

# The General Assembly

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The 2015 legislative long session lasted longer than any session since those of the 1980s with the exception of the longest session on record in 2001. The General Assembly convened on January 14 for a one day organizational session, reconvened to begin the session's work on January 28, and adjourned on September 30. During this time, 1666 bills were introduced and 314 laws were enacted.

This chapter provides an overview of the 2015 session, including the organization of each chamber and major legislation enacted. Please note that School of Government (SOG) faculty members and experts have written detailed blog posts, outlines, and summaries of selected legislation of interest to state and local government officials. These summaries are available on the SOG's Legislative Reporting Service website, [irs.sog.unc.edu](http://irs.sog.unc.edu) under the "Legislative Summaries" link; the site will be updated as summaries are available.

## Overview of the 2015 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 typically 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. Beginning in 2013, legislators also convene a one-day organization session a couple of weeks before returning to conduct business during the long session.

The 2015 session welcomed 25 new members with both chambers retaining a Republican majority. The Senate membership included 7 new members, gaining one republican seat, while the House, which had 18 new members, lost three republican seats (although the one unaffiliated member chose to caucus with the Republicans).

On January 14, legislators met to adopt temporary rules, name leadership, and announce committee appointments. This one-day session allowed legislators to quickly get to work when the session reconvened on January 28. This session was one of the longest when compared to long sessions starting back in 1974. Since that time, only the 2001 session, when legislators were facing conflicts over the budget and redistricting, consisted of more calendar days. Legislators met for 260 calendar days, which accounts for the two scheduled vacation weeks. In terms of actual working days, with the exception of the 2001 session, the 2015 session consisted of more legislative days than any session since 1989 when the House met for 137 days.

An early indication that the session might stretch on longer than usual was the fact that legislators took two vacation breaks. The legislators took a spring break the week of April 6, during which skeleton, or no-vote, sessions were held. Legislators also took a summer break the week of July 4. Instead of holding skeleton sessions this second vacation week, legislators adjourned on July 2 and reconvened on July 13<sup>1</sup>. While it is not unusual for legislators to schedule a skeleton session or two around holidays in order to give legislators an extended break, it is unusual for legislators to take a full week off.

The session length was largely due to disagreements over the State budget. Budgeting disagreements included spending amounts, tax changes, and whether or how to fund teachers' assistants and drivers education. Other controversial issues left to the end of session included Medicaid reform, economic development and a bond referendum.

Governor McCrory vetoed two bills, both of which were overridden. A further discussion of those bills can be found in the "The Governor's Veto" section of this document. The Governor also allowed two bills to become law without his signature, S.L. 2015-7 (Senate Bill 14) and S.L. 2015-9 (House Bill 364). Among its provisions, S.L. 2015-7 allocates funds to pay for litigation costs and to fund the Academic Standards Review Commission, changes various funds concerning coal ash management, makes changes to Emergency Action Plan requirements for dams, amends funding for the health information exchange, and requires performance audits of county departments of social services' administration of the North Carolina Medicaid program. S.L. 2015-9 amends the conflict of interest provisions for members of the Coal Ash Management Commission, the Environmental Review Commission, and the Coastal Resources Commission, no longer requiring the Governor to issue an executive order promulgating conflict of interest rules for those Commissions and instead allows the Governor to require additional disclosure of conflict of interest and to promulgate additional criteria concerning conflict of interest and disclosure of conflicts for determining membership eligibility. The act also replaces General Assembly members with members of the public on various state boards and commissions.

## **The House of Representatives**

The November 2014 election resulted in the election of 18 new House of Representatives members for a total membership of 74 Republicans, 45 Democrats, and 1 Unaffiliated member, retaining a veto-proof<sup>2</sup> Republican majority. Thom Tillis, the previous Speaker of the House, was elected to the US Senate in 2014. Tim Moore of Cleveland County was elected as Speaker of the House while Larry Hall was re-elected Minority Leader. Table 1-1 lists the 2015 House officers.

The demographics of the 2015 House can be broken down as follows:

- 26 women, four less than in 2013
- 94 men
- 23 African Americans, one more than in 2013
- One Native American

There were several changes in House membership during the 2015 session. Representative Edgar Starnes resigned on January 13, the day before legislators reconvened to begin the business of the 2015 session. He resigned in order to work as a policy advisor and lobbyist for the State Treasurer's Office. George S. Robinson was appointed to fill the seat. Representative Glazier resigned in August in order to become director of the NC Justice Center; William O. Richardson was named as his replacement in September. Representative Brian Brown resigned in early October to work for US Senator Tillis. Dr. Gregory F. Murphy was appointed to Rep. Brown's seat later that month. Finally, Representative Bryan Holloway resigned in late October in order to become a lobbyist for the NC School Boards Association. Kyle Hall has been named as his replacement.

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<sup>1</sup> Ch. Res. 2015-11 (Senate Joint Resolution 717)

<sup>2</sup> A vote in favor of the bill by three-fifths of the members present and voting is needed to override a veto. In the House, 72 members are needed for a veto proof majority.

**Table 1-1. Officers of the 2015 House of Representatives**

Tim Moore, Cleveland County, Speaker
Paul Stam, Wake County, Speaker Pro Tempore
Mike Hager, Burke and Rutherford counties, Majority Leader
Marilyn Avila, Wake County, Deputy Majority Leader
John R. Bell IV, Craven, Greene, Lenoir and Wayne counties, Majority Whip
Dean Arp, Union County, and James L. Boles, Jr., Moore County Deputy Majority Whips
Charles Jeter, Mecklenburg County, Conference Chair
Pat B. Hurley, Randolph County, Joint Caucus Leader
John A. Fraley, Iredell County, Republican Freshman Leader
John R. Bradford, III, Mecklenburg County, Republican Freshman Whip
Larry Hall, Chatham and Durham counties, Democratic Leader
Susan Fisher, Buncombe County, Deputy Democratic Leader
Bobbie Richardson, Franklin and Nash counties, Secretary
Henry Michaux, Jr., Durham County, and Michael Wray, Halifax and Northampton counties, Executive liaisons
Grier Martin, Wake County, and Garland E. Pierce, Hoke, Richmond, Robeson, and Scotland counties, Democratic Conference Chairs
Graig Meyer, Durham and Orange counties, and Robert T. Reives II, Chatham and Lee counties, Freshman Caucus Co-Chairs
Denise Weeks, Principal Clerk
Garland Shepherd, Sergeant-at-Arms

## The Senate

Seven new members were elected to the Senate during the 2014 elections. The November election resulted in Republican's maintaining a veto proof majority<sup>3</sup>; the 2015 Senate was made up of 34 Republicans and 16 Democrats. The demographics of the 2015 Senate can be broken down as follows:

- Twelve women, four more than in 2013
- 38 men
- Eleven African Americans, two more than in 2013

The Senate saw only one change in membership this year. In late January Senator Earline Parmon resigned in order to work for US Representative Alma Adams. Paul A. Lowe, Jr. was appointed to fill her seat on January 30.

The 2015 Senate officers and leadership are shown in Table 1-2.

**Table 1-2. 2015 Senate Officers and Leadership**

Dan Forest, Lieutenant Governor, President
Phil Berger, Guilford and Rockingham counties, President Pro Tempore
Louis Pate, Lenoir, Pitt, and Wayne counties, Deputy President Pro Tempore
Harry Brown, Jones and Onslow counties, Majority Leader
Jerry Tillman, Moore and Randolph counties, Majority Whip
Fletcher Hartsell, Jr., Cabarrus and Iredell counties, Majority Caucus Secretary
Dan Blue, Wake County, Democratic Leader

<sup>3</sup> A vote in favor of the bill by three-fifths of the members present and voting is needed to override a veto. In the Senate, 30 members are needed for a veto proof majority.

Terry Van Duyn, Buncombe County, Democratic Whip
Ben Clark, Cumberland and Hoke counties, Democratic Caucus Secretary
Sarah Lang, Principal Clerk
Philip King, Sergeant-at-Arms
Lee Settle, Reading Clerk

### Statistical Comparison

A total of 1,666 bills were introduced during the 2015 legislative session, down from the previous long session.<sup>4</sup> Of the bills introduced, 314, or only 19% of the bills introduced, were ratified. This marks the lowest bill passage rate since 2007, which saw a 17% passage rate. The session also included two legislative vetoes.

Table 1-3 compares the 2015 session with other odd-year sessions of the past ten years.

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

	<b>2005</b>	<b>2007</b>	<b>2009</b>	<b>2011</b>	<b>2013</b>	<b>2015</b>
<b>Date convened</b>	January 26	January 24	January 28	January 26	January 30	January 28
<b>Date adjourned</b>	Sept. 2	August 2	August 11	June 18	July 26	September 30
<b>Senate legislative days</b>	126	111	112	87	103	137
<b>House legislative days</b>	125	113	114	87	103	135
<b>Senate bills introduced</b>	1184	1573	1109	785	726	722
<b>House bills introduced</b>	1800	2072	1658	936	1022	944
<b>Total bills introduced</b>	2984	3645	2767	1721	1748	1666
<b>Laws Enacted</b> (includes session laws and joint resolutions)	521	619	610	405	442*	314*
<b>% of introduced bills enacted</b>	17%	17%	22%	24%	25%	19%
<b>Vetoes</b>	2	1	1	15	2	2

\*These totals include bills enacted during the 2013 and 2015 organizational sessions and the 2013 veto override session.

### 2015 State Budget

Disagreement over the state budget was the primary reason for the lengthy session. Each biennium the chambers alternate the responsibility of initiating the budget. This biennium, the House presented their budget first. The Governor released his budget proposal on March 5 (with the companion bill, House Bill 940 filed on April 16), the House released their full budget proposal on May 20 (the finance portion of the budget was released on May 18), and the Senate released their budget proposal on June 16. Final approval was given to the 2015 Appropriations Act (S.L. 2015-241, House Bill 97) on September 18. The delay necessitated the passage of three continuing resolutions: S.L. 2015-133 (Senate Bill 534), S.L. 2015-214 (Senate Bill 560); and S.L.

<sup>4</sup> According to analysis of statistics compiled by the General Assembly library, available at <http://www.ncleg.net/library/Documents/Legislative%20statistics.pdf>.

2015-233 (House Bill 18). Disagreement over funding for drivers education, funding for teacher's assistants, and tax code changes were major sticking points during budget negotiations. With a surplus, the first sticking point was how much to increase spending with the House setting a higher spending target than the Senate. After months of negotiation, leaders settled on a final budget of \$21.7 billion.

The General Fund availability used in developing the budget for fiscal year 2015-16 is as follows:

Beginning unreserved fund balance	\$264,511,091
Tax revenues	\$20,981,400,000
Nontax revenues	\$983,700,000
Adjustments	\$(312,308,142)

With \$21,734,714,405 appropriated, the 2015-16 fiscal year will have an unappropriated balance of \$182,588,544.

There General Assembly also made the following appropriations for fiscal year 2015-16:

Highway Fund	\$1,947,788,129
Highway Trust Fund	\$1,312,540,000

As usual, education and health and human services received the largest share of the General Fund operations appropriations. The amount appropriated for education (consisting of secondary education, community college system, and the UNC system) totaled \$12.3 billion while the amount appropriated to the Department of Health and Human Services was \$5.1 billion.

The act appropriates \$16,756,000 for 2015-16 for capital improvements. The money is to be used for specified projects by the Department of Agriculture and Consumer Services, Department of Cultural Resources, Department of Environment and Natural Resources, Department of Public Safety, North Carolina School of Science and Mathematics, and NC State University. The act authorizes \$33,840,200 for 2015-16 to be used for specified capital projects that must be funded with receipts or from other non-General Fund sources. The act also includes approximately \$10 million for water resource development projects.

Teachers and state employees were given a one-time \$750 bonus, while state retirees were not given a cost of living increase.

There are a number of substantive changes made in the 2015 Appropriations Act. Several of those changes are discussed below in "Major Legislation Enacted in 2015." Other substantive changes of interest include:

The act adds to the lottery's expenses by requiring that the lottery also transfer \$2,100,000 annually to the Department of Public Safety, Alcohol Law Enforcement Branch, for gambling enforcement activities. A new statute limits the Lottery Commission to no more than seven regional offices, which may include a claims center. A second new statute prohibits the Lottery Commission and all lottery game retailers from accepting any form of public assistance funds for the purchase of lottery ticket or for participation in any lottery game.

The act requires the Office of State Budget and Management to report by January 1, 2016 on (1) state agency legislative liaisons, including their salary, the amount of time spent lobbying legislators or legislative employees for legislative action, and an explanation of why each legislative liaison is needed; (2) Public Information Officers (PIOs), including the number of individuals designated as a PIO and the number of staff reporting to each Officer PIO, their salaries, and an explanation of why each PIO and staff is needed; and (3) salary reserves and lapsed salaries.

The State Chief Information Officer is required to establish a State budget transparency website, which is to be functional by April 1, 2016, to provide information on budget expenditures for each State agency for each fiscal year beginning 2015-16. The State CIO is also required to coordinate with counties, cities, and local education agencies to facilitate the posting of their respective budget and spending data on their websites and on the State budget transparency website.

The act also includes provisions concerning the use of funds for supplemental funding in low-wealth counties, supplemental funding for small school systems, and requirements for the use of funds appropriated for disadvantaged student supplemental funding. The act requires the

establishment of a statewide School Risk and Response Management System. One issue that was debated between the House and Senate was funding for teacher's assistants. While the positions were ultimately funded, a provision was added that prohibits funds from being transferred out of the teacher assistants' allotment category. A second education topic of much debate was whether to continue funding for the drivers' education program. In the end, legislators decided to continue funding which will be funded by the newly created motor vehicle registration late fee.

The act enacts new Article 29B, the Statewide Health Information Exchange (HIE) Act, in General Statute Chapter 90. The intent of the Article is to improve the quality of health care delivery within this State by facilitating and regulating the use of a voluntary, statewide health information exchange network for the secure electronic transmission of individually identifiable health information among health care providers, health plans, and health care clearinghouses in a manner that is consistent with the Health Insurance Portability and Accountability Act, Privacy Rule and Security Rule. As a condition of receiving State funds, specified entities are required to submit at least twice daily, through the HIE network, demographic and clinical information pertaining to services rendered to Medicaid and other State-funded health care program beneficiaries and paid for with Medicaid or other State-funded health care funds. The Department of Health and Human Services and the State Health Plan for Teachers and State Employees are to be given access to data and information disclosed through the HIE Network. The Article also establishes the North Carolina Health Information Exchange Authority to oversee and administer the HIE Network.

Effective January 1, 2017, the act extends foster care benefits for an individual who is 18 years old and has chosen to continue receiving foster care services until reaching 21 years of age if the individual is (1) completing secondary education or a program leading to an equivalent credential, (2) enrolled in an institution that provides postsecondary or vocational education, (3) participating in a program or activity designed to promote, or remove barriers to, employment, (4) employed for at least 80 hours per month, or (5) incapable of completing the educational or employment requirements of this subsection due to a medical condition or disability.

The act requires licensure to offer overnight respite services in new GS 131D-6.1. "Overnight respite services" is defined as the provision of group care and supervision in a place other than their usual place of abode on a 24-hour basis for a specified period of time to adults who may be physically or mentally disabled in order to provide temporary relief for a caregiver and includes services provided by any facility certified to provide adult day care services, or adult day health services, or both. Overnight respite services may include the services of the adult day care program or the adult day health program.

The act expands the list of offenses for which an offender's DNA must be collected. The act adds more than 30 violent felonies to the list, including assault with a deadly weapon on executive, legislative, or court officer; assault inflicting serious bodily injury on executive, legislative, or court officer; and assaulting a law enforcement agency animal, an assistance animal, or a search and rescue animal willfully killing the animal. These changes are effective December 1, 2015. The act also requires the Joint Legislative Oversight Committee on Justice and Public Safety to study extending the collection of DNA samples to persons arrested for any felony and report to the 2016 Regular Session of the 2015 General Assembly.

The act transfers the Office of Indigent Defense Services within the Judicial Department to the Administrative Office of the Courts. The Joint Legislative Oversight Committee on Justice and Public Safety is required to study: (1) the Office of Indigent Defense Services and determine whether changes should be made to the ways in which appropriated funds are used to provide legal assistance and representation to indigent persons; and (2) the North Carolina Innocence Inquiry Commission and determine whether changes should be made to the way in which the Commission investigates and determines credible claims of factual innocence made by criminal defendants. The Committee is required to report to the 2015 General Assembly when it reconvenes in 2016.

The act also makes changes to the Film and Entertainment Grant Fund, relocates the State Capitol Police Section as a section under the State Highway Patrol (previously within the Law Enforcement Division of the Department of Public Safety), provides matching grants to local and county law enforcement agencies to for body-worn video cameras, and allows retirees who return

to work for the state in nonpermanent positions to retain their coverage options under the State Health Plan for Teachers and State Employees.

## **Major Legislation Enacted in 2015**

The 2015 General Assembly enacted a number of significant pieces of legislation, a few of which are listed below. Please note that two bills passed by the General Assembly are discussed in the Governor's Veto section of this document. Although studies were authorized in numerous bills, a stand-alone studies bill was not presented this session.

### **Local District Changes**

This session included two bills that made changes to local county commissioner and city council districts.

S.L. 2015-4 (Senate Bill 181) increases the size of the Wake County Board of Commissioners from 7 to 9. The act also alters the districts so that they match the districts for the County's Board of Education.

S.L. 2015-138 (House Bill 263) makes several changes, but the provisions of the act that were controversial concern Greensboro. The act makes changes to the Greensboro City Council districts, requires the General Assembly, upon the return of the 2020 federal decennial census, to revise the districts if needed, and requires the City of Greensboro to submit proposed changes to the districts to the General Assembly.

### **Tanning Beds**

S.L. 2015-21 (House Bill 158) prohibits anyone under the age of 18 from using tanning equipment. Before this change no one age 13 and younger was allowed to use tanning equipment without a doctor's prescription. These changes are effective October 1, 2015. This act is known as the Jim Fulghum Teen Skin Cancer Prevention Act, in honor of Rep. Fulghum, who passed away from cancer in July of 2014.

### **Abortion**

S.L. 2015-62 (House Bill 465) makes a number of changes to laws impacting women and children. These changes include (but are not limited to) making the offenses of statutory rape and sexual offense of person applicable to a victim who is 15 or younger instead of requiring the victim to be 13, 14, or 15 years old, creating a new aggravating sentencing factor of knowingly committing an offense that is seen or heard by a minor who is not an accomplice to the offense, and establishing the Maternal Mortality Review Committee. The most debated provisions of the act, however, were the portions of that act amending the state's abortion laws.

The act requires the Department of Health and Human Services to annually inspect clinics where abortions are performed and publish the results of inspections conducted on or after January 1, 2013, on the Department's website and on the "Woman's Right to Know Act" website. The act also prohibits clinics that perform abortions from employing anyone who is less than 18 years of age. These provisions apply only to clinics, including ambulatory surgical facilities, and do not apply to licensed hospitals.

The act also requires physicians who perform abortions to be board certified or certifiable in obstetrics or gynecology, or possess sufficient training based on established medical standards in safe abortion care, abortion complications, and miscarriage management, unless there is a medical emergency. The act requires that specified information be recorded and provided to the Department when an abortion is conducted after the sixteenth week of a woman's pregnancy. When an abortion is conducted after the twentieth week of pregnancy, the physician must record the findings and analysis on which the physician based the determination that there existed a

medical emergency and provide that information to the Department. These reporting requirements are effective January 1, 2016. Lastly, the act increased the waiting for an abortion from 24 to 72 hours. Unless otherwise specified, the changes to the abortion laws became effective October 1, 2015.

### **Election Law Changes**

This session legislators made a variety of changes impacting the way elections are held.

S.L. 2015-66 (House Bill 222) changes the way that we elect Supreme Court justices in North Carolina. As it was originally written, the bill would have made the same changes to the way we elect Court of Appeals Judges, but it was changed in the Senate to drop the Court of Appeals from the act. The act establishes a process by which a Supreme Court Justice may opt to stand for retention election after having won an election. The retention election would be held at the general election immediately preceding the expiration of the elected term. If the majority of the votes cast are for retention, the justice would be retained for a new eight-year term. If the voters fail to approve the retention, the office is deemed vacant at the end of the term of office, and the vacancy must be filled as provided by law, which currently requires the replacement to be appointed by the Governor. In that case, the appointee serves only until the next election for which members of the General Assembly are on the ballot that is held more than 60 days after the vacancy occurs, at which time an election is to be held to fill the vacancy. For more information about this legislation, see: <http://canons.sog.unc.edu/?p=8133>.

S.L. 2015-292 (House Bill 8) requires Court of Appeals judge candidates to disclose their party affiliation and requires the party affiliation to appear on the ballot.

S.L. 2015-103 (House Bill 836) makes changes to a variety of laws, including those concerning easements, going out of business sales, elections law, ABC laws, and the Alexander County Board of Education. Section 8 of the act amends the requirements for photo identification necessary to vote. Under the changes made to the law, a voter who does not have the required photo identification due to a reasonable impediment that prevented the voter from obtaining the identification, may vote a provisional ballot upon completion of a reasonable impediment declaration and providing one of other specified types of identification, including the last four numbers of the voter's social security number and date of birth. The list of several reasonable impediments includes lack of transportation, lack of documents needed to obtain a photo identification, and work schedule. A county board of elections must find that such a provisional ballot is valid and direct that it be counted unless, (1) the county board of elections has grounds, including an impediment evidentiary challenge by a voter, to believe the declaration is factually false, merely denigrated the photo identification requirement, or made obviously nonsensical statements; (2) the voter did not present one of the specified types of identification (such as the voter's last four digits of the social security number and date of birth) to the county board of elections; (3) the voter provided the last four digits of the social security number and date of birth as the required form of identification and the county board of elections could not confirm the voter's registration using that information; or (4) the voter is disqualified for some other reason provided by law. The act also sets out a process under which another registered voter can make an impediment evidentiary challenge. These changes become effective January 1, 2016.

S.L. 2015-258 (House Bill 373) changes the date of North Carolina's presidential primary, in 2016 to March 15. The chair of each political party is required to submit to the State Board of Elections a list of its presidential candidates to be placed on the 2016 presidential preference primary ballot by December 16, 2015. The act sets out provisions concerning the qualifications and registration of voters for the primary. The act also changes the general primary date from the Tuesday after the first Monday in May before each general election held in November, to March 15, 2016. The filing period for the 2016 primary opens on December 1, 2015, and closes on Monday, December 21, 2015.

The act also enacts new G.S. 163-278.8B, allowing the leader of each political party caucus of the NC House of Representatives and the Senate to establish a separate, affiliated party committee to support the election of candidates of that leader's political party. These party committees are



considered a political party for the purposes of General Statute Chapter 163, Article 22A (Regulating Contributions and Expenditures in Political Campaigns).

### **SEPA Reform**

S.L. 2015-90 (House Bill 795) amends the State Environmental Policy Act (SEPA). SEPA requires that a State agency include in its recommendation or report on any action involving the expenditure of public money or the use of public land for projects and programs significantly affecting the quality of the environment of the State, a detailed statement that includes: (1) the environmental impact of the proposed action; (2) significant adverse environmental effects that cannot be avoided if the proposal is implemented; (3) mitigation measures proposed to minimize the impact; (4) alternatives to the proposed action; (5) the relationship between the short term uses of the environment involved in the proposed action and the maintenance and enhancement of long term productivity; and (6) any irreversible and irretrievable environmental changes which would be involved in the proposed action if it is implemented. This act amends SEPA by limiting the instances when the above detailed statement is required to when the state agency is recommending or reporting on any action involving use of public land or the *significant* expenditure of public money. The act defines the “significant expenditure of public money” as the expenditure of public funds greater than \$10 million for a single project or action or related group of projects or actions. Additionally, the items that must be included in the statement are amended so that only the *direct* environmental impacts of an action must be reported. The act also amends the definition of the term “use of public land” so that it now means land disturbing activity of greater than 10 acres that results in substantial, permanent changes in the natural cover or topography of those lands (previously the term was defined only as activity that results in changes in the natural cover or topography).

In addition to limiting when the statement is required, the act also increases the number of activities are exempt so that no environmental document is required. The new exemptions include facilities related to the closure of coal ash impoundments; projects or facilities specifically required or authorized by the General Assembly; and mitigation projects.

The act also deletes current requirements concerning environmental assessments for water infrastructure loans and grant applicants and instead requires the Division of Water Resources to establish an environmental assessment process for projects funded from the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund that is sufficient to meet federal environmental assessment requirements for those projects.

For more information on this act and other environmental legislation, see: <http://elinc.sog.unc.edu/n-c-environmental-legislation-2015-deregulating-and-obscuring-the-consequences/>.

### **Mopeds**

S.L. 2015-125 (House Bill 148) makes a number of changes to laws governing mopeds, including requiring moped operators to have liability insurance effective July 1, 2016. Effective July 1, 2015, the act also specifies that moped owners are not required have a certificate of title. For more information on this act, see: <http://nccriminallaw.sog.unc.edu/its-time-to-register-your-moped/>. Additional summaries of motor vehicle related legislation can be found at: <https://lrs.sog.unc.edu/lrs/legsumms/2015>.

### **Sunday Hunting**

S.L. 2015-144 (House Bill 640), the Outdoor Heritage Act, makes a number of changes to wildlife laws, including establishing the Outdoor Heritage Advisory Council to advise State agencies and the General Assembly on the promotion of outdoor recreational activities. The most controversial provision of the act allows hunting on Sundays on private property with written permission from the landowner. The act sets out the following limitations on such hunting: (1)

hunting on Sunday is prohibited between 9:30 am and 12:30 pm, except on controlled hunting preserves; (2) hunting of migratory birds on Sunday is prohibited; (3) the use of a firearm to take deer that are run or chased by dogs on Sunday is prohibited; (4) hunting on Sunday within 500 yards of a place of worship or any accessory structure thereof, or within 500 yards of a residence not owned by the landowner, is prohibited; and (5) hunting on Sunday in a county having a population greater than 700,000 people is prohibited. Effective October 1, 2015.

Effective October 1, 2017, the act also allows counties to prohibit hunting on Sundays and requires that such an ordinance: (1) be applicable from January 1 until December 31 of any year of effectiveness; (2) allow for individuals hunting in an adjacent county with no restriction on Sunday hunting to retrieve any animal lawfully shot from the adjacent county; (3) be applicable to the entire county.

## Firearms

S.L. 2015-195 (House Bill 562) makes many changes to firearms laws, including (but not limited to) the following.

The act specifically allows district attorneys with a concealed handgun permit to carry a concealed handgun in a courtroom and allows Administrative Law Judges with concealed handgun permits to carry concealed handguns in specified locations, including courtrooms. Effective July 1, 2015.

The act also allows a person with a concealed handgun permit to carry a handgun concealed on their person within a locked vehicle on educational property; a person within a locked vehicle on educational property is also allowed to move a handgun from concealment on their person to a closed compartment and vice versa even if the handgun is momentarily not concealed. The act adds that it is an affirmative defense to possession of handgun on educational property if the person was allowed to have a handgun in a locked vehicle and the person removed the handgun from the vehicle only in response to a threatening situation in which deadly force was justified to defend self or others. Effective July 1, 2015.

The act eliminates some misdemeanors from the list of misdemeanor convictions that prohibit a person from obtaining a concealed handgun permit including GS 14-33(a) (simple assault and battery) and violations involving fireworks under GS 14-283. The act also makes most misdemeanor convictions prohibiting a person from obtaining a concealed handgun permit prohibitive for a period of 3 years. Convictions for certain assaults, stalking, domestic violence and assault on a law enforcement or specified public safety officer, are now a bar on obtaining a concealed handgun permit. Effective July 1, 2015.

The act makes carrying a concealed handgun on private posted property an infraction that may include a fine of up to \$500 (previously, this was a Class 1 misdemeanor). Effective December 1, 2015.

The act also makes an number of changes to the statutes governing pistol purchase permits, including specifying that the sheriff may only consider an applicant's conduct or criminal history for the past five years when determining "good moral character"; changing the appeal of a denial of a permit from an appeal to the chief district court judge in that district to an appeal to the superior court; setting out requirements for a standardized permit application form; and requires a person or entity presented with a mental health release form to promptly provide court orders concerning the applicant's mental health or capacity. Effective December 1, 2015.

Finally, the act prohibits counties and municipalities from regulating the taxation, manufacture, or transportation of firearms. The act adds that a person may bring an action for declaratory and injunctive relief against a local government that violates this prohibition. The act also amends GS 14-415.23, which limits local government regulation of carrying concealed handguns, to add that a person may bring an action for declaratory and injunctive relief against the local government for violation of the statute. Effective December 1, 2015.

## Death Penalty

The last execution in North Carolina took place in August, 2006.<sup>5</sup> In the intervening years, legal challenges to the death penalty based on several grounds, including whether doctors are required to participate in executions, have put executions on hold. State law requires a licensed physician to be present at executions and requires the surgeon or physician of the penitentiary, along with the warden, to certify the fact of the execution to the clerk of superior court. The American Medical Association (AMA), however, issued an opinion stating that physicians should not participate in executions. Among the actions that the AMA listed as not constituting participation in an execution is certifying death, as long as the condemned has been declared dead by another person. S.L. 2015-198 (House Bill 774) seeks to resume executions by expanding the

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<sup>5</sup> See, NC Department of Public Safety, Executions carried out under current death penalty statute, Executions 1984 to 2006, <https://www.ncdps.gov/Index2.cfm?a=000003,002240,002327,002330,002337>.

class of individuals who may participate in an execution through broadening the list beyond licensed physicians and by limiting the role of licensed physicians.

Under the act, a licensed physician, or a medical professional other than a physician, is required to monitor the injection of the required lethal substances and certify the fact of the execution. The act defines a "medical professional other than a physician" as a physician assistant, nurse practitioner, registered nurse, emergency medical technician, or emergency medical technician-paramedic who is licensed or credentialed by the licensing board, agency, or organization responsible for licensing or credentialing that profession. If a licensed physician is not present at the execution, then a licensed physician must be present on the premises and available to examine the body after the execution and pronounce the person dead.

Additionally, the act also no longer requires that an execution be only by the administration of a lethal quantity of an ultrashort-acting barbiturate in combination with a chemical paralytic agent; the law now says that a person must be executed accordance with GS 15-188, which says that "the mode of executing a death sentence must in every case be by administering...an intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until the person is dead and that procedure shall be determined by the Secretary of the Department of Public Safety" and the remainder of Article 19 (Execution).

Finally, the act provides that nothing in the Public Records Law is to be construed to require or allow the disclosure of the name, address, qualifications, and other identifying information of any person or entity that manufactures, compounds, prepares, prescribes, dispenses, supplies, or administers the drugs or supplies obtained for an execution.

## **Unemployment**

S.L. 2015-238 (Senate Bill 15) makes a number of changes to unemployment insurance laws. The most debated provision concerned requirements for unemployment benefit recipients. The act increases the number of job contacts that a claimant must make each week from two to five. A claimant, however, is no longer required to make those contacts on two different days. This change is effective January 1, 2016.

The act amends G.S. 1-359 to add that the Division of Employment Security (DES) may, when it prevails in a civil action against an employer to collect unpaid employment taxes, attach or garnish the employer's credit card receipts as payment of the unpaid taxes.

S.L. 2015-238 also codifies the requirement that unemployment claimants must present DES with photo identification in order to receive benefits.

In addition to the changes above, the act makes further changes to unemployment insurance laws, makes changes impacting the DES Board of Review, and requires the Program Evaluation Division to study the value provided by the Board, makes changes to the unemployment insurance tax rates, and requires DES to enhance its program integrity efforts.

## **Establishment of New Agencies**

Among the many changes made in the 2015 Appropriations Act where changes to existing agencies and the creation on new state agencies.

*Changes to the Department of Cultural Resource and the Department of Environment and Natural Resources*

S.L. 2015-241 (House Bill 97) renames the Department of Cultural Resources as the Department of Natural and Cultural Resources. The act transfers all functions, powers, duties, and obligations for the following from the Department of Environment and Natural Resources to the Department of Natural and Cultural Resources: (1) the Division of Parks and Recreation; (2) the State Parks System; (3) the North Carolina Aquariums Division; (4) the North Carolina Zoological Park; (5) the Museum of Natural Sciences; (6) Clean Water Management Trust Fund; and (7) the Natural Heritage Program, within the Office of Land and Water Stewardship. The act also transfers all functions, powers, duties, and obligations for the following commissions, boards, councils, and committees from the Department of Environment and Natural Resources to the

Department of Natural and Cultural Resources: (1) North Carolina Parks and Recreation Authority; (2) North Carolina Trails Committee; (3) North Carolina Zoological Park Council; (4) Advisory Commission for North Carolina State Museum of Natural Sciences; and (5) Clean Water Management Trust Fund Board of Trustees. The Department of Environment and Natural Resources is also renamed as the Department of Environmental Quality.

The act requires the Office of State Budget and Management, in consultation with the Department of Environment and Natural Resources and the Department of Cultural Resources, to make an interim report on or before January 1, 2016, and a final report on or before April 1, 2016, on progress in implementing the transfer, to the Environmental Review Commission, the Senate and the House of Representatives appropriations committees with jurisdiction over natural and cultural resources, and the Fiscal Research Division.

The act also requires the Department of Cultural Resources, in consultation with the Department of Environment and Natural Resources and the Wildlife Resources Commission, to study and report on the potential for efficiency, cost savings, and alignment of core mission and values that would result from the transfer of the following agencies, divisions, or programs to the reorganized Department of Natural and Cultural Resources: (1) Albemarle-Pamlico National Estuary Partnership; (2) Coastal Reserves Program; (3) Office of Land and Water Stewardship; (4) all or a portion of the Office of Environmental Education and Public Affairs; (5) Division of Marine Fisheries' (6) Wildlife Resources Commission. A report on the study is due no later than April 1, 2016, to the chairs of the Senate Appropriations Committee on Natural and Economic Resources, the chairs of the House Appropriations Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division.

*Creation of the Department of Military and Veterans Affairs*

The act creates the new Department of Military and Veterans Affairs. The act transfers the Department of Administration's Veterans' Affairs Commission, Governor's Jobs for Veterans Committee and Division of Veterans Affairs, as well as the Office of the Governor's North Carolina Military Affairs Commission to the new agency.

The act specifies 23 agency duties, including: (1) provide active outreach to the US Department of Defense and the US Department of Homeland Security and their associated establishments in North Carolina to support the military installations and activities in the State, to enhance North Carolina's current military-friendly environment and foster and promote business, technology, transportation, education, economic development, and other efforts in support of the mission, execution, and transformation of the United States government military and national defense activities located in the State; (2) promote the industrial and economic development of localities included in or adjacent to US government military and national defense activities and those of the State; (3) provide technical assistance and coordination between the State, its political subdivisions, and the US military and national defense activities within the State of North Carolina; (4) provide active outreach to the US Department of Veterans Affairs, the veterans service organizations, and the veterans community in North Carolina to support and assist North Carolina's veterans in identifying and obtaining the services, assistance, and support to which they are entitled, including monitoring efforts to provide services to veterans, newly separated service members, and their immediate family members and disseminating relevant materials; (5) monitor and enhance efforts to provide assistance and support for veterans living in North Carolina and members of the North Carolina National Guard and North Carolina residents in the Armed Forces Reserves not in active federal service in the areas of medical care, mental health and rehabilitative services, housing, homelessness prevention, job creation, and education; (6) work with veterans services organizations and counterparts in other states to monitor and encourage the timely and accurate processing of veterans' benefit requests by the US Department of Veterans Affairs, including requests for service connected to health care, mental health care, and disability payments; (7) educate the public on veterans and defense issues in coordination with applicable State agencies; (8) assist veterans, their families, and dependents in the presentation, processing, proof, and establishment of such claims, privileges, rights, and benefits as they may be entitled to under federal, State, or local laws, rules, and regulations; (9) aid persons in active military service and their dependents with problems arising out of that service that come reasonably within the

purview of the Department's program of assistance; and (10) train, assist, and provide guidance to the employees of any local government.

These provisions are effective January 1, 2016.

*Creation of the Department of Information Technology*

The act also creates the Department of Information Technology, the head of which is the State Chief Information Officer. The act transfers the following from the Office of Information Technology Services to the new Department of Information Technology: (1) Office of the State Chief Information Officer; (2) Office of Information Technology Services; (3) 911 Board; (4) Criminal Justice Information Network; (5) Government Data Analytics Center; and (6) North Carolina Geographic Information Coordinating Council; and (7) Center for Geographic Information and Analysis.

The act sets out the agency's 33 powers and duties, including: (1) provide information technology support and services to State agencies; (2) provide information technology support to local government entities and others, as may be required; (3) establish and document the strategic direction of information technology in the State; (4) assist State agencies in meeting their business objectives; (5) plan and coordinate information technology efforts with State agencies, nonprofits, and private organizations, as required; (6) establish a consistent process for planning, maintaining, and acquiring the State's information technology resources; (7) develop standards and accountability measures for information technology projects, including criteria for effective project management; (8) set technical standards for information technology, review and approve information technology projects and budgets, establish and enforce information technology security standards, establish and enforce standards for the procurement of information technology resources, and develop a schedule for the replacement or modification of information technology systems; (9) require reports by State agencies, departments, and institutions about information technology assets, systems, personnel, and projects and prescribing the form of such reports; (10) prescribe the manner in which information technology assets, systems, and personnel shall be provided and distributed among agencies, to include changing the distribution when the State CIO determines that is necessary; and (11) identify and develop projects to facilitate the consolidation of information technology equipment, support, and projects.

The State CIO is required during the 2015-16 fiscal year, to work with appropriate State agencies to develop a State business plan. The State CIO is required to prepare plans to transition each of the participating agencies. The following agencies are required to transfer information technology personnel, operations, projects, assets, and appropriate funding to the Department of Information Technology as the transition plans are completed: (1) Department of Cultural Resources; (2) Department of Health and Human Services; (3) Department of Revenue; (4) Department of Environment and Natural Resources; (5) Department of Transportation; (6) Department of Administration; (7) Department of Commerce; (8) Governor's Office; (9) Office of State Budget and Management; (10) Office of State Human Resources; and (11) Office of the State Controller.

## **Taxes**

The 2015 Appropriations Act, S.L. 2015-241 (House Bill 97) includes a number of changes to tax laws.

In 2016, consumers will start paying taxes on any repairs, installations, and maintenance contracts, including vehicle repairs, appliance installation, and computer service contracts. The tax does not apply if the company providing the service is a contractor or does not sell tangible items.

The act includes several changes impacting personal income tax. In 2016, the standard personal income tax deductions will increase and in 2017, the personal income tax rate will decrease from 5.75% to 5.499%. Finally, for 2015, personal the income tax deduction for medical and dental expenses is revived.

S.L. 2015-241 reestablishes a historic preservation tax credit; the credit had expired on January 1, 2015. The new credit differs from the previous credit in several ways. The act

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establishes new General Statute Chapter 105, Article 3L, Historic Rehabilitation Tax Credits Investment Program. The Article gives tax credits to a taxpayer who is allowed a federal income tax credit for making qualified rehabilitation expenditures for a certified income-producing historic structure in the amount of 15% for rehabilitation expenditures that range from \$0 to \$10 million, and 10% for expenditures that range from \$10 million to \$20 million. The new credit includes a tax credit ceiling, providing that no tax credit for an income-producing certified historic structure can exceed \$4.5 million. The Article also establishes a tax credit for a taxpayer not allowed a federal income tax credit for making qualified rehabilitation expenditures for a certified non-income-producing historic structure that has rehabilitation expenses of at least \$10,000, providing that the credit is equal to 15%, with a credit ceiling of \$22,500 per discrete property parcel. The credit is effective January 1, 2015, applying to qualified rehabilitation expenditures and expenses incurred on or after that date, and expires for rehabilitation expenditures and rehabilitation expenses on January 1, 2020.

The act also makes a number of changes to corporate tax law, including reducing the tax rate once set revenue numbers are met, and phasing in single sales factor apportionment.

## **Medicaid**

For the past few years, legislative attempts to overhaul the Medicaid and Health Choice programs have been unsuccessful. During the final weeks of the 2015 session, legislators approved S.L. 2015-245 (House Bill 372), Medicaid Transformation and Reorganization. The act states the General Assembly's intent as transforming the State's current Medicaid and NC Health Choice programs to programs that provide budget predictability for the taxpayers while ensuring quality care. The new Medicaid and NC Health Choice programs are required to be designed to: (1) ensure budget predictability through shared risk and accountability; (2) ensure balanced quality, patient satisfaction, and financial measures; (3) ensure efficient and cost-effective administrative systems and structures; and (4) ensure a sustainable delivery system.

The act creates the Division of Health Benefits (Division) within the Department of Health and Human Services (DHHS) to implement the Medicaid transformation and administer and operate all functions, powers, duties, obligations, and services related to the transformed Medicaid and NC Health Choice programs. The Division of Medical Assistance is eliminated twelve months after capitated Prepaid Health Plan contracts begin, or at an earlier time determined by the Secretary of the Department of Health and Human Services.

The act changes the Medicaid and NC Health Choice programs from a fee for service system to a managed care system that uses a prepaid health plan structure. Under the new system, the Division will enter into contracts with Prepaid Health Plans (PHP). The act defines a PHP as an entity that operates a capitated contract for the delivery of Medicaid and NC Health Choice services. The contract will require the PHP to deliver services to enrollees within a specified geographic region and must include defined goals and measures for health outcomes, quality of care, patient satisfaction, access, and cost, and must also cover all administrative functions. Behavioral health services are not included under the contracts for the first four years.

The timeline for the transformation requires the Division to submit the waivers and State Plan amendments required under the act to the Centers for Medicare & Medicaid Services by June 1, 2016. PHP contracts are to begin and initial enrollment is to be completed 18 months after the waiver and amendments are approved.

The act also sets out DHHS's role and responsibilities, establishes the General Assembly's role, and sets out further requirements for the structure of the transformed programs.

Finally, the act establishes the 14-member Joint Legislative Oversight Committee on Medicaid and NC Health Choice, consisting of seven members of the Senate and seven members of the House of Representatives. The Committee is required to examine budgeting, financing, administrative, and operational issues related to the Medicaid and NC Health Choice programs.

## **Revenge Postings**

S.L. 2015-250 (House Bill 792) enacts new G.S. 14-190.5A, making it illegal to disclose private images of another when (1) the disclosure is done knowingly and with the intent to either coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person, or cause others to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person; (2) the depicted person can be identified from the image or information offered in connection with the image; (3) the depicted person's intimate parts are exposed or the depicted person is engaged in sexual conduct in the disclosed image; (4) the person discloses the image without the depicted person's consent; and (5) the person discloses the image under circumstances such that the person knew or should have known that the depicted person had a reasonable expectation of privacy. The statute includes exceptions for images involving voluntary exposure in public or commercial settings, disclosures made in the public interest (which includes reporting unlawful conduct, medical treatment, or scientific or educational activities), and providers of an interactive computer service, for images provided by another person. Violations are punishable as (1) a Class H felony for an offense by a person who is 18 years of age or older at the time of the offense; (2) a Class 1 misdemeanor for a first offense by a person who is under 18 years of age at the time of the offense; and (3) a Class H felony for a second or subsequent offense by a person who is under the age of 18 at the time of the offense. The act also gives any person whose image is



disclosed, or used, as described above, a civil cause of action against any person who discloses or uses the image and allows them to recover: (1) actual damages, but not less than liquidated damages, to be computed at the rate of \$1,000 per day for each day of the violation or in the amount of \$10,000, whichever is higher; (2) punitive damages; and (3) a reasonable attorneys' fee and other litigation costs reasonably incurred. The act specifies that the civil cause of action may be brought no more than one year after the initial discovery of the disclosure, but may not be commenced more than seven years from the most recent disclosure of the image.

The act requires the Joint Legislative Oversight Committee on Justice and Public Safety to study the issue of improper disclosure of images of people superimposed onto other images exposing intimate parts or depicting sexual conduct and report to the General Assembly by April 1, 2016.

The act also makes indecent exposure that occurs on private premises a Class 2 misdemeanor.

These provisions are effective December 1, 2015, and apply to offenses committed on or after that date and to actions initiated on or after that date.

You can read more about this legislation at: <http://nccriminallaw.sog.unc.edu/new-revenge-porn-crime/>.

### **Sale of Remains**

S.L. 2015-265 (House Bill 297) enacts new a new statute making it a Class I felony to sell the remains of an unborn child resulting from an abortion or miscarriage. The act also amends G.S. 130A-131.10 to allow a mother, with informed written consent, to donate the remains of her unborn child after a spontaneous abortion or miscarriage to a research facility for research. The written consent is required to be obtained before the donation and must be separate from any other prior consent.

The act also prohibits the Department of Health and Human Services from using state funds for Teen Pregnancy Prevention Initiatives from being used for contracts for the provision of family planning services, pregnancy prevention activities, or adolescent parenting programs with any provider that performs abortions.

This act is effective October 1, 2015.

### **Bond Referendum**

S.L. 2015-280 (House Bill 943) puts before voters at the 2016 primary election the question of whether to issue \$2 billion in bonds to update the State's public facilities. The bonds would pay for specified construction, repair, renovation, and furnishing of new facilities for the UNC System, Community Colleges, State and local parks, National Guard, agriculture, and public safety. During the 2015 session, Governor McCrory pushed for the General Assembly to approve \$2.85 billion in bonds with \$1.37 billion in bonds dedicated to transportation and another \$1.48 billion for upgrades state buildings and facilities.<sup>6</sup> The act, as it was passed out of the House, had included supplemental highway funding in the amount of \$400 million but it was taken out of the act by the Senate.

### **GPS Stalking**

S.L. 2015-282 (Senate Bill 238) makes it a Class 2 misdemeanor to knowingly install, place, or use an electronic tracking device without consent, or cause an electronic tracking device to be installed, placed, or used without consent, to track a person's location. The act includes many exceptions including, but not limited to: (1) a law enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, when engaged in the lawful performance of official duties and in accordance with the law; (2) a legal guardian for a disabled adult, or a legally authorized individual or organization designated to

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<sup>6</sup> For more information on the Governor's Connect NC initiative, see <http://www.connect.nc.gov/>

provide protective services to a disabled adult when the electronic tracking device is installed, placed, or used to track the location of the disabled adult for which the person is a legal guardian or the individual or organization is designated to provide protective services; (3) the installation, placement, or use of an electronic tracking device authorized by an order of a State or federal court; (4) a parent or legal guardian of a minor when the electronic tracking device is installed, placed, or used to track the location of that minor unless the parent or legal guardian is subject to a domestic violence protective order or any court order that orders the parent or legal guardian not to assault, threaten, harass, follow, or contact that minor or that minor's parent, legal guardian, custodian, or caretaker; (5) an employer, when providing a communication device to an employee or contractor for use in connection with his or her work for the employer; (6) a licensed private detective or private investigator if (a) the tracking is pursuant to authority under G.S. 74C-3(a)(8), (b) the tracking is not otherwise contrary to law, and (c) the person being tracked is not under the protection of a domestic violence protective or any other court order that protects against assault, threat, harassment, following, or contact. Effective December 1, 2015, and applies to offenses committed on or after that date.

### **E-Verify and Immigration Related Laws**

S.L. 2015-294 (House Bill 318) makes change to E-Verify requirements, prohibits using specified documents for identification, bans sanctuary cities, and forbids the Department of Health and Human Services from seeking specified waivers.

#### *E-Verify*

The act prohibits state agencies and local governments from entering into a contract unless the contractor and the subcontractors comply with the E-Verify requirements found in Article 2 of General Statute Chapter 64. The act sets out four categories of exceptions. The act provides that state agencies and local governments are in compliance so long as the contract requires the contractor and the contractor's subcontractors to comply with E-Verify requirements. Finally, the act amends the Commissioner of Labor's E-Verify enforcement authority.

#### *Identification Documents*

S.L. 2015-294 enacts new Article 18, Identification Documents, in General Statute Chapter 15A. The Article forbids the use of the following documents by a court, law enforcement, or government official when determining a person's identity or residency: (1) a matricula consular or other similar document, other than a valid passport, issued by a consulate or embassy of another country; and (2) an identity document issued or created by any person, organization, county, city, or other local authority, except where expressly authorized to be used for this purpose by the General Assembly. The act also amends numerous statutes to remove matricular consular and similar documents from those that may be used to prove residence for motor vehicle, insurance, and medical assistance laws.

#### *"Sanctuary Cities"*

The act enacts new statutes that prohibit counties and cities from adopting ordinances, policies, or procedures that limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law. Counties and cities are specifically banned from: (1) prohibiting law enforcement officials or agencies from gathering information regarding citizenship or immigration status; (2) directing law enforcement officials or agencies not to gather information regarding citizenship or immigration status; and (3) prohibiting the communication of information regarding citizenship or immigration status to federal law enforcement agencies.

#### *Waiver Prohibition*

S.L. 2015-294 enacts a new statute prohibiting the Department of Health and Human Services from seeking waivers to federal time limits for food and nutrition benefits for able-bodied adults without dependents required to fulfill work requirements to qualify for those benefits (an exception is made for waivers for the Disaster Supplemental Nutrition Assistance Program sought for an area that has received a Presidential disaster declaration of Individual Assistance). The Department is also required by the act to withdraw any such pending requests unless the request can be amended so that the period covered by eh waiver will no extend beyond March 1, 2016.

The act also places limitations on pending waivers that are granted before the act become effective.

### **UNC Board of Governors**

S.L. 2015-300 (Senate Bill 670) makes two sets of changes impacting the University of North Carolina Board of Governors (Board). First, the act limits Board members to serving three full four-year terms (election to a partial term to fill a vacancy does not count towards the limit), beginning with elections held on or after January 1, 2017. Before the change, individuals could not serve more than three four-year terms in succession.

Second, the act sets out requirements that must be met by the Board when searching for a UNC President. The act requires at least three final candidates to be submitted to the full Board from which the full Board shall make its selection for the President. The candidate that receives a majority of votes of the entire Board will be elected President of The University of North Carolina. The act allows the Board to appoint an interim President, who will serve until the Board appoints a President using the specified procedures.

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

Governor McCrory exercised his veto power two times this session. The Governor vetoed Senate Bill 2 and House Bill 405. Both vetoes were overridden, allowing the acts to become law despite the Governor's objections.

### **Marriage Recusal**

In 2012, voters approved a constitutional ban on same sex marriages. In 2014, a federal district court judge ruled that the State's ban on same sex marriages was unconstitutional. In North Carolina registers of deeds are required to issue marriage licenses to persons allowed to be married under state law and magistrates are allowed to perform marriage ceremonies. Following the declaration that the ban on same sex marriages was unconstitutional, there were magistrates in the state who resigned stating a religious objection to same-sex marriage. One of the first bills filed during the 2015 session, S.L. 2015-75 (Senate Bill 2) establishes a way for magistrates and register of deeds to state their religious objections while keeping their jobs.

The act enacts a new statute that gives magistrates and assistant and deputy register of deeds the right to recuse from performing all lawful marriages based upon any sincerely held religious objection. The recusals are in effect for at least six months and have to be rescinded in writing. The act also specifies that the chief district court judge must ensure that all individuals issued a marriage license seeking to be married before a magistrate may marry and that the register of deeds must ensure for all qualified applicants to be issued a marriage license. The statute specifies that no magistrate, assistant register of deeds, or deputy register of deeds may be charged or convicted under G.S. 14-230 (Class 1 misdemeanor for a magistrate to willfully omit, neglect or refuse to discharge any of the duties) or G.S. 161-27 (Class 1 misdemeanor for a register of deed to fail to perform any of their duties), or subjected to a disciplinary action, due to a good-faith recusal.

The act also amends the statute setting out the power of magistrates by adding that the authority granted to magistrates to perform marriages is a responsibility given collectively to the magistrates in a county and is not a duty imposed upon each individual magistrate. The statute is further amended to require the chief district court judge to ensure that marriages before a magistrate are available to be performed at least a total of 10 hours per week, over at least three business days per week.

Finally, the act allows any magistrate who resigned, or was terminated from, his or her office between October 6, 2014, and the effective date of the act, to apply to fill any vacant position of

magistrate. Any magistrate who is reappointed within 90 days after the effective date of the act is to be credited with the time between their resignation and their resumption of service when determining employment benefits, including when determining continuous service, length of aggregate service, anniversary date, longevity pay rate, and the accrual of vacation and sick leave.

The bill was ratified on May 28, and vetoed by the Governor the following day. In his veto message, Governor McCrory stated, “I recognize that for many North Carolinians, including myself, opinions on same-sex marriage come from sincerely held religious beliefs that marriage is between a man and a woman. However, we are a nation and a state of laws. Whether it is the president, governor, mayor, a law enforcement officer, or magistrate, no public official who voluntarily swears to support and defend the Constitution and to discharge all duties of their office should be exempt from upholding that oath; therefore, I veto Senate Bill 2.”<sup>7</sup> The Senate voted to override the veto on June 1, and the House did the same on June 11.

### **Property Protection**

S.L. 2015-50 (House Bill 405) enacts a new statute that creates civil liability for any person who intentionally gains access to the nonpublic areas of the premises and acts in a way that exceed their authority to enter those areas. The act lists five activities that are considered to be an act exceeding a person’s authority to enter the nonpublic areas of another’s premises. Those activities are: (1) an employee enters the nonpublic areas of an employer’s premises for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer and, without authorization, captures or removes the employer’s data or documents in order to use the information to breach the person’s duty of loyalty to the employer; (2) an employee who enters the nonpublic areas of an employer’s premises for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer and, without authorization, records an image or sound occurring within an employer’s premises and uses it to breach the person’s duty of loyalty to the employer; (3) knowingly or intentionally placing on the employer’s premises an unattended camera or electronic surveillance device and recording images or data; (4) conspiring in organized retail theft; and (5) an act that substantially interferes with the ownership or possession of real property. The act allows the court to award equitable relief, compensatory damages, costs and fees (including attorneys’ fees), and exemplary damages of \$5,000 for each day that the defendant has committed a violation. Effective January 1, 2016.

The act was vetoed by the Governor on May 29. The Governor’s veto message stated, in part, “This bill is intended to address a valid concern for our state’s businesses—how to discourage those bad actors who seek employment with the intent to engage in corporate espionage or act as an undercover investigator. This practice is unethical and unfair to employers, and is a particular problem for our agricultural industry. It needs to be stopped. While I support the purpose of this bill, I believe that it does not adequately protect or give clear guidance to honest employees who uncover criminal activity. I am concerned that subjecting these employees to potential civil penalties will create an environment that discourages them from reporting illegal activities.”<sup>8</sup> The veto was overridden by the General Assembly on June 3, making the bill law over the Governor’s objections.

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<sup>7</sup> Governor’s Veto message for Senate Bill 2, available here: <http://www.ncleg.net/Sessions/2015/s2Veto/letter.pdf>

<sup>8</sup> Governor’s Veto Message for House Bill 405, available here: <http://www.ncleg.net/Sessions/2015/H405Veto/H405Veto.html>.

## **Unfinished Business**

### **Taxpayer Protection Act**

Senate Bill 607 proposed amendments to the State constitution that would that limit the growth of state spending, establish a state emergency savings reserve fund, and reduce the maximum of the income tax rate.

The act, upon voter approval, would amend the constitution by adding a new Article V-A, Taxpayer Protections. The new Article would prohibit the maximum annual percentage increase in State fiscal year spending from exceeding the average inflation growth for the prior three calendar years plus the average growth in State population for the prior three fiscal years. The General Assembly would be allowed to increase the spending limit for a fiscal year by an act passed by two-thirds of all the members of each chamber. These state spending provisions would be effective July 1, 2017. The Article would also establish an Emergency Savings Reserve Fund. The General Assembly is required to reserve to the Fund each fiscal year an amount equal to 2% of the amount appropriated from the General Fund, excluding General Fund receipts, for capital and operating expenses for the prior fiscal year until the Fund contains an amount equal to 12.5% of the amount appropriated from the General Fund, excluding General Fund receipts, for capital and operating expenses for the prior fiscal year. Money may be drawn from the Fund only by an act passed by two-thirds of all the members of each chamber. The Fund provisions would be effective July 1, 2016. Finally, the Article would reduce the maximum income tax rate from 10% to 5% beginning in 2020.

Senate Bill 607 passed out of the Senate in August and the House has referred the bill to Rules, Calendar, and Operations of the House. While it is unclear whether the House will take up the bill, it will be eligible for consideration during the 2016 session.

### **Employee Misclassification**

House Bill 482 enacts new Article 81, Employee Fair Classification Act, in General Statute Chapter 143. The act makes it a violation of the Article for an employer to willfully or recklessly engage in employee misclassification. The new Article establishes the Employee Classification Division within the Department of Revenue. The Division's duties include investigating reports of employee misclassification, assessing administrative civil penalties for misclassification, and developing methods and strategies to educate employers, employees, and the public about proper classification of employees and the prevention of employee misclassification. The Division Director is required to appoint an informal advisory council to advise the director. The Article sets out eight factors that are to be considered in determining whether an individual is an independent contractor, including: whether the individual is engaged in an independent business, calling, or occupation; whether the individual is doing a specified piece of work at a fixed price or for a lump sum or upon a quantitative basis; whether the individual is not subject to discharge because he or she adopts one method of doing the work rather than another; and whether the individual selects his or her own time. The Article also requires a temporary amnesty program to encourage voluntary self-reporting by employers currently engaging in employee misclassification.

The act allows the State Licensing Board for General Contractors and the State Licensing Board for Plumbing, Heating, and Fire Sprinkler Contractors to refuse to issue or renew or revoke, suspend, or restrict a license or take disciplinary action if a civil penalty was imposed. Among other changes made by the act, a vendor is ineligible to enter into a contract with a State agency if, within five years of the bid solicitation, the vendor has been assessed a civil penalty for a violation of the new Article. The act would also require applicants subject to regulation and licensure by a county or city and owners of sites with work in progress subject to local inspection by the county or city to certify that they have read and understand the employee misclassification notice.

The act requires Department of Labor posters to include a notice about employee misclassification. The act also amends unemployment insurance and workers' compensation provisions for newsprint employees.

After making additional changes, the Senate returned the bill to the House in the middle of September. The bill was calendared for the next to last day of session, but instead of voting on the bill, it was returned to Rules, Calendar, and Operations of the House. The bill remains eligible in 2016.

### **Charter School Funding**

House Bill 539 amends funding for charter schools. First, the act adds a provision allowing a court to award damages when funds are not transferred from a local school administrative unit in which a child resides to the charter school the child attends with the required timeframe. The amount of damages is 5% of the amount that should have been transferred. Second, the act specifies 14 types of funds that could be kept by LEAs in funds other than the local current expense fund meaning that they would not have to be shared with charter schools. The act also amends the funds that must be shared with charter schools.

The act passed the Senate in late September and the House referred the bill to Rules, Calendar, and Operations of the House. The act remains eligible for consideration during the 2016 session.

### **School Authority in Legal Proceedings and Investigations**

House Bill 561 would allow a state or federal administrative agency with a quasi-judicial function or court of law to inspect confidential provisions of a local board of education employee's personnel file if a current or former employee has filed a claim against the local board of education or a school official or employee for any alleged act or omission arising during the course and scope of the employee's official duties or employment and in the superintendent's discretion the disclosure is necessary to adequately defend against the employee's claim. The disclosure is limited to that employee's records only, and to the extent necessary for the defense of the local board of education. The act would also give local boards of education the power to issue subpoenas for the production of all tangible items (including but not limited to documents, books, photos, films, sound recordings, electronic communications) when an employee is suspected of committing job-related misconduct which, in the discretion of the board or superintendent, requires investigation.

The act is one of the few bills that remained in conference at the end of session. In August, the House changed their conferees on the bill. The bill remains eligible for consideration in 2016.

## **The Legislative Institution**

### **New Legislative Services Officer**

George Hall, who had acted as the Legislative Services Officer for more than three decades, retired in November of 2014. After his departure, Kory Goldsmith, Director of the Bill Drafting Division, and Beverly Adams, Legislative Services Office Executive Assistant, both acted as the interim Legislative Services Officer. Effective August 19, 2015, President Pro Tempore Berger and Speaker Moore appointed Paul Coble as the new Legislative Services Officer.

## Legislative Sessions

S.L. 2015-264 (Senate Bill 119) amends GS 120-11.1 to convene the General Assembly's organizational session that takes place prior to the start of the long sessions at noon instead of 9 a.m.

Ch. Res. 2015-14 (Senate Bill 721) moves up the traditional date of the start of the short session by setting the convening date for the 2016 session as Monday, April 25, 2016.

## Legislative Appointments

S.L. 2015-286 (House Bill 765) amends the process for making legislative appointments. The act specifies that when the Speaker of the House of Representatives or the President Pro Tempore of the Senate is directed by law to make a recommendation for an appointment by the General Assembly, and the legislator is also directed to make the recommendation *in consultation with or upon the recommendation of a third party*: (1) the recommendation or consultation is discretionary and is not binding upon the legislator; (2) the third party must submit the recommendation or consultation at least 60 days before the expiration of the term or within 10 business days from the occurrence of a vacancy; and (3) failure by the third party to submit the recommendation or consultation to the legislator within the specified time periods is deemed a waiver by the third party of the opportunity. When the Speaker or the President Pro Tempore is directed by law to make a recommendation for an appointment by the General Assembly, and the legislator is also directed to make the recommendation *from nominees provided by a third party*, the third party must submit the nominees at least 60 days before the expiration of the term or within 10 business days from the occurrence of a vacancy and failure to do so within that time is deemed a waiver by the third party of the opportunity. The act also sets out the same requirements for appointments made by legislators other than the Speaker or President Pro Tempore.

## Letters of Reference

S.L. 2015-208 (House Bill 584) clarifies that covered persons, defined as a legislator, public servant, or judicial officer, as identified by the State Ethics Commission, may refer to their public position in a letter of character reference for: (1) a student seeking admittance to a school or institution of higher education; (2) an individual seeking an academic scholarship; (3) an individual seeking leniency upon sentencing by the courts, or other matters related to probation or parole; or (4) an individual seeking employment, at the request of that individual or in response to the inquiry of a potential employer as to the qualifications and character of that individual.

## Service on Boards and Commissions and New Commissions

S.L. 2015-9 (House Bill 364) prohibits members of the General Assembly from serving on the North Carolina Longitudinal Data System Board, the Domestic Violence Commission, and the Governor's Crime Commission of the Department of Public Safety. The act also amends those boards and commissions by removing the General Assembly members and replacing them with members of the public.

The Appropriations Act of 2015, S.L. 2015-241 (House Bill 97), establishes the 12-member Joint Legislative Oversight Committee on Natural and Economic Resources, consisting of six members of the Senate and six members of the House of Representatives. The purpose of the Oversight Committee is to examine the services provided by the specified departments and agencies in order to make ongoing recommendations to the General Assembly on ways to improve the effectiveness, efficiency, and quality of State government services. Those specified entities are: (1) Department of Agriculture and Consumer Services; (2) Department of Environmental Quality; (3) Department of Natural and Cultural Resources; (4) Wildlife Resources Commission; (5) Department of Labor; (6) Department of Commerce; and (7) any other agency under the

jurisdiction of the Senate and House of Representatives appropriations committees on agriculture, natural, or economic resources.

S.L. 2015-241 also establishes the-16 member Joint Legislative Oversight Committee on Capital Improvements, consisting of eight members of the Senate and eight members of the House of Representatives. The Oversight Committee has the power to: (1) examine, on a continuing basis, capital improvements requested by, authorized for, and undertaken by or on behalf of State agencies; (2) have oversight over implementation of the six-year capital improvements plan developed under G.S. 143C-8-5; (3) make recommendations to the General Assembly on ways to improve the planning, financing, design, construction, and maintenance of State capital improvements; (4) make reports and recommendations to the General Assembly regarding which capital improvements requested by State agencies should be authorized and how they should be funded; and (5) examine any other topic the Committee believes to be related to its purpose.

### **Required Studies by Legislative Committee and Commissions**

The Appropriations Act of 2015, S.L. 2015-241 (House Bill 97), requires the Joint Legislative Oversight Committee on Health and Human Services to appoint a subcommittee to study early childhood and family support programs, including the Child Care Subsidy program, NC Prekindergarten program, and the Smart Start program. The subcommittee is required to consider: (1) the purpose, outcomes, and effectiveness of each program; (2) the flexibility needed to ensure the needs of young children in counties across the State are met; (3) the potential for streamlined administration across the programs; and (4) any other relevant issues. The subcommittee is required to develop a proposal for a statewide plan that addresses how to meet county or regional needs of children by county or region and submit a report on the proposed plan to the Joint Legislative Oversight Committee on Health and Human Services by April 1, 2016, at which time the subcommittee terminates.

S.L. 2015-241 also requires that the Joint Legislative Oversight Committee on Health and Human Services and the Joint Legislative Oversight Committee on Justice and Public Safety each appoint a subcommittee to study the intersection of Justice and Public Safety and behavioral health and report their findings and recommendations to their respective Committees. The subcommittees are required to report on: (1) the impact of the Justice Reinvestment Act on the State's behavioral health system, (2) the impact of mental illness and substance abuse on county law enforcement agencies, (3) the impact of judicial decisions on the State's behavioral health and social services system, and (4) any other relevant issues.

The Environmental Review Commission (ERC) is required by S.L. 2015-241 to perform a number of studies. First, the Environmental Review Commission is required to convene a stakeholder working group to study local government authority over solid waste management matters, including (1) the authority to enact ordinances concerning collection and processing of solid waste generated within their jurisdictions and their authority to charge fees for such services; (2) an examination of costs to local governments for providing solid waste collection and processing services to citizens; (3) whether efficiencies and cost reductions could be realized through privatization of such services, and what impacts might result; and (4) any other issue the Commission deems relevant. Second, the ERC is required to study the use of new technologies and strategies to dewater leachate and other forms of wastewater to reduce the burden and cost of disposal at the site where it is generated. The ERC is required to determine the efficiency, cost-effectiveness, and environmental impact of each studied technology and strategy.

### **Program Evaluation Division**

S.L. 2015-264 (Senate Bill 119) makes changes to laws governing the General Assembly's Program Evaluation Division (PED). The act no longer requires PED's work plan to be completed on an annual basis. The act also allows, instead of requiring, a PED report of an evaluation of a State agency program or activity to include: (1) PED's findings concerning the program or activity; (2) specific recommendations for making the program or activity more efficient or



effective; (3) any legislation needed to implement PED's findings and recommendations; and (4) an estimate of the costs or savings expected from implementing PED's findings and recommendations.

## The 2016 Session

The General Assembly is currently scheduled to return for the short session on Monday, April 25, 2016, which is about a month earlier than the typical short session state date. According to the adjournment resolution (Ch. Res. 2015-14), only the following matters may be considered during the short session: (1) bills affecting the budget, including the budget of an occupational licensing board, provided the bill is submitted to the Bill Drafting Division by April 27, 2016, and introduced in the House or filed for introduction in the Senate by May 10, 2016; (2) bills amending the NC Constitution; (3) bills and resolutions introduced in 2015 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 April 26, 2016, and filed for introduction in the Senate or introduced in the House by May 10, 2016; (5) any noncontroversial local bill, as described, that is submitted to the Bill Drafting Division by May 3, 2016, and introduced in the House or filed for introduction in the Senate by May 19, 2016, 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 passed by a two-thirds majority; (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 3, 2016, and introduced in the House or filed for introduction in the Senate by May 19, 2016; (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 2015 Regular Session, sine die.

The resolution also allows the Speaker of the House or the President Pro Tempore of the Senate to authorize committees or subcommittees to meet during the interim between sessions to perform three listed functions.

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%202015.pdf>.

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