

The General Assembly

The 2016 short session convened on April 25, weeks earlier than the usual mid-May convening. The session adjourned on July 1, totaling 41 legislative days. The Governor vetoed only one bill and allowed one bill to go into law without his signature.

This chapter provides an overview of the 2016 session, including major legislation enacted. Please note that School of Government (SOG) faculty members and experts are writing summaries of selected legislation of interest to state and local government officials. These summaries are available on the SOG's legislative reporting service website. The summaries are available directly at: <https://lrs.sog.unc.edu/lrs/legsumms/2016>; the site will be updated as new summaries are available.

Overview of the 2016 Regular Session

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

Beginning with the 1973-74 biennium, the General Assembly began holding annual sessions. The General Assembly convenes in January of odd-numbered years. In these "long sessions," which generally run through midsummer, a biennial budget is adopted and any legislative business may be considered. In even-numbered years the General Assembly convenes for a "short session," which generally runs from May through July or August. When the General Assembly adjourned in 2015, the adjournment resolution convened the short session in April instead of the typical May start date. In the short session the General Assembly considers budget adjustments for the second year of the biennium and generally deals with bills that have passed one house and a limited number of additional noncontroversial matters. Legally the short session is a continuation of the long session.

The 2016 short session convened on April 25 and adjourned July 1.

The 2015 adjournment resolution, (Ch. Res. 2015-14; SJR 721), limited the matters that may be considered during the short session to the following:

(1) bills affecting the budget, as described, provided the bill is submitted to the Bill Drafting Division by 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;
- (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 and related issues;
- (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.

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/Legislative%20Analysis%20Division/Eligible%20Bills/Bills%20Eligible%20for%20Consideration%20for%202016%20Session.pdf>.

The adjournment resolution also authorized the Speaker of the House or the President Pro Tempore of the Senate to allow committees or subcommittees to meet when the General Assembly was not in session to review matters related to the 2015-17 budget, prepare reports, and consider other matters as appropriate, other than resolutions, bill, or proposed committee substitutes that originated in the other house. Conference committees were also allowed to meet with approval from the Speaker or President Pro Tem.

Before convening the short session in April, legislators returned to Raleigh for two extra sessions. The first extra session was convened by the Governor on February 18, 2016, to address congressional redistricting. The session lasted only two days, adjourning on Friday, February 19. A complete discussion of that extra session can be found here: https://lrs.sog.unc.edu/sites/lrs.sog.unc.edu/files/supp_content/2016%20extra%20session%20General%20Assembly.pdf. Legislators were called into the second extra session by the President of the Senate and the Speaker of the House of Representatives on March 23, 2016, in response to changes the City of Charlotte made to their non-discrimination ordinances. The one day session included passage of House Bill 2 (S.L. 2016-3). A more thorough discussion of the second extra session can be found here: https://lrs.sog.unc.edu/sites/lrs.sog.unc.edu/files/supp_content/2016%20second%20extra%20session%20General%20Assembly.pdf.

Statistical Comparison

The 2016 short session convened on April 25 and adjourned July 1. Although the July 1 end date is the earliest short session adjournment in the previous five bienniums, the earlier start date ends up making the length of session average (although it was shorter than 2014 short session, which ran much longer than average). A total of 387 bills were introduced, which continues a downward trend in bill filings, but by a smaller margin than we have seen in previous years. Over the whole 2015-16 biennium, including extra sessions, a total 2,062 bills were filed. Of those filed bills, only 463, or 22% were enacted into law, down slightly from the previous two bienniums.

Table 1-1 compares the 2016 session with other even-year sessions of the past ten years.

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

	2006	2008	2010	2012	2014	2016
Date convened	May 9	May 13	May 12	May 16	May 14	April 25
Date adjourned	July 28	July 18	July 10	July 3	August 20	July 1
Senate legislative days	48	40	35	29	56	44
House legislative days	47	40	36	29	55	41
Senate bills introduced	881	597	354	165	157	181
House bills introduced	1,093	733	426	294	253	206
Total bills introduced	1,974	1,330	780	459	410	387
Session Laws Enacted	264	229	227	203	122	144
Vetoed	1	1	0	3	1	1

The Legislative Institution

Membership Changes

The 2016 marked the final year for many legislators with many not planning on returning in 2017. Long-serving legislators not running for re-election after the 2016 session include Rep. Daughtry, Rep. Langdon, Rep. Stam, Rep. West, Senator Bingham, Senator Hartsell, and Senator Rucho. The session also saw several changes in membership. In the House of Representatives, Representative Ralph Johnson, who represented Guilford County, passed away in March. Chris Sgro was appointed to the seat in April. Representative Jacqueline Schaffer, who represented Mecklenburg County for two terms, resigned in April, citing increased responsibility at her business as the reason for her resignation. Scott Stone was named as her replacement in May. The most recent membership change is the departure of Representative Charles Jeter, who resigned on July 25. Rep. Jeter who represented Mecklenburg County for two terms, and was running for election, cited the desire to spend more time with his family as a reason for his resignation. A replacement has not yet been named.

In the Senate, Senator Josh Stein, who represented Wake County for four terms, resigned in March in order to run for State Attorney General. Jay Chaudhuri was named as his replacement in April. Senator Dan Soucek, who represented Alleghany, Ashe, Avery, Caldwell, and Watauga counties for three terms resigned in April, saying he wanted to spend more time with his family. Deanna Ballard was appointed to the seat in April. Following the adjournment of the 2016 session, Rules Chairman, Senator Tom Apodaca, resigned on July 15. Sen. Apodaca represented Buncombe, Henderson, and Transylvania counties for seven terms. Having previously announced his plans to retire after the 2016 session, Sen. Apodaca did not give a reason for his resignation; his replacement has not yet been named.

Research Division Name Change

The Research Division provides the General Assembly with legal and other research, bill drafting, and policy analysis and library services. In January, the name of the Research Division was changed to the Legislative Analysis Division. According to an announcement from Paul Coble, Legislative Services Officer, the name of the Division was changed in order to, “accurately reflect its role and distinguish it from other divisions and departments within the General Assembly.”

Study Committees and Commissions

The 2016 session ended without a studies bill, but various legislation required pilot programs or studies to be performed by already existing committees, commissions, or departments.

S.L. 2016-94 (H 1030, the 2016 Appropriations Act) creates a new six-member Joint Legislative Study Committee on School-Based Administrator Pay (Committee), made up of three

members of the House of Representative and three members of the Senate. The Committee is to study the feasibility of revising the school-based administrator salary schedule, including principal and assistant principal pay, and whether revisions are needed; the process of recruiting and retaining principals in North Carolina as compared with the process of recruiting and retaining executives in other professions; strategies for recruiting and retaining the most qualified principals in low-performing and hard-to-staff schools; and other relevant issues. The Committee is required to submit a final report on the results of its study to the members of the Senate and the House of Representatives on or before December 31, 2016. The Committee terminates on December 31, 2016, or upon the filing of its final report, whichever occurs first.

Major Legislation Enacted in 2016

The 2016 General Assembly enacted a number of significant pieces of legislation, a few of which are discussed below. Please note that additional legislation passed by the General Assembly is discussed in the Governor's Veto section of this document.

Municipal Service Districts

S.L. 2016-8 (H 1023) amends municipal service district (MSD) authority. Among its provisions, the act requires a local government to establish or amend an MSD by ordinance, creates a process by which property owners can request a new MSD or require that property be excluded or removed from an MSD, and amended reporting requirements for private entities that contract to do work in an MSD. A thorough discussion of this act can be found in a blog post written by SOG faculty member Kara Millonzi, available here: <http://canons.sog.unc.edu/2016-changes-municipal-service-district-msd-authority/>.

Opioid Abuse

This session included two bills that address opioid use.

Opioid antagonist

S.L. 2016-17 (S 734) allows the State Health Director to prescribe an opioid antagonist through a statewide standing order to a person who is at risk of experiencing an opiate-related overdose, or to a family member, friend, or other person who is in a position to assist a person at risk of experiencing an opiate-related overdose. An opioid antagonist is defined as naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of a drug overdose. The act also gives the State Health Director immunity from civil or criminal liability for actions authorized by changes to the law. You can learn more about this law and other public health legislation on the following blog post written by my SOG faculty member Jill Moore: <http://canons.sog.unc.edu/2016-public-health-legislation-highlights/>.

Treatment pilot

S.L. 2016-94 (H 1030, the 2016 Appropriations Act) establishes a medication assisted opioid use disorder treatment pilot program in Section 12F.1. The section requires the Department of Health and Human Services (DHHS) to oversee a three-year pilot program conducted by designated federally qualified health care centers (centers) located in the state, with the goal of studying the effectiveness of combining behavioral therapy with a nonnarcotic, nonaddictive, extended-release, injectable formulation of opioid antagonist approved by the United States Food and Drug Administration for the prevention of relapse to opioid dependence. The section sets out additional requirements for the selection of program participants, treatment standards, and data collection. Participating centers must report annually on specified information, and DHHS is required to submit an evaluation of the effectiveness of the pilot program by November 1, 2020, to the Joint Legislative Oversight Committee on Health and Human Services. The pilot program conducted at each selected center expires after no later than three years. The act appropriates funds for the program for 2016-17.

Digital Assets

One of the few bills to pass through the legislative process without undergoing any changes, S.L. 2016-53 (S 805), Fiduciary Access to Digital Assets, sets out the process under which an individual's digital assets may be disclosed to a fiduciary, personal representative, guardian or trustee. The act establishes new General Statutes Chapter 36F, known as the Revised Uniform Fiduciary Access to Digital Assets Act. The act governs the procedure for when a user establishes directions for the disclosure of the user's assets, for disclosure of a deceased user's electronic communications and other types of digital assets, for the disclosure of digital assets and electronic communications under a power of attorney, for the disclosure of digital assets and electronic communications when they are held in trust, and for the disclosure of a ward's digital assets to a guardian.

Unauthorized Practice of Law

S.L. 2016-60 (H 736) enacts a new statute that excludes from the practice of law the operation of a website allowing consumers to use interactive software to generate a legal document based on information the consumer provides, if seven specified criteria are met. The act also amends the existing definition of the practice of law by excluding from the term specified activities by a licensed real estate broker and specified activities related to the sale or lease of a motor vehicle. A more thorough discussion of these changes can be found in the following document written by SOG faculty member Robert Farb: https://lrs.sog.unc.edu/sites/lrs.sog.unc.edu/files/supp_content/2016criminallawlegislation.pdf.

Adult Guardianship

S.L. 2016-72 (H 817) enacts new General Statutes Chapter 35B, known as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The act governs jurisdiction in guardianship proceedings when more than one state is involved. The act states that the purpose is to provide clear direction to the courts, attorneys, guardians, and individuals about the proper jurisdiction for guardianship proceedings and states that the act does not affect the established system for determining incompetency, appointing guardians, and managing estates. In addition to addressing jurisdiction, the act also includes provisions concerning the transfer of general guardianship, guardianship of the person, or guardianship of the estate to another state, and the registration of guardianship of the person orders, protective orders, and general guardianship orders from other states. The act is effective December 1, 2016.

Probation, Post-release Supervision and Parole

S.L. 2016-77 (H253) includes a number of changes concerning probation, post-release supervision, and parole. Changes include requiring probationers to submit to photographs, allowing the use of videoconferencing for hearings related to violations of post-release supervision and parole, and the creation of a Justice Reinvestment Council. A more thorough discussion of these changes, and more, can be found at the following blog post written by SOG faculty member Jamie Markham: <http://nccriminallaw.sog.unc.edu/2016-legislation-related-probation-post-release-supervision-parole/>. A discussion of the new jail credit rule for confinement in response to violation, also found in the act, written by Prof. Markham, is available here: <http://nccriminallaw.sog.unc.edu/another-new-rule-crv-jail-credit/>. A blog post written by Prof. Markham concerning the act's new requirement for supervised felony probationers to make a prospective waiver of extradition can be found here: <http://nccriminallaw.sog.unc.edu/new-probation-condition-felons-mandatory-waiver-extradition/>.

Law Enforcement

In addition to the discussion and links found below, an overview of bills impacting law enforcement is found in the following document written by SOG faculty member Robert Farb: https://lrs.sog.unc.edu/sites/lrs.sog.unc.edu/files/supp_content/2016criminallawlegislation.pdf.

Law enforcement omnibus bill

S.L. 2016-87 (H 1044) is an omnibus law enforcement bill that includes several provisions related to law enforcement and public safety; this discussion addresses only a few of those provisions.

The act creates a Blue Alert System, the purpose of which is to aid in the apprehension of a suspect who kills or inflicts serious bodily injury on a law enforcement officer. Information will be disseminated on a suspect statewide when a law enforcement officer is killed or suffers serious bodily injury, the suspect poses a threat to the public and other law enforcement personnel and a law enforcement agency has information that may assist in locating the suspect, and the head of a law enforcement agency with jurisdiction recommends the issuance of a blue alert to the North Carolina Center for Missing Persons (Center).

The existing Silver Alert System is also modified to expand upon when an alert is issued to now allow the issuance of an alert when the Center receives a request that involves a missing person or child who is believed to be suffering from dementia, Alzheimer's disease, or a disability that requires them to be protected from potential abuse or other physical harm, neglect, or exploitation.

The act also expands the definition of "emergency" under the North Carolina Emergency Management Act so that it now also includes occurrences or imminent threats resulting from terrorism, public health causes, explosions, and technological failures or accidents, which are defined to include cyber-incidents, explosions, transportation accidents, radiological accidents, or chemical or other hazardous material incidents.

Law enforcement recordings

S.L. 2016-88 (H 972) sets out statutes governing when law enforcement agencies can disclose or release recordings made using body worn cameras or dashboard cameras, including a procedure by which individuals can contest the refusal to disclose a recording. More information on the portion of the legislation pertaining to law enforcement recordings can be found in a blog post written by SOG Faculty member Frayda Bluestein, available here: <http://canons.sog.unc.edu/answers-questions-north-carolinas-body-worn-camera-law/>. Prof. Bluestein also discusses the issue in the following podcast: <http://podcast.sog.unc.edu/>.

The act also enacts a new statute allowing any governmental or nongovernmental organization to establish and operate a needle and hypodermic syringe exchange program. You can learn more about the exchange program at the following blog post written by SOG faculty member Jill Moore: <http://canons.sog.unc.edu/2016-public-health-legislation-highlights/>.

Education

There were many bills passed by the General Assembly that touched upon education in some way, including the 2016 Appropriations Act, S.L. 2016-94 (H1030). This section discusses only a few of those bills.

Personnel issues and study to resolving funding disputes

S.L. 2016-116 (H561) includes provisions modifying who can view confidential employee personnel records of a current or former employee of a local board of education, and allows a local board of education to request that the court allows the local board to issue subpoenas for the production of tangible items in matters related to an employee who is suspected of committing job-related misconduct when the local board determines an investigation is required. These provisions are effective October 1, 2016.

The act also requires the General Assembly's Program Evaluation Division to study the statutory procedure for resolving education funding disputes between local boards of education and boards of county commissioners. The study is required to examine eight issues, including: a

historical review of education capital and current expense funding requests made by local boards of education and the amounts appropriated by county commissioners to fund education needs; an examination of yearly encumbered and unencumbered fund balances held by local boards of education and county commissions; an analysis of the use of fund balances by local boards of education and county commissions to pay for required expenses prior to the receipt of periodic revenue; an analysis of how the current process impacts county budgeting procedures and relationships between local boards of education and boards of county commissioners; and an examination of alternative ways for local boards of education to receive local funds. The Division is required to report the results of the study to the Joint Legislative Program Evaluation Oversight Committee by May 1, 2017.

Student information protection

S.L. 2016-11 (H 632) enacts new provisions protecting student information held by third-party online educational applications for kindergarten through 12 grade students in a charter school, regional school, or school operated by a local board of education. Protected information includes (but is not limited to) name, contact information, discipline records, test results, grades, evaluations, and photos. The act prohibits operators of a website, service, or application from (1) engaging in targeted advertising on the operator's site, service, or application, or on any other site, service, or application if the targeting of the advertising is based on any information, including covered information and persistent unique identifiers, that the operator has acquired because of the use of that operator's site, service, or application for school purposes; (2) using information created or gathered by the operator's site, service, or application, to amass a profile about a student except in furtherance of school purposes; (3) selling or renting a student's information; and (4) disclosing covered information unless the disclosure is made for specified purposes. Operators are also required to take specified security measures. The act allows a parent, school, teacher, local board of education, or the State Board of Education to report an alleged violation to the Attorney General and the Attorney General may bring a civil action seeking injunctive and other equitable relief. This act is effective October 1, 2016.

Charter schools

S.L. 2016-79 (H 242) makes a number of changes to the laws affecting charter schools, only a few of which are discussed below. Among those changes, the act amends the process for reviewing and renewing charters. The act also makes changes to the conditions that must be found in order for the State Board of Education (SBE) to approve enrollment growth greater than 20%, which is considered a materials revision of a charter that requires SBE approval, if the material revision is being requested because of a proposed capital expansion. The act also adds two new categories of students who are given enrollment priority. Under the act, the SBE is now required to annually identify low-performing and continually low-performing charter school; this replaces the requirement that the SBE identify schools with inadequate performance. Continually low-performing schools are subject to non-renewal or termination.

Achievement school districts

S.L. 2016-110 (H 1080) enacts new Article 7A, Achievement School District and Innovation Zones, in G.S. Chapter 115C. An Achievement School District (ASD) is responsible for the supervision, management, and operation of elementary schools that have been selected as achievement schools, and is under the control of the State Board of Education (SBE) while the ASD is headed by an ASD Superintendent. Upon recommendation by the ASD Superintendent, the SBE is authorized to select no more than 5 qualifying elementary schools to transfer to the ASD as achievement schools. A qualifying school is defined as a low-performing school, that received one of the specified low school performance score and meets additional specified criteria. The act sets out criteria that must be considered in selecting the achievement schools. The act also includes requirements for the selection of achievement school operators policies related to operators, the management of achievement schools, and the funding of achievement schools.

The act allows local boards of education that transfers a school to the ASD to ask the SBE for permission to create an innovation zone for up to three continually low-performing schools within the local school administrative unit, with zones authorized for up to five years. Innovation zone

requirements are set out in the act. The act also includes various reporting and evaluation requirements.

The act specifically requires the SBE to authorize the Charlotte-Mecklenburg Board of Education to create an innovation zone among Project LIFT schools and Beacon Initiative schools. The act is effective when it becomes law and supervision of achievement schools by the Achievement School District begins with the 2017-18 school year.

University tuition

Among the changes affecting higher education made by the 2016 Appropriations Act, S.L. 2016-94 (H 1030), are two provisions concerning tuition rates. Section 11.4 of the act guarantees that the rate of tuition of any freshman or transfer undergraduate student admitted to any constituent institution of the University of North Carolina who is considered a resident for tuition purposes will remain the same or decrease during the tuition period. The tuition period is defined as eight consecutive academic semesters for a student seeking a baccalaureate degree in a four-year program or 10 consecutive academic semesters for a student seeking a baccalaureate degree in a five-year program. This provision is effective beginning with the 2016 fall academic semester. The act also caps the amount by which the UNC Board of Governors and the Board of Trustees at each constituent institution may increase the total of all undergraduate student fees at no more than 3% per academic year. This cap applies beginning with the 2017-18 academic year.

Section 11.4 of the act establishes the NC Promise Tuition Plan, with requires the UNC Board of Governors to set undergraduate tuition for Elizabeth City State University, the University of North Carolina at Pembroke, and Western Carolina University at \$500 per semester for in state residents and \$2,500 per semester for out of state residents beginning with the 2018 fall semester. The provision also requires the State to “buy down” the amount of an financial obligation that results from the set tuition rates that may be incurred by the three universities. The UNC Board of Governors is required to develop a marketing strategy by January 16, 2017, that is designed to increase enrollment at Elizabeth City State University and to market the NC Promise Tuition Plan at that campus. The UNC Board of Governors is required to consider the effect of eliminating or increasing the current 18% cap on the enrollment of nonresident students entering the freshman class at Elizabeth City State University, the University of North Carolina at Pembroke, and Western Carolina University on applications to those universities. The Board of Governors may adopt a policy that eliminates or establishes a different cap and the period of time for which the modification of the cap is to be implemented, if it is determined that eliminating or increasing the cap may increase the number, academic strength, and diversity of student applications.

Tax/Revenue Laws

Individual income tax

S.L. 2016-94 (H 1030, the 2016 Appropriations Act) increases the personal income standard deduction amount in section 38.1 of the act. The amount of the deduction is increased twice, with the first increase effective for taxable years beginning on or after January 1, 2016, and the second increase effective for taxable years beginning on or after January 1, 2017.

Sales tax

Section 38.5 of S.L. 2016-94 provides that a retailer is not liable for an under collection of sales tax because of the changes made under Section 32.18 of S.L. 2015-241 and under Part V of S.L. 2015-259 provided that the retailer made a good-faith effort to comply with the law and collect the proper amount of tax. This exception applies only to the period beginning March 1, 2016, and ending December 31, 2016. In an effort to treat similar transactions the same and identify taxable transactions more clearly, the section also amends the provisions concerning when sales tax is due on repair, maintenance, and installation services.

Taxpayer confidentiality

S.L. 2016-92 (S 803) makes a number of technical, clarifying, and other changes to various revenue law bills. Among those changes, the act now allows counties to share information about the amount of a taxpayer's income or receipts with an authorized finance officer of any municipality located within the county tax, as necessary to administer a tax. A municipality is now

also allowed to share that information with the county within which is located for those same purposes. For more information on this act, please see Chris McLaughlin's blog entry, Confidentiality of Taxpayer Income Information, at <http://canons.sog.unc.edu/confidentiality-taxpayer-income-information/>.

Child Welfare

S.L. 2016-94 (H 1030, the 2016 Appropriations Act) makes a number of changes concerning child welfare in Section 12C.1 of the act. The section includes provisions requiring the Department of Health and Human Services to implement the requirements of the federal Program Improvement Plan to bring the state into compliance with national standards for child welfare policy and practices, to develop a statewide plan for child welfare services that complements the required federal Program Improvement Plan, and to continue working on completing the child welfare component of the North Carolina Families Accessing Services Through Technology (NC FAST) system with the goal of the child welfare component of the NC FAST system being operational by December 31, 2017. For a more thorough discussion of the changes that the act makes to abuse, neglect, and dependency law, as well as a discussion of S.L. 2016-115 (H424), Prohibit Unlawful Custody Transfer of Child, please see the blog post written by Sara DePasquale, 2016 Legislative Changes Impacting Child Welfare, available at <http://civil.sog.unc.edu/2016-legislative-changes-impacting-child-welfare/>.

Transportation and Motor Vehicles

Stand-alone bills and the 2016 Appropriations Act included transportation and motor vehicle provisions; this section discusses only a few of those provisions.

Light rail funding

S.L. 2016-94 (H1030, the 2016 Appropriations Act) repeals the light rail funding cap in Section 35.12 of the act. The section repeals G.S. 136-189.11(e1) which capped the amount of funds expended for light rail transit system projects at \$500,000 per project. Previously submitted light rail projects are required to be resubmitted under the next round of prioritization, and maximum State funding for light rail and commuter rail transit projects is set at 10% of the total project cost.

Bicycle safety

Effective December 1, 2016, section 5.1 of S.L. 2016-90, DOT Proposed Legislative Changes (H 959) requires, when operating a bike at night, that a bicycle have a red rear light or for the bicyclist to wear reflective vest or clothing visible from a distance of at least 300 feet from the rear of a bicycle. Section 5.5 allows passing a slower moving bicycle or moped, even where passing is otherwise prohibited, if the other requirements are met. Penalties are also increased for unsafe traffic violations that cause injury to bicyclists. The act also makes change to the required hand signals for turning and stopping. These changes are effective October 1, 2016.

Sheyenne's Law

S.L. 2016-34 (H 958) enacts Sheyenne's Law, named for Sheyenne Marshall, who was killed while knee-boarding by an impaired boater on Lake Norman in 2015. The act increases penalties for impaired boating that results in death or serious injury to another. You can read more about the act in the following blog post by SOG faculty member Shea Denning:

<http://nccriminallaw.sog.unc.edu/sheyennes-law-stiffens-penalty-impaired-boating-causing-serious-injury-death/>.

DWI Trials

S.L. 2016-10 (H 357) makes changes to the admissibility of chemical analyses in impaired driving trials. More information on the changes can be found in the following blog post written by SOG faculty member Shea Denning: <http://nccriminallaw.sog.unc.edu/amendments-notice-demand-provisions-dwi-cases/>.

Environmental Law

While there were several bills enacted that impacted environmental law, this year's omnibus environmental law bill, House Bill 593, did not make it out of conference committee before the end of session (the bill is discussed further in the Unfinished Business section of this document). A more thorough discussion of this session's environmental laws can be found in a blog post written by SOG's Jeff Hughes, available here: <http://ced.sog.unc.edu/2016-environmental-legislation-place-matters/>.

Coal Ash

Taking the place of the previously vetoed Senate Bill 71, S.L. 2016-95 (H 630), addresses some of the same issues as Senate Bill 71, while also addressing new issues. S.L. 2016-95's provisions include, but are not limited to, the following. The act requires coal combustion residuals impoundment owners to provide permanent alternative water supplies for people residing in areas surrounding the impoundments; this issue was also addressed in Senate Bill 71, but the requirements are not identical. Instead of making changes to the Coal Ash Management Commission, this act repeals the Commission entirely. The act also makes change to the requirements for the closure of coal combustion residuals surface impoundments; these changes are different from the closure requirement and public comment changes made in Senate Bill 71. The act also adds a statute concerning ash beneficiation projects. Finally the act makes changes to the membership of the Mining Commission and the Oil and Gas Commission, in a way that is similar to, but not identical to those made in Senate Bill 71.

House Bill 2 changes

S.L. 2016-99 (H 169) addresses changes made to employment law in S.L. 2016-3 (more commonly known as House Bill 2), which legislators approved during the 2016 Second Extra Session. S.L. 2016-3 act required state agencies and local governments to designate multiple occupancy bathrooms and changing rooms for use by persons according to their biological sex. The act preempted local government ordinances concerning wage and hour requirements and antidiscrimination in employment and access to public accommodations. The act also provided that the Equal Employment Practices Act (Article 49A of G.S. Chapter 143) does not create a statutory or common law private right of action for employment discrimination. A more thorough discussion of S.L. 2016-3 can be found here: https://lrs.sog.unc.edu/sites/lrs.sog.unc.edu/files/supp_content/2016%20second%20extra%20session%20General%20Assembly.pdf.

During the 2016 session, several bills were filed that would have amended or repealed the act in part or in its entirety. The only bill impacting provisions of S.L. 2016-3 that was approved by legislators was H169, which addressed only the right of action for employment discrimination piece of the act. The language of the act, which first appeared in a conference report that was reported in on the last day of session, repeals the provisions of House Bill 2 that stated that the Equal Employment Practices Act (Article 49A of G.S. Chapter 143) does not create a statutory or common law private right of action for employment discrimination. The act creates a one year statute of limitations for wrongful discharge in violation of the public policy set forth in G.S. 143-422.2, which states that "It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers which regularly employ 15 or more employees."

Service Animals

Named in honor of Senator Apodaca's dog, the Raleigh Apodaca Service Dog Retirement Act gives local governments more options in placing retired service animals. Five bills were filed in 2016 that included provisions addressing how local governments can place service animals; three of those bills, including two local acts, were enacted into law. S.L. 2016-101 (H 550) enacts

provisions that are substantially the same as those local bills, but makes the provisions effective statewide. Under the act, after determining that a service animal is no longer fit or needed for public service, the State or a local government may transfer ownership of the animal to specified categories of individuals at a price and under conditions determined by the state or local government. A more thorough discussion of this act can be found in the following document written by SOG faculty member Norma Houston: https://lrs.sog.unc.edu/sites/lrs.sog.unc.edu/files/supp_content/P%26C%20Legislative%20Summary%202016.pdf.

Criminal Law and Procedure

There were several bills related to criminal law and procedure this session. S.L. 2016-102 (H 1021) amends where registered sex offenders are allowed to go. More information on this act is available at the following blog post written by faculty member Jamie Markham: <http://nccriminallaw.sog.unc.edu/sex-offender-premises-restrictions-revised-response-doe-v-cooper/>.

A very thorough discussion of additional bills related to criminal law and procedure, including those that amend the procedures governing admissibility of written chemical analysis results in DWI cases, make it a felony to violate first-degree trespass that involves reentry after removal by execution of valid order or writ of possession or the trespass occurs under color of title by person who knowingly creates false document of title or possession, require licensure to operate beach bingo games, and prohibit the unlawful transfer of custody of a minor, can be found in the following document written by SOG faculty member Robert Farb: https://lrs.sog.unc.edu/sites/lrs.sog.unc.edu/files/supp_content/2016criminallawlegislation.pdf.

Elections Changes

S.L. 2016-109 (S 667), Elections Omnibus Revisions, makes a number of changes to elections laws; only a few of those changes are discussed here, see the act for more information.

The act requires the Attorney General represent the State in actions related to the validity or constitutionality of a local act of the General Assembly and requires the State to be a party to all of those types of actions. This requirement is effective August 1, 2016.

The act requires candidates for judge of the Court of Appeals be listed on the ballot in a general election in the following order: (1) candidates registered with political parties that reflect at least 5% of statewide voter registration, in alphabetical order by party beginning with the party whose nominee for Governor received the most votes in the most recent gubernatorial election and in alphabetical order within the party; (2) candidates registered with other political parties, in alphabetical order by party and in alphabetical order within the party; and (3) unaffiliated candidates, in alphabetical order.

The act also expresses the General Assembly's intent to provide for even-numbered year municipal elections, effective with the 2020 election cycle. The Joint Legislative Elections Oversight Committee is required to study the options to implement this change and recommend legislation to the General Assembly with a final report due before the convening of the 2017 session.

The act also amends the timing of completing election canvasses, requires explanatory captions for constitutional amendments appearing on ballots, changes the filing period for elections in Reidsville, and requires participation in the census redistricting data program, and changes the reporting requirements for voting data.

Farm Act

S.L. 2016-113 (S 770), the NC Farm Act of 2016, is an omnibus bill containing provisions related to agriculture. Among its many provisions, the act (1) establishes the "Agricultural Emergency Response Act," which allows for the use of agricultural emergency response teams in

agricultural emergencies; (2) allows state and federal wildlife officials to shoot wild swine from aircraft; (3) require training of soil and water district supervisors; (4) extends the tax credit for renewable fuel processors; (5) enacts the “farmed Cervid Industry Promotion Act,” which allows levying a voluntary assessment on deer farmers, with funds used to promote the interests of the industry; and (6) exempts activities related to specified horticultural uses from the state’s sedimentation control program. A more thorough discussion of the act’s provisions allowing local boards of education to adopt policies and procedures to maximize purchases of food grown or raised in the state, and amending statutes governing automatic contract renewal notices can be found in the following document written by SOG faculty member Norma Houston: https://lrs.sog.unc.edu/sites/lrs.sog.unc.edu/files/supp_content/P%26C%20Legislative%20Summary%202016.pdf.

Measurability Assessments

S.L. 2016-123 (H 805), which is the only bill in 2016 to go become law without the Governor’s signature, includes numerous provisions, including technical changes to the 2016 Appropriation Act. The act enacts a new General Statutes Chapter 143E, named “The North Carolina Measurability Assessments Act of 2016.” The chapter specifies that the General Assembly may require a measurability assessment (defined as an independent evaluation conducted on a new or existing State program) of any proposed or existing State program to determine whether the program is or will be capable of reporting performance and return on investment. The chapter sets out what must be included in the measurability assessment and the assessment results must be submitted to the General Assembly’s Program Evaluation Division. The chapter also includes requirements for the administration of the measurability assessment process.

Purchasing and Contracting

A thorough analysis of legislation impacting the state’s purchasing and contracting laws can be found in the following document written by SOG faculty member Norma Houston: https://lrs.sog.unc.edu/sites/lrs.sog.unc.edu/files/supp_content/P%26C%20Legislative%20Summary%202016.pdf. Topics addressed in the document include (but are not limited to): exemptions from competitive bidding requirements for the purchase of food and food service supplies for county detention facilities; new requirements for approving change orders on public school construction projects; and limits on state information technology liability.

The Governor’s Veto

The Governor exercised his veto power one time this session, vetoing S 71, Comm’n Appointment Modifications. The General Assembly did not attempt to override the veto and enacted compromise language in H 630, which the Governor signed into law.

Coal Ash

Senate Bill 71 addressed a number of issues related to coal ash. In short, the act (1) required a coal combustion residuals impoundment owner to provide residents in the surrounding area with permanent alternative water supplies; (2) extended the public comment period and review period for coal combustion residuals surface impoundments risk classifications; and (3) amended appointments to the Coals Ash Management Commission, the Mining Commission, and the Oil and Gas Commission. Governor McCrory vetoed the bill on June 6.

In his veto message¹, the Governor gives several reasons for the veto, including that, “[t]his bill weakens environmental protections, delays water connections for well owners, ignores dam safety and hinders environmentally sound efforts to reuse coal ash.”² The veto message also states that, “. . . Senate Bill 71 yet again violates the separation of powers by interfering with a Governor’s constitutional duty to faithfully execute the laws. It does this by re-establishing unaccountable bureaucracies within the cabinet agencies that have the power to make or overrule executive decisions. . . . The re-established Coal Ash, Mining, and Oil & Gas Commissions have the same lack of supervision and extremely limited removal authority that the Supreme Court objected to in *McCrary v. Berger*.³”

Instead of considering an override of the veto, legislators passed S.L. 2016-95 (H 630). More information on S.L. 2016-95 can be found above in the Environmental Law section of this document.

Unfinished Business

Constitutional Amendments

House Bill 3 contains several proposed amendments to the State Constitution. The amendments, which would be submitted to voters at a statewide election on November 8, 2016, concern eminent domain, taxes, and wildlife, with the tax provision receiving the most attention. The first amendment prohibits taking private property by eminent domain unless it is for a public use and requires the payment of just compensation, determined by a jury upon request. The second amendment adds a new article that would cap the income tax rate at 5.5% (down from the current 10%) and establish the Emergency Savings Reserve Fund (Fund) into which the General Assembly is required to reserve each fiscal year an amount that is equal to 2% of the amount appropriated from the General Fund for capital and operating expenses for the prior fiscal year until the Fund contains 12.5% of the amount appropriated from the General Fund for capital and operating expenses for the prior fiscal year. Money may be drawn from the Fund by an act passed by two-thirds of all of the members of each house. The third amendment provides that the people have a right to hunt, fish, and harvest wildlife, using traditional methods, subject to reasonable General Assembly regulations to promote wildlife conservation and management and to preserve the future of hunting and fishing. While the bill passed the Senate in the final days of the session, it ended session in Rules, Calendar, and Operations of the House.

Regulatory Reform

This session ended without the approval of an omnibus regulatory reform bill. Senate Bill 303 was sent to a conference committee during the final days of session, but was not reported out before session adjourned. The most recent edition of the 35 page bill includes a number of provisions concerning business regulation, state and local government regulation, agriculture, energy, environment, and natural resources regulation, and also eliminated, consolidated, and amended various environmental reports.

Environmental Regulations

House Bill 593 contained this session’s omnibus environmental law changes. The bill includes a prohibition on certain stormwater controls, an exemption from stormwater management requirements for landscaping materials, changes to who can submit applications for stormwater management systems fast-track permits, amendments to stream mitigation requirements, directives to the Coastal Resources Commission on temporary erosion control structures and the sediment

¹ The Governor’s Objections and Veto Message for Senate Bill 71 is available at: <http://www.ncleg.net/Sessions/2015/S71Veto/S71Veto.html>.

² See the Governor’s Objections and Veto Message for Senate Bill 71.

³ *Id.*

criteria rule, study of long term erosion rates adjacent to terminal groins, amendments to solid waste provisions, specified exemptions for farriers and horseshoeing, expansion of what is considered identifying information for specified entities, changes to the regulation and disposition of specified reptiles, provision of low-flow design alternative for public water supply systems, changes to the allowable distribution method of copies of public records, prohibition on cities charging fees for utility use right-of-way, and a provision allowing the federal government to pump standing stormwater from federal lands into the ocean. The bill was passed by both chambers in the final weeks of session and was sent to a conference committee, where it remained upon adjournment.

Math Curriculum

House Bill 657 addressed the common core math curriculum. The bill requires the State Board of Education and State Board of Community Colleges to review the North Carolina Mathematics Standard Course of Study in order to develop a revised course of study for grades K-12 that “increase rigor, focus and career readiness, ensures high-quality standards in all sequences, and provides options for students and parents in determining the sequence of mathematics instruction most appropriate for the needs of that student and the student’s postsecondary school plans.” The revised course is required to be implemented beginning with the 2018-19 school year. The act sets out requirements that must be met in developing revisions to the course of study, including, keeping the option of enrolling in the traditional sequence of math courses, involving stakeholders in the process, and ensuring that specified requirements are met, including that students’ level of academic achievement are increased, that the standards are age level and developmentally appropriate and that they are understandable to parents and teachers. The act also includes reporting requirements. The act made it through both chambers and was sent to a conference committee, but the bill was not reported out before the end of the session.

Wind Energy Facilities

House Bill 763, Military Operations Protection Act of 2016, passed through the Senate but remained in Rules, Calendar, and Operations of the House when session adjourned. The bill makes various changes to the process for permitting wind energy facilities, including giving the Department of Military and Veterans Affairs authority to consider and review the military-related criteria required, and prohibits the construction, operation, or expansion of wind energy facilities in specified military operation zones. The act also makes various amendments to the process for endorsing construction of tall buildings and structures, including giving the Department of Military and Veterans Affairs authority to consider and review the military-related criteria required in the endorsement process, and establishing a separate endorsement process for construction of tall buildings or structures located within one-quarter mile of a National Guard facility.

Wake County Districts

S.L. 2013-110 (S 325) redrew the districts, and amended the timing and method of election, for the Wake County Board of Education. S.L. 2015-4 (S 181) increased the size of the Wake County Board of Commissioners, and redrew districts to coincide with the districts of the Wake County Board of Education. The changes for those boards were challenged in court. On the final day of session, the U.S. Court of Appeals for the 4th Circuit decided that the districts were unconstitutional⁴. Legislators decided that they did not have enough time to address the issue before adjournment. Currently, uncertainty remains as to which districts will be used for the election.

⁴ Raleigh Wake Citizens Ass’n v. Wake Cnty. Bd. of Elections, ___ F.2d ___ (4th Cir. 2016); 2016 U.S. App. LEXIS 12136.

The Regulatory Reform Act of 2016 (S 303) also included a requirement that the Department of Environmental Quality and the Department of Military and Veterans Affairs study the role of the Department of Military and Veterans Affairs in evaluating military-related criteria for permitted wind energy facilities. The bill was sent to a conference committee but was not reported out before the end of the session.

The 2017 Session

The General Assembly is scheduled to convene for the long session on January 11, 2017. This initial convening will be for an organizational session during which legislators will elect officers, adopt rules, and otherwise organize the session. Legislators will return for the regular session on January 25, 2017.

Christine B. Wunsche