

The General Assembly: Reconvened Session II

Following the first reconvened session in July that focused on redistricting and veto overrides, legislators returned for a second reconvened session on September 12, focusing on amendments to the North Carolina Constitution. While it was rumored that amendments on eminent domain, term limits for the Speaker of the House of Representatives and President Pro Tempore of the Senate, and changes to the Board of Education would be considered, in the end, an amendment banning same-sex marriage was the only constitutional amendment passed during the session. Legislators also took up legislation that made statutory changes to other areas of the law, giving approval to a total of five bills during the three day session.

Same-sex Marriage Amendment

After protest rallies held by supporters on both sides of the issue and several hours of debate, legislators gave their approval to S.L. 2011-409 (Senate Bill 514), Defense of Marriage. S.L. 2011-409, which passed the Senate by a vote of 30-16 and the House by a vote of 75-42, proposes to add a new section to Article 14 of the North Carolina Constitution that states “marriage between one man and one woman is the only domestic legal union that shall be valid or recognized by this State.” The act provides that private parties may still enter into contracts and that the courts may still adjudicate the rights of parties under those contracts. In order to take effect, the amendment must receive the support of a majority of voters during the first 2012 primary election.

Prison Maintenance/Justice Reinvestment/Technical Corrections

S.L. 2011-412 (House Bill 335), which addresses several topics ranging from prison maintenance to water line connections, became law without the Governor’s signature.

In response to the Governor’s veto of House Bill 482, S.L. 2011-412 directs the Secretary of Environment and Natural Resources to grant a waiver to allow additional connections to a bond-funded water line within designated areas provided that the design capacity and size of the existing bond-funded water line can accommodate the addition and that the purpose for the additional connection is either to (1) address an existing threat to public health or water quality, or (2) provide water to a habitable structure located on a lot zoned for a single family residence. The act does not include the provisions requiring the Department of Environment and Natural Resources to remit penalties assessed against poor counties for violations of wetland and stream standards due to the discharge of sludge, under specified circumstances, which the Governor objected to in her veto message.

The act directs the Department of Correction (DOC) to study contracting for maintenance services at prison facilities and report to the 2013 the General Assembly and prohibits DOC from expanding private maintenance contracts to additional prison facilities unless authorized to do so by the 2013 Session. The act also requires a defendant to remain *within the jurisdiction of the*

court (was, required to make whereabouts known and not leave county of residence) unless granted written permission to leave by the court or probation officer as a regular condition of probation; the act also makes clarifying changes to the effective date for S.L. 2011-62 (pertaining to probation conditions) and modifies confinement calculations for defendants on probation for multiple judgments and when a defendant is arrested for violation of a condition of probation and is lawfully confined.

Governor Perdue allowed the act to become law without her signature because of concerns over two issues addressed in the act. First, the act repeals a provision that restricts community colleges that elected not to participate in the William D. Ford Federal Direct Loan Program from transferring more than 2% of the state funds allocated to it for faculty salaries to support other instructional costs or other purposes. A second issue of concern for the Governor was a set of changes affecting bondsmen. The act allows a bondsman or runner to search criminal records in the Administrative Office of the Courts' (AOC) criminal information systems and sets the parameters for the access. The act also amends the motion procedure to set aside a forfeiture by amending service requirements and providing that if neither the district attorney nor the board of education files a written objection to the motion by the 20th day after service, that the forfeiture is to be set aside regardless of the basis for relief asserted in the motion, the evidence attached, or the absence of either. Governor Perdue expressed concern that this would take more money away from the schools, who would receive the forfeited bonds.

The act also addresses allowing domestic fowl to run at large on another person's land, amends membership requirements for the North Carolina Home Inspector Licensure Board, and makes additional technical and clarifying changes.

Modifications to Appointments

S.L. 2011-410 (Senate Bill 354) makes several changes to the appointments made by the President Pro Tempore of the Senate and the Speaker of the House of Representatives in the 2011 Appointments Bill. The act adds appointments, amends term dates, and/or modifies appointments to the following committees, commissions, and boards: Portal Project Review Committee; Local Government Commission; 911 Board; North Carolina Teaching Fellows Commission; North Carolina Criminal Justice Education and Training Standards Commission; Judicial Standards Commission; Board of Trustees of the North Carolina School of Science and Mathematics; North Carolina Small Business Contractor Authority; North Carolina Turnpike Authority; and the Board of Directors of the North Carolina Global TransPark Authority.

AOC Omnibus Courts Act

S.L. 2011-411 (Senate Bill 580) makes a number of changes affecting courts. The act provides for the automatic reinstatement of cases that have been dismissed with leave if the cases are waivable. The act also adds to the duties of the Director of the Administrative Office of the Courts the issuance of photo ids to Judicial Department employees and officials that allows the individuals to work in court related locations to support court operations in preparing for and dealing with emergency situations, and establishing the procedures for assigning and compensating magistrates that temporarily work outside of their county of residence during an emergency. The act also allows a clerk to release funds held under a claim of lien on real property, or a corporate surety bond, when the clerk receives a written agreement of the parties, a final judgment from a court of competent jurisdiction, or a consent order. The act also now allows the court, instead of requiring the court, to consider that a party lives more than 50 miles from the court as good cause when deciding whether to waive the mandatory setting of a contested custody or visitation matter for mediation. The act also provides that certification and renewal fees

collected by the Dispute Resolution Commission are non-reverting and are to be used only at the Commission's direction. Finally, the act makes clarifying changes to forced combinations.

Adjournment/Next Session

The reconvened session adjourned on Wednesday, September 14. Legislators are set to come back for another reconvened session on Monday, November 7, 2011. According to the adjournment resolution, Res. 2011-11 (Senate Bill 792), the following may be considered during the session: (1) US Congress and General Assembly redistricting and specified related matters; (2) veto overrides on bills returned by the Governor; (3) election laws bills; (4) bills concerning a Tribal Compact; (5) bills addressing natural disasters; (6) appointment bills; (7) adoption of conference reports for bills in conference as of September 14, 2011; (8) local bills pending in the House Rules Committee on July 28, 2011; and (9) a bill to modify governance and management provisions for local management entities.

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