dan River. Legislators soon called for clean up the spill and regulations for Duke Energy's 31 ash ponds located throughout the state.

While multiple bills were filed addressing coal ash, Senate Bill 729 is the one that ultimately become law after undergoing several rounds of changes. It looked unlikely that a compromise would be reached before the end of session; versions of the adjournment resolution would have allowed considering coal ash legislation during a reconvened November session. Ultimately the bill was given final approval on the last day of the 2014 session.

The 45 page S.L. 2014-122 addresses the management of coal ash and the closure of coal ash ponds (referred to as coal combustion residuals surface impoundments in the act). Among its many provisions, the act sets out the following. The act prohibits recovering from customers costs related to unlawful discharges from coal ash ponds, applying to discharges occurring on or after January 1, 2014. The recovery moratorium ends January 15, 2015. The act also establishes Part 2I, Coal Ash Management in Article 9 of G.S. Chapter 130A. The new Part creates the nine member Coal Ash Management Commission to review and approve coal ash pond classifications and closure plans, and study and make recommendations on laws governing management of coal ash. Under the new Part, the Department of Environment and Natural Resources (Department) must perform expedited review of any permit necessary to conduct activities required by the Part. The Department is also required to report quarterly to the Environmental Review Commission and the Coal Ash Management Commission on its operations, activities, programs, and progress on obligations under the Part concerning coal ash ponds. The Department must also report annually to each General Assembly member who has a coal ash pond in the member's district. Public utilities generating coal ash and coal combustion products must also report annually to the Department.

The Part prohibits: (1) local government regulation of the management of coal combustion residuals or coal combustion products; (2) the construction of new or expansion of existing coal ash ponds effective October 1, 2014; (3) the disposal of coal ash into coal ash ponds at coal-fired generating units that are no longer producing coal combustion residuals effective October 1, 2014; (4) disposal of stormwater to coal ash ponds at facilities where the units are no longer actively producing coal ash effective December 31, 2018 and effective December 31, 2019, at facilities where the units are actively producing coal ash. The Part requires all electric generating facilities to convert to generation of dry fly ash on or before December 31, 2018, and dry bottom ash on or before December 31, 2019, or retire. The Part also requires the assessment of groundwater at coal ash ponds and corrective action for the restoration of groundwater quality at coal ash ponds. Coal Ash pond owners are also required to conduct a survey of drinking water supply wells and replace contaminated water supplies. The Part requires the identification, assessment, and correction of unpermitted discharges from coal ash ponds. The Department is required, by December 31, 2015, to prioritize coal ash ponds for the purpose of closure and remediation, with prioritization based on the sites' risks to public health, safety, and welfare, the environment, and natural resources. Coal ash pond owners are required to submit a proposed plan for the closure of all impoundments. The closure and remediation of high risk coal ash ponds is required by December 31, 2019, intermediate risk impoundments by December 31, 2024, and low risk impoundments by December 31, 2029. Finally, the Part establishes minimum statutory requirements for structural fill projects using coal combustion products and requires the Department to inventory and inspect structural fill projects with a volume of 10,000 cubic yards or more.

The act names four coal ash pounds at facilities in Rockingham County, Gaston County, Buncombe County, and New Hanover County as high priority and requires that they be closed by August 1, 2019.

The act also places a moratorium on certain projects using coal combustion products as structural fill until August 1, 2015, and directs the Department and the Environmental Management Commission to study the adequacy of current law governing use of coal combustion products as structural fill and for beneficial use. The act places a moratorium on the expansion and construction of coal combustion residuals landfills until August 1, 2015, and directs the Department to assess the risks to public health, safety, and welfare, the environment, and natural resources of coal combustion residuals surface impoundments located beneath these landfills to determine the advisability of continued operation of these landfills and report to the Environmental Review Commission by January 15, 2015. The act also makes changes concerning the reporting and notification requirements applicable to discharges of wastewater to waters of the state, requires the development of emergency action plans for high and intermediate hazard dams, and amends other dam safety law requirements applying to coal combustion residuals surface impoundments. The act transfers solid waste rule-making authority from the Commission for Public Health to Environmental Management Commission. The act requires each public utility with a coal ash pond to pay a fee of 0.03% of the North Carolina jurisdictional revenues of the utility to defray the cost of coal ash oversight. The fee requirement expires April 1, 2030. The act also requires the performance of several studies.

Regulatory Reform

S.L. 2014-120 (S 734) makes many changes to various areas of the law, including changes to administrative and environmental laws. The act repeals several boards and committees, including the Committee on Dropout Prevention, the State Education Committee and Commission, and the National Heritage Area Designation Commission. The act makes several changes to the Administrative Procedure Act, including changes to clarify the process for readopting exiting rules, allow documents in a contested case to be filed and served electronically, streamline the rule making process, and allow a business entity to represent itself using a nonattorney representative who meets specified conditions.

Business related changes including authorizing licensing boards to adopt rules for professional corporations, amending Occupational Licensing Board reporting requirements, amending the merchant exemption from the locksmith licensing requirements, and clarifying the professional engineer exemption.

The act creates new Article 80, Permit Choice, in G.S. Chapter 143, allowing a development permit applicant to choose which version of the rule or ordinance will apply, if a permit applicant submits a permit for any type of development and a rule or ordinance changes between the time the application is submitted and the decision is made.

S.L. 2014-120 allows the holder of a brewing, distillation, and fermentation course to: (1) manufacture malt beverages on a community college or college campus to provide instruction and education on the making of malt beverages; (2) possess malt beverages manufactured during the brewing, distillation, and fermentation program for the purpose of conducting malt beverage tasting seminars and classes for students who are 21 years of age or older; (3) sell malt beverages produced during the course to wholesalers or to retailers upon obtaining a malt beverages wholesaler permit; and (4) sell malt beverages produced during the course, upon obtaining a permit. Authorization for a brewing, distillation, and fermentation course is to be granted only for a community college or college that offers a brewing, distillation, and fermentation program as a part of its curriculum offerings for students of the school.

The act repeals Section 10.2 of S.L. 2013-413, which prohibited cities and counties from enacting an ordinance that regulates a field that is also regulated by a State or federal statute enforced by an environmental agency or that regulates a field that is also regulated by a rule adopted by an environmental agency, until October 1, 2014. The act now requires the Department of Agriculture and Consumer Services and the Department of Environment and Natural Resources to report to the Environmental Review Commission by November 1 of 2014 and 2015 on any local government ordinances that impinge on or interfere with any area subject to regulation by the Departments.

S.L. 2014-120 amend G.S. 160A-272 to allow a local government to approve a lease for the siting and operating of a renewable energy facility for up to 25 (was, 20) years without treating the lease as a sale of property and without giving notice by publication of the intended lease. This provision is extended statewide, no longer applying only to the specified counties and cities.

Among other changes, the act also amends hotel carbon monoxide alarm requirements, establishes pharmacy benefits management provisions, and amends open burning regulations. Additional environmental law changes including amending several stormwater regulations, exempting construction and demolition landfills from minimum financial responsibility requirements, and amending isolated wetlands regulation.

Various Criminal Law Changes

Please note that a more detailed analysis of the changes discussed below, along with other changes to criminal law and procedure, can be found under the Criminal Law and Procedure heading on the LRS 2014 post-session legislative summaries site: https://lrs.sog.unc.edu/lrs/legsumms/2014.

Marijuana drug paraphernalia. Effective December 1, 2014, S.L. 2014-119 (H 369) makes it a Class 3 misdemeanor to possess marijuana drug paraphernalia. It remains a Class 1 misdemeanor to possess drug paraphernalia related to other controlled substances.

Cell phone possession. S.L. 2014-119 (H 369) increases the penalty for giving or selling a cell phone to an inmate from a Class 1 misdemeanor to a Class H felony. The act also make it unlawful for an inmate in the custody of the Division of Adult Correction to possess a cell phone or a component of a cell phone, and increases the penalty for inmates of local confinement facilities who possess a cell phone or components of a cell phone; these offenses are a Class H felony effective December 1, 2014.

Remote testimony. S.L. 2014-119 (H 369) allows the remote testimony of an analyst concerning the results of forensic or chemical testing if: (1) the State has provided a copy of the report to the defendant's attorney; (2) the State notifies the defendant's attorney at least 15 business days before the proceeding at which the evidence would be used that the State intends to introduce the forensic or chemical testing results testimony using remote testimony; and (3) the defendant's attorney does not file a written objection with the court at least five business days before the proceeding at which the testimony will be presented. These provisions are effective for testimony admitted on or after September 1, 2014.

Venus flytrap. S.L. 2014-120 (S 734) makes it a Class H felony to (or to aid another person in doing so) dig up, pull up, take, or carry away any Venus flytrap plan or seed with the intent to steal. Such activity was previously a Class 3 misdemeanor. The act also increases the fine for digging up, pulling up, or taking other specified wild plants. These changes are effective December 1, 2014.

The Governor's Veto

Although he allowed two bills to go into law without his signature (House Bill 1086, NC and SC Rail Compact, and Senate Bill 729 Coal Ash Management Act of 2014), Governor McCrory exercised his veto power only one time this session, vetoing House Bill 1069, Unemployment Insurance Law Changes. The General Assembly did not attempt to override the veto, choosing instead to place language identical to portions of House Bill 1069 in a second bill, Senate Bill 42, which was signed into law.

Unemployment Insurance Changes

House Bill 1069 contains several provisions amending unemployment insurance laws. Part I of the act provides that confidential information includes any unemployment compensation

information in the Division of Employment Security's records that pertains to the administration of the Employment Security Law that is required to be kept confidential under federal regulations. Part II of the act allows the Division of Motor Vehicles to release social security numbers to the Division of Employment Security to verify employer and claimant identity. Among the other changes made in Part II, the bill requires job seekers to show that they have made at least five job contacts per week instead of two, and eliminates the procedure for requesting reconsideration of decisions. Part III of the bill would allow the Division of Employment Security, when the Division prevails in a civil action against an employer for the collection of unpaid employment taxes, to garnish the employer's credit card receipts for payment of the unpaid taxes. Part IV of the act changes the duration of unemployment benefits so that it is based only on unemployment rates. Part V of the act requires that recipients show photo identification at a local unemployment office. Finally, Part VI repeals existing law concerning the Board of Review, enacts new G.S. 96-15.3 establishing a Board of Review, and establishes the terms of those members that were appointed to the Board by the Governor in December 2013 (which was after the stated appointment deadline). The purpose of the Board is to determine appeals policies and procedure and to hear appeals from the Division of Employment Security's decisions and determinations.

Citing concerns related to the changes in membership of the Board of Review, Governor McCrory vetoed House Bill 1069 on June 24. The Governor's veto message states, "Although the vast majority of this bill contains much needed revisions to unemployment insurance laws, there are unacceptable provisions which stagger and shorten terms of current lawfully seated members. I appointed these members following a previous legislative directive that did not require confirmation for initial appointees."[6]

Instead of considering a veto override, legislators placed portions of House Bill 1069 in other legislation. Senate Bill 42, S.L. 2014-117 contains language identical to Section 1 of House Bill 1069, concerning confidentiality of information. The bill did not include any other provisions from House Bill 1069.

Reconvened Sessions

One sticking point for the legislators, which led to multiple versions of the adjournment resolution, was whether to reconvene after adjourning. Proposals included adjourning until a date certain, where they would reconvene to take up coal ash, any vetoed bills, and bills remaining in conference. Proposals also included reconvening for a session in November to take up Medicaid reform. In the end, those ideas were rejected and legislators adjourned sine die, with no plans to return.

Shortly following adjournment, there were calls for the Governor to call a special session to consider economic development issues. In September Governor McCrory issued a statement saying he would not be calling legislators back in. The Governor stated, "It would be counterproductive and a waste of taxpayer money to bring the General Assembly back when there is no agreement in place on issues already voted on. However, if a major job recruitment effort develops and it requires legislative support, I will bring lawmakers back to Raleigh"[7].

Unfinished Business

Medicaid Reform

The 2014 Appropriations Act required that the General Assembly reconvene in November to discuss Medicaid system reform. This requirement was also

[6] Governor's veto message: http://www.governor.state.nc.us/newsroom/press-releases/20140624/governor-mccrory-vetoes-house-bill-1069#sthash.bQB1dbkM.dpuf

[7] See more at: http://www.governor.state.nc.us/newsroom/press-releases/20140912/governor-mccrory-will-not-call-general-assembly-back-special#sthash.kXWfvrm4.dpuf

reflected in several of the proposed adjournment resolutions, but it does not appear in the final adjournment resolution. In lieu of a session dedicated to Medicaid reform, the Joint Legislative Oversight Committee on Health and Human Services (Committee) established a Medicaid Reform/Division of Medical Assistance Reorganization Subcommittee (Subcommittee)[8].

The Subcommittee is authorized to study the following four areas: (1) progress and recommendations by the Department of Health and Human Services, Division of Public Health, on the adequacy of current fees, the categories of professionals appointed as medical examiners, and the qualification of and training requirements for medical examiners; (2) overall structure and capacity of the Office of the State Medical Examiner including the pros and cons of having a central office versus regional offices and the adequacy of overall funding; (3) progress in developing and implementing a system of oversight to achieve operational efficiencies and quality assurance; and (3) the Subcommittee is authorized to work with the Joint Legislative Oversight Committee on Justice and Public Safety, upon request. The Subcommittee must report its findings to the Committee on or before the Committee's November 2014 meeting.

The 2015 Session

The General Assembly is scheduled to convene for the long session on January 14, 2015. This initial convening will be for a one day organizational session; legislators will return for the full regular session on January 28, 2015.

Christine B. Wunsche

[8] The Subcommittee authorization is available at: http://www.ncleg.net/documentsites/committees/JLOCHHS/HHS%20Subcommittees%20by%20Interim/2014-15%20HHS%20Subcommittees/Medicaid%20Reform-DMA%20Reorg%20Subcommittee/September%2024,%202014/Subcommittee%20Authorization.pdf