



Kochanek
law group
Focusing on Legislative Representation

LEGISLATIVE REPORT October 10, 2017

INTRODUCTION

Last week, the North Carolina General Assembly convened yet another special session, the third since the legislature “adjourned” on June 30th. While the official purpose of the session was to take up Governor Cooper’s vetoes, other issues dominated the two-day session, particularly the House’s Judicial Redistricting plan (see below). What was equally notable were the items not taken up - including confirmation votes for Gov. Cooper’s nominees to the Utilities Commission, and the conference report for House Bill 162 (Amend Administrative Procedure Laws). The Senate approved the conference report back in August and has pushed particularly for a provision that would require legislative approval for any rule with an impact greater than \$100 million over 10 years. The House chose not to take up the conference report this week, which may have led to the Senate’s limited action on House-initiated bills before adjournment on October 5th. While the 2018 “short” session is scheduled to begin on May 16th, the General Assembly will be back for a fourth special session on January 10th, during which (per the adjournment resolution) 16 separate kinds of bills may be considered (see below). Members left Raleigh late on Thursday night and headed home to their districts, knowing they would soon be back - for meetings of various Oversight Committees and Commissions, political events and now yet another special session, all in the service of this supposedly part-time legislature.



TOWING AND RECOVERY PROFESSIONALS OF NC



THIS LEGISLATIVE REPORT IS A
PUBLICATION OF KOCHANEK LAW GROUP
AND IS A MEMBER BENEFIT OF TRPNC.
ANY USE OR REPRODUCTION OF THIS
REPORT IS LIMITED TO TRPNC
AND ITS MEMBERS.

FOR MORE INFORMATION:

Colleen Kochanek
Alexander C. Miller
P.O. Box 1038
Wake Forest, NC 27588
919.747.9988
colleen@kochaneklawgroup.com
alex@alexmillernc.com
www.kochaneklawgroup.com

BILL UPDATES

HOUSE BILL 717, Judicial Redistricting and Investment Act, is the House's controversial plan to reconfigure the State's judicial districts. Critics charge that the plan gerrymanders the state to allow more Republican judges and District Attorneys to be elected, while supporters counter that the plan allows more citizens a voice in choosing the officials that serve in their local courthouses. The new version of the plan makes some adjustments based on feedback received in the previous months, however the new plan still drew plenty of criticism and calls to slow the process, including from the North Carolina Conference of Superior Court Judges and the NC Courts Commission, which voted to recommend legislators wait until next year's regularly-scheduled session to take the issue up again. Despite this criticism, the House voted 69-43 to pass the bill. The Senate chose not to take up the measure during this special session, with a leading member saying they would consider it "next year" (whether in the January special session or the regularly-scheduled 2018 session was unclear). **Passed by the House and referred to the Senate Rules Committee.**

SENATE BILL 656, Electoral Freedom Act of 2017, was amended in Conference Committee to:

- amend the definition of political party to include any group of voters that has filed documentation with the State Board of Elections that the group of voters had a candidate nominated by that group on the general election ballot of at least 70% (was, 80%) of the states in the prior Presidential election;
- no longer state that a party recognized under these provisions is eligible to participate only in the presidential preference primary and the election of presidential electors;
- require voters filing a petition to have the voter's name printed on the general election ballot as an unaffiliated candidate for a district office other than General Assembly to file the petition on or before noon on the day of the primary election, and require that the petition be signed by qualified voters of the district equal in number to 1.5% of the total number of registered voters in the district;
- require, for General Assembly seats in which the district lies in more than one county, that petitions be filed by noon on the day of the primary election and must be signed by qualified voters of the district equal in number to 4% of the total number of registered voters in the district;
- reinstate the current requirement that petitions for county office or a single county legislative district be signed by qualified voters of the county equal in number to 4% (was, 3%) of the total number of registered voters in the county;
- require, in cities conducting partisan elections, that any voter seeking to have his or her name printed on the regular municipal election ballot as an unaffiliated candidate file a petition signed by a number of qualified voters of the municipality equal to at least 1.5% (was, 3%) of the whole number of voters qualified to vote in the election;
- **prohibit holding party primaries for candidates for the following offices in the general election held on November 6, 2018: Justices of the Supreme Court, judges of the Court of Appeals, judges of the superior courts, judges of the district courts, and district attorneys; and require notice of candidacy for these offices to be filed between noon on June 18, 2018, and noon on June 29, 2018;**
- specify the format and requirements to be met for a notice of candidacy; and allow notice of candidacy to be withdrawn at any time before the close of business on the third business day before the date on which the right to file for that office expires;
- require candidates to also file a certificate stating that the individual is registered to vote, specifying the judicial district of residency when the person is running for superior or

district court judgeship in a county containing more than one district, and verifying the candidate's party designation or unaffiliated status;

- prohibit a person from filing a notice of candidacy for more than one of these offices or group of offices and for an office for Governor, Lieutenant Governor, all State executive officers, United States Senators, members of the US House of Representatives, district attorneys, state Senators, members of the State House of Representatives, and all county offices for any one election;
- require in any election in which there are two or more vacancies for the office of justice of the Supreme Court, judge of the Court of Appeals, superior court judge, or district court judge to be filled by nominations, that each candidate file a written statement designating the vacancy to which the candidate seeks election;
- require a person seeking election for a specialized district judgeship to file a written statement designating the specialized judgeship to which the person seeks nomination;
- list residency requirements for a person filing a notice of candidacy for superior court judge or district court judge;
- specify the procedures to be followed when there is an insufficient number of candidates, upon the death or disqualification of a candidate, and failure to withdraw from candidacy;
- require that for the 2018 general election, the State Board of Elections and Ethics Enforcement place elections for the offices elected as provided in this section with other partisan offices;
- require that the order of candidates for those offices be determined as provided in GS 163-165.6(c) (which requires that the order in which candidates appear on a county's official ballots in any (1) primary ballot item, whether the primary is partisan or nonpartisan and (2) in any nonpartisan general election ballot item shall be determined by the county board of elections using a process designed by the State Board of Elections for random selection. The same random selection process shall be used for all primaries and elections in a calendar year.);
- require that a general election for all candidates seeking office as provided in this section be held on November 6, 2018. The candidate for a single office receiving the highest number of votes is elected and the candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, is elected. In the event of a tied vote, the winner is determined by lot.

The bill was approved by the House and Senate and was sent to the Governor for his signature; however, the Governor vetoed the bill on October 9, 2017. The Governor's veto reads as follows: "This legislation abolishes a scheduled election and takes away the right of the people to vote for the judges of their choice. It is the first step toward a constitutional amendment that will rig the system so that the legislature picks everybody's judges in every district instead of letting the people vote for the judges they want. If the legislature doesn't like the fact that judges are ruling many of their laws unconstitutional, they should change their ways instead of their judges."

LEGISLATION ENACTED

SENATE BILL 582, Budget & Agency Technical Corrections. As amended in Conference Committee, this bill will:

- authorize the Secretary of Revenue to reduce an assessment against a taxpayer who requests relief for State and local sales and use taxes and waive any penalties imposed when the assessment is the result of an audit of the taxpayer by the Department of Revenue and all five qualifications, as specified, are met;

- modify the qualifications of which the taxpayer must meet one: (1) the taxpayer received a proposed assessment dated on or before August 15, 2017, did not file a request for review, paid the tax due, and filed a written request with the Secretary on or before December 29, 2017, to request the amount of sales of use taxes be reduced, citing specific reasons; (2) the taxpayer received a proposed assessment dated on or before September 30, 2017, timely filed a request for review, and files a written request with the Secretary on or before December 29, 2017, to request the amount of sales or use taxes be reduced, citing specific reasons; or (3) the taxpayer receives a proposed assessment after September 30, 2017, and timely files a request for review and files a written request with the Secretary no later than 45 days from the date of the notice of the proposed assessment to request the amount of sales or use taxes be reduced, citing specific reasons;
- add that when a taxpayer received a proposed assessment dated on or before September 30, 2017, timely filed a request for review, and files a written request with the Secretary on or before December 29, 2017, to request the amount of sales or use taxes be reduced, the Department does not need to take further action on the taxpayer's request for review unless the taxpayer states in writing when filing the request for reduction that the reduction does not resolve the taxpayer's objection to the proposed assessment and that the taxpayer wishes to continue the Departmental Review.

The bill as amended by the Conference Committee was adopted by the House and the Senate, and was signed into law by the Governor on October 8, 2017. Effective: August 11, 2017.

SENATE JOINT RESOLUTION 696, Adjourn October Session/Reconvene in January. This joint resolution provides that when the House and Senate adjourn on Tuesday, October 17, 2017, they stand adjourned to reconvene the 2017 Regular Session on Wednesday, January 10, 2018, at noon. In addition, the resolution provides that, during the regular session that reconvenes on Wednesday, January 10, 2018, only the following matters may be considered:

- 1) Bills:
 - a. Revising the judicial divisions of the State, the superior court districts, the district court districts, and the prosecutorial districts and the apportionment of judges and district attorneys among those districts and containing no other matter.
 - b. Revising districts for cities, counties, and other political subdivisions of the State and the apportionment of elected officials among those districts and containing no other matter.
 - c. Revising the Senate districts and the apportionment of Senators among those districts and containing no other matter.
 - d. Revising the Representative districts and the apportionment of Representatives among those districts and containing no other matter.
- 2) Bills:
 - a. Proposing an amendment or amendments to the North Carolina Constitution and containing no other matter.
 - b. Proposing an amendment or amendments to the North Carolina Constitution and containing no other matter other than statutory conforming changes to implement such bills.
 - c. Solely making statutory and transitional changes to implement bills under sub-subdivision a. of this subdivision.
- 3) Bills returned by the Governor with his objections under Section 22 of Article II of the North Carolina Constitution, but solely for the purpose of considering overriding of the veto upon reconsideration of the bill.

- 4) Bills providing for selection, appointment, or confirmation as required by law, including the filling of vacancies of positions, for which appointees are elected by the General Assembly upon recommendation of the Speaker of the House of Representatives, President of the Senate, or President Pro Tempore of the Senate.
 - 5) Bills providing for action on gubernatorial nominations or appointments.
 - 6) Bills responding to actions related to litigation concerning the districts for Congressional, State House, State Senate, judicial, municipal, county, and other elected officials' actions and any other litigation challenging the legality of legislative enactments.
 - 7) Bills returned on or after Wednesday, June 28, 2017, to the house in which the bill originated for concurrence.
 - 8) Adoption of conference reports for bills which were in conference on or after Wednesday, June 28, 2017, and conferees had been appointed by both houses on or after that date.
 - 9) Bills relating to election laws.
 - 10) Bills making technical corrections to S.L. 2017-57, S.L. 2017-119, or both.
 - 11) Local bills having passed third reading in the house in which introduced, received in the other house in accordance with Senate Rule 41 or House Rule 31.1(h), as appropriate, and 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 rules of the receiving house.
 - 12) A joint resolution further adjourning the 2017 Regular Session or amending a joint resolution adjourning the 2017 Regular Session to a date certain.
- When the House of Representatives and the Senate jointly adjourn the regular session convened on January 10, 2018, they will stand adjourned to reconvene in regular session on Wednesday, May 16, 2018, at noon. **Effective: October 9, 2017.**

- Colleen Kochanek
TRPNC Legislative Counsel
P.O. Box 1038
Wake Forest, NC 27588
919.747.9988
colleen@kochaneklawgroup.com
www.kochaneklawgroup.comⁱ

Alexander C. Miller, MSW
Alex Miller Government Affairs
5 W Hargett St., Suite 908
Raleigh, NC 27610
919.619.3360
alex@alexmillernc.com

ⁱ THIS LEGISLATIVE REPORT IS A PUBLICATION OF KOCHANЕК LAW GROUP AND IS A MEMBER BENEFIT OF TRPNC. ANY USE OR REPRODUCTION OF THIS REPORT IS LIMITED TO TRPNC AND ITS MEMBERS.