



INTRODUCTION

What a strange trip it has been..... The second year of the 2017-2018 General Assembly was marked by amazing speed and a surprising amount of substantive legislation. In about six weeks, they approved over 80 bills, approved a budget, and during the last two weeks of the session, they handled dozens of local bills and approved six constitutional amendments for the November ballot. In all my years at the General Assembly, the pace of the session comes in waves, with time frames of urgency and craziness followed by slow periods of little activity or impasse which allows you to catch up on things..... not this year. The pace of session was “hair on fire” from the beginning to the end, with legislators juggling many issues at once and lobbyists trying to figure out what was coming next since there was very little notice, if any, of major pieces of legislation, including the budget. Many of the bills that were approved were very complicated, technical or just major changes to the law that did not receive much review or scrutiny as you will see in the summaries below. This almost always leads to issues and problems that must be fixed later.

Once the session ended on June 30th, we took a little break and then started working on the final legislative report; however, before we could complete that, they were already back in a special session in July to deal with party disclosures on ballots and the descriptions of the Constitutional Amendments they had just approved the last week in June. Lawsuits were filed about both pieces of legislation and the Courts intervened in both issues. Of course, you never know what they will take up during a special session so we had to be prepared for anything, the proclamation actually said “to consider bills concerning any matters the General Assembly elects to consider.” Well that does narrow it down, doesn’t it!

Then the 2nd Special Session was called on August 24th to deal with the amendments regarding judicial vacancies and a non-partisan ethics commission in response to the lawsuits that were going to take those Constitutional Amendments off of the ballot. September brought more news of challenges to ballots and district lines that not only brought into question what would be on the ballot, but if the election



TOWING AND RECOVERY PROFESSIONALS OF NC



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.

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

would take place at all. We go into more detail below, hopefully without getting too much in the weeds about all of these developments, but needless to say our legislative report kept becoming outdated before we could complete it! The ballots have now been printed and unless there is some major surprise, the districts we have will be used for the upcoming election and it is now a matter of getting through the mass of commercials and mail flyers to get to election day.

In an attempt to explain the torrent of North Carolina political news recently, we have broken down the relevant updates below, though at this pace there may be yet another development before we know it. The very short version is that, in four separate cases, news broke that threatened to upend the ballot for the upcoming November elections – and in one case the elections themselves - only to be reversed or resolved within days. Ballots are (finally) finalized and, though delayed somewhat, will be ready for what could be one of the most consequential elections in recent memory for the future of North Carolina politics.

Legal Battle over Constitutional Amendments

The last week of the 2018 session, the legislature passed six bills to add constitutional amendments to the November ballot. Of these, the Voter ID amendment was the most high-profile and controversial, especially given that the implementing legislation (which would detail the types of IDs needed to vote and other details) has not yet been even proposed so no one knows what types of ID's will be needed, if there will be exemptions for the disabled, how absentee ballots will be affected, and many more questions. Two of the other amendments came under fire as well, as critics called them blatant attempts to strip the Governor of much of his power. One would limit the Governor's authority to fill judicial vacancies, and included a provision that would prohibit a veto of any legislation that includes a judicial appointment. The other would "amend the Constitution of North Carolina to establish a bipartisan board of ethics and elections enforcement and to clarify board appointments." What is not clear from this short description is that the amendment would have the legislature make appointments to the over 400 state Boards and Commissions that have historically been made by the Governor.

In the special session held July 24th, the legislature convened to write short descriptions of each amendment for the ballot, after claiming the panel responsible for writing them could not be trusted to create accurate, unbiased captions. The Commission is made up of the Secretary of State, Attorney General and Legislative Services Officer, two Democrats and one Republican. The General Assembly changed this process by adopting House Bill 3, Ballot Designation/Referenda. HB 3 provides that instead of allowing the Constitutional Amendments Publication Commission to write the descriptions, the proposed Constitutional Amendments will simply be labeled "Constitutional Amendment" without any additional descriptive language beyond the language already adopted by the General Assembly.

Legislators also adopted Senate Bill 3, Party Disclosure/2018 Judicial Races. SB 3 prohibits a candidate for Supreme Court, Court of Appeals, Superior Court or District Court to include his or her party affiliation on the ballot if that individual has changed party affiliation within 90 days of filing for candidacy. Opponents of the bill argued that the bill would not hold up in court because it changes the rules for election after candidates that have already filed for office. Opponents also argued that the bill's only purpose was to help Supreme Court Justice Barbara Jackson get reelected. Justice Jackson faces challenges from Anita Earls and Chris Anglin, an attorney who recently changed his party affiliation to Republican. With the passage of SB 3, Anglin's name would have appeared on the November ballot without the Republican party designation.

Gov. Cooper quickly vetoed both bills, setting up an override vote in the House and Senate.

The legislature reconvened on August 4th to override the Governor's vetoes. The same day Cooper filed a lawsuit seeking the removal of the two appointment amendments from the ballot, saying the descriptions were misleading and if passed "would take a wrecking ball to the separation of powers (and) rewrite bedrock constitutional provisions." Over the following weeks all 5 living former Governors (3 Democrats and 2 Republicans) jointly announced their opposition to the two appointment amendments, as did all 6 living former State Supreme Court Chief Justices. On August 21st, a federal 3-judge panel sided with Cooper, ordering the two amendments be removed from the ballot. Three days later the Senate convened yet another special session, this time to pass updated versions of the 2 amendments in question.

On August 27th, the legislature finished approving the updated amendments. The Ethics Board amendment no longer affects the Governor's power to appoint members to any other Board or Commission, and the Judicial Appointment amendment no longer includes the clause that would prevent the Governor from vetoing bills that include an appointment. Democratic lawmakers opposed the new amendments despite the new language, stating that the amendments still were intended to weaken the power of the Governor. Cooper filed yet another challenge in court, this time to the new amendments, however, courts rejected that challenge as well as one brought by the NAACP to the Voter ID and tax cap amendments, paving the way for all 6 Constitutional Amendments to appear on the ballot. Despite this, Democratic lawmakers and interest groups continue to rally their supporters against all 6 amendments, and many observers have noted that the presumed original intent of including them on the ballot – to increase Republican turnout – may in the end have the opposite effect.

Aside from the two appointment amendments summarized above, the other four constitutional amendments voters will see on their ballots are:

- Voter ID. Would require a photo ID to vote. If passed, the General Assembly will have to pass implementing legislation listing acceptable forms of ID and other details.
- Income Tax Cap. Would lower the cap on individual income tax to 7% (the current cap is 10%).
- Protect the Right to Hunt and Fish. Would enshrine in the constitutional the right of all persons in North Carolina to hunt, fish, and harvest wildlife to be "forever protected for the public good... subject only to laws enacted by the General Assembly"
- Provide Rights for Victims of Crime (Marsy's Law). Section 37 of the North Carolina constitution currently details rights afforded to victims of crime. If this amendment is adopted, the constitution would be amended and the offenses that trigger victims' rights would be expended to include:
 - Crimes against the person.
 - Felony property crimes.
 - Delinquent acts against the person.
 - Delinquent acts equivalent to felony property crimes.

If adopted, the constitution would guarantee victims the following rights:

- To be treated with dignity and respect.
- Reasonable, accurate, and timely notice, upon request.
- To be present at any proceeding.
- To be reasonably heard at certain proceedings.
- Restitution in a reasonably timely manner.

- Information, upon request.
- To reasonably confer with the prosecutor.

Republican (?) Supreme Court Candidate Wins in Court

On August 27th, the State Court of Appeals cleared the way for judicial candidates affected by the legislatures recently approved legislation requiring 90 days of partisan affiliation to run as a member of a particular party. This impacted several races; most notably Supreme Court candidate Chris Anglin, a former Democrat, who switched parties shortly before filing as a Republican for the race, meaning two GOP nominees (including incumbent Justice Barbara Jackson) would face Democrat Anita Earls. Republican lawmakers cried foul assuming that having two Republicans running would split the vote and help the Democrat, and passed a law during the first special session designed to ensure Anglin would not be listed as a Republican (had the law stood he would have been listed without partisan affiliation, or given the choice to drop out). Anglin challenged the law and won the first round in district court. The recent decision by the Court of Appeals allows Anglin to run for the Supreme Court as a Republican since the legislature tried to change the rules after candidate filing was completed.

Congressional Districts

On August 27th, the same day the legislature passed new versions of the two appointment amendments, the state's Congressional districts were struck down as illegally partisan (rather than racial) gerrymanders by a federal 3-judge panel (the same panel that struck the districts down in January, a decision that was stayed by the U.S. Supreme Court). The panel was directed to review their January ruling in light of the Supreme Court decision in *Gill v. Whitford*, which dealt with issues of who has standing to challenge Congressional districts. The panel found standing is not an issue in this case, and affirmed their substantive arguments from the January ruling.

With 70 days before the election, this decision created significant uncertainty as to what would happen next. The legislature, given until September 17th to draw new districts, filed for an emergency appeal. Given the current 4-4 split on the U.S. Supreme Court, had lower court ruling stood, a number of scenarios would have been possible: the Congressional contests could have been removed from the November ballot entirely, a new primary could have been held and included on the ballot with a general election later in the year or early in 2019, or the primary could have been skipped and the new districts could be decided in an open election, where the highest vote-getter of any party wins the seat. Given that the balance of power in the U.S. House could well come down to the balance of the North Carolina delegation, the eyes of the political world were fixed on the outcome of this case, and the chaos that such a monumental decision made this close to the election could have caused. In the end, both the plaintiffs in the case and the three-judge panel agreed that such chaos was untenable, and the court cleared the way for November's elections to be held using the current Congressional districts (unconstitutional though they had found them to be). New districts may well need to be created for the 2020 election, after which new districts (based on the 2020 census) will be created yet again in 2021. While the only stable thing about Congressional redistricting in North Carolina has been how unstable things have been, the question is at least settled for this year's election, and these days, 2 months of stability is a welcome change. Despite this, as Boards of Elections began the delayed process of getting ballots ready, another bombshell hit.

Voter Records Subpoena

On September 5th, subpoenas were issued by the U.S. Attorney for the Eastern District of NC to the state Boards of Elections and 44 North Carolina counties demanding millions of voting records covering the past 8 years, on behalf of the U.S. Department of Justice and Immigration and Customs Enforcement (ICE). For several days no explanation was given for the demand or the timing, as Elections staff and Directors scrambled to detail the disruption complying with such an order would create, just as they were beginning an already time-compressed process to get ballots and voting sites prepared. Democratic lawmakers and voting-rights advocates blasted the subpoena and the timing as obvious attempts to interfere with the election, while Republicans cited the specter of voter fraud to defend the action. On September 6th, the U.S. Attorney relented, delaying the deadline until January 2019 and offering to negotiate a narrowing of the subpoena's scope. The next day the NC Board of Elections unanimously voted to fight the subpoenas, asking state Attorney General Stein to intervene on their behalf. As the immediate impact was relieved, officials breathed a collective sigh of relief and continued their work as the election season swung into high gear.

As all of this drama unfolded, candidates continued to focus on raising money and getting their campaign operations ready to get out the vote in what is expected to be a very low turnout year, as polls continue to forecast a Democratic advantage in many legislative races. The pace of campaigning will only quicken in the weeks to come, as (we hope) the wave of bombshell developments detailed above slows to a halt. Given the past several months however, no one is counting out yet another surprise or two before we head to the polls.

LEGISLATION ENACTED

HOUSE BILL 90, Changes to Education and Election Laws. Legislators came back to Raleigh in early February 2018 (prior to the beginning of the short session in May) and accomplished their primary goal of passing legislation to address problems arising from the class-size mandate. For students, parents, teachers and school administrators who have been clamoring for a fix to the class size mandate set to take effect in the 2018-19 school year, they got a solid fix in House Bill 90. The bill contains a new appropriation of \$61 million each year for Music, Arts, Physical Education, and World Language teachers over a 4-year phase in of the class size reductions in elementary schools. Another provision of the bill that garnered praise on both sides of the aisle was a new statutory appropriation for NC Pre-Kindergarten slots for eligible at-risk 4-year olds. Beginning in 2019-20, the base budget will include \$82 million for NC Pre-K, and then \$91 million in the subsequent year. This should provide enough funding to eliminate the current NC Pre-K waitlist over this 2-year period.

A lesser-publicized provision of HB 90 was the expansion of students' eligibility for Personal Education Savings Accounts (PESAs). PESAs are voucher-like creations that were first enacted by the General Assembly in 2017. They allow qualifying students with disabilities in kindergarten through 12th grade and their families to receive up to \$9,000 per year in state funds on debit cards issued by the State Education Assistance Authority. These PESAs can be used to pay for tuition in private schools and for other eligible education expenses in home school and private school settings. The 2017 law generally required eligible students to have first attended public school, with certain exceptions, before qualifying for a PESA. Under HB 90, however, this requirement is essentially eliminated. Also, the bill would allow eligible part-time public school students to qualify for up to half of the full PESA amount; \$4,500 per year. One criticism of PESAs is the loss

of federal protections under the Individuals with Disabilities Education Act (IDEA) once a child with a disability leaves the public school setting with his/her PESA to attend a private or home school. The concern is that parents may not understand this loss of rights for their child. In total state funding, the General Assembly appropriated \$3 million for PESAs in 2018-19. [PESA Applications](#) opened on February 1, 2018. Beginning on March 15 of this year, the SEAA will be selecting the first round of PESA recipients. **Effective: March 16, 2018, except as otherwise provided (without the Governor's signature).**

HOUSE BILL 335, Restore Last Saturday Early One-Stop. This law will address the contentious issue of early voting on the Saturday before an election and like many issues was intensely debated and litigated. This version was approved after Senate Bill 325, which is summarized below in this legislative report and addresses a court decision challenging the changes in early voting. The new law will:

- allow for early voting not earlier than the third Wednesday before an election, and not later than 1:00 pm on the last Saturday before that election (previously, early voting was allowed not later than 7:00 pm on the last Friday before that election);
- require a county board of elections to conduct one-stop voting on the last Saturday before the election from 8:00 am until 1:00 pm, and allow the county board to conduct one-stop early voting until 5:00 pm on that Saturday;
- provide that, if the county board of elections opens one-stop sites on Saturdays *other than the last Saturday before the election* during the period required, then all one-stop sites must be open for the same number of hours uniformly throughout the county on those Saturdays; and
- allow a county board of elections in a county which includes a barrier island and meets specified requirements, including that it has no bridge to the mainland, to propose a Plan for Implementation, by unanimous vote of the board, providing for a site in that county for absentee ballots to be cast with days and hours that vary from the county board of elections, and allow the members of the county board to petition the State Board to adopt a plan for the county, if the county board cannot reach unanimity.

Effective: July 9, 2018.

HOUSE BILL 374, Business Freedom Act. This legislation includes provisions to add electronic delivery as an authorized method of delivery of the agency decision in contested cases. The Governor vetoed this bill on June 25th citing concerns about pollution from the coast (a separate provision in the bill), and the House and Senate voted to override the veto on June 27th. **Effective: June 27, 2018, except as otherwise provided.**

HOUSE BILL 379, Recodification Working Group. This legislation will:

- require all State agencies, boards, and commissions that have the power to define conduct as a crime in the North Carolina Administrative Code to create a list of all crimes defined by the agency, board, or commission that are in effect or pending implementation, and submit the list to the Joint Legislative Administrative Procedure Oversight Committee and the Joint Legislative Oversight Committee on Justice and Public Safety no later than December 1, 2018;
- direct the Administrative Office of the Courts to, by February 1, 2019: (1) compile a list of North Carolina common law crimes and a list of crimes defined in the General Statutes; and (2) identify and list any North Carolina criminal statutes that meet one or more of the following criteria:
 - is duplicative;

- is inconsistent with other statutes, rarely charged, fails to state a *mens rea*, or contains undefined terms;
- appears to be obsolete; or
- has been held to be unconstitutional by an appellate court; and
- require every county, city, town, or metropolitan sewerage district that has enacted an ordinance punishable pursuant to G.S. 14-4(a) (which makes it a Class 3 misdemeanor to violate an ordinance of a county, city, town, or metropolitan sewerage district, to be fined not more than \$500) to create a list of applicable ordinances with a description of the conduct subject to criminal punishment in each ordinance, and submit the list as required no later than December 1, 2018.

Effective: June 25, 2018.

HOUSE BILL 496, Fair and Nonpartisan Ballot Placement. This law requires the order in which candidates appear on official ballots in any election ballot item to be by either alphabetical order or reverse alphabetical order by the last name of the candidate. The order will be determined each election by a drawing at the State Board of Elections after the closing of the filing period for all offices on the ballot. **Effective: June 26, 2018, and applies to elections held on or after that date. Elections held in 2018 will be conducted using the random selection process previously determined by the State Board of Elections and Ethics Enforcement for all primaries and elections in 2018. No further drawing will be conducted for any ballot item for the 2018 election.**

HOUSE BILL 500, ABC Omnibus Legislation. This bill included a variety of changes to the alcohol laws in North Carolina and was amended many times along its journey. Once most of the controversial provisions were removed the bill was started moving and these provisions about nonprofits were included which:

- increases the number of raffles that a nonprofit organization could hold each year from two to four;
- increases the annual amount of prizes that a nonprofit organization could award in raffles by a nonprofit from \$125,000 to \$250,000;
- authorizes the sale and consumption of alcoholic beverages in a room where a raffle is being conducted;
- provides that a nonprofit organization that has received a limited special occasion ABC permit or special one-time ABC permit may renew the permit rather than applying for a new permit (effective Dec. 1, 2018);
- allows a nonprofit organization holding ticketed event with a special one-time ABC permit to offer alcoholic beverages as a prize in a raffle or sell alcoholic beverages at auction at the ticketed event.

Effective: Except as noted, October 1, 2018.

HOUSE BILL 551, Strengthening Victims' Rights. This law is known as "Marsy's Law" and places a constitutional amendment on the November 2018 ballot to expand the rights of victims of certain crimes. If the amendment is approved by the voters, the State constitution would be amended and the offenses that trigger victims' rights would be expanded to include:

- Crimes against the person;
- Felony property crimes;
- Delinquent acts against the person and
- Delinquent acts equivalent to felony property crimes.

In addition, the constitution would guarantee victims the following rights:

- To be treated with dignity and respect;

- Reasonable, accurate, and timely notice, upon request;
- To be present at any proceeding;
- To be reasonably heard at certain proceedings;
- Restitution in a reasonably timely manner;
- Information, upon request; and
- To reasonably confer with the prosecutor.

If the amendment is adopted, the General Assembly is directed to create a procedure for a victim to assert the rights provided above; afford the district attorney an opportunity to resolve any alleged violation; and authorize the General Assembly to prescribe laws to implement the constitutional guarantees. The amendment will NOT provide: relief in a criminal case; access to confidential juvenile records; or restrict the authority of the district attorney or the court. **If adopted, the amendment will be effective August 1, 2019.**

HOUSE BILL 619, Clarify Motor Vehicle Dealer Laws, makes a variety of changes to the motor vehicle dealer and manufacturer licensing laws, including to:

- add a provision making it unlawful for a manufacturer to require a dealer to change locations or make substantial alterations to its dealership facilities if the dealer has changed locations or made substantial alterations to the dealership within the preceding ten years at a cost of more than \$250,000 in compliance with an initiative or program sponsored or supported by the manufacturer;
- clarify that existing requirements regarding dealer warranty obligations and compensation apply to recall service performed by dealers;
- require the dealer to be compensated on the basis of the dealer's average markup on the cost of parts for parts provided by the manufacturer at a reduced cost under a warranty or recall;
- provide a mechanism for dealers to be compensated by manufacturers for motor vehicles in their inventories that are subject to a recall notice or covered under a stop-sale or do-not-drive order when parts to remedy the defect are not made available within 30 days of the recall;
- strengthen existing provisions protecting dealership customer data by clarifying that manufacturers or dealer management computer system vendors must provide dealers with detailed lists of each and every third party to whom dealer data has actually been provided;
- add a provision making it unlawful for a manufacturer to establish performance criteria for its dealers for purposes of terminating a franchise agreement that are unfair and do not consider relevant local, state, and regional data;
- delay the date for mandatory use of LD plates to January 1, 2021, and would allow dealers to continue to use "u-drive-it" plates or demonstration permits as an alternative in the interim.

BACKGROUND: Legislation was enacted in 2015 to authorize a new "LD" license plate, or loaner/dealer plate, to be issued to motor vehicle dealers for use on vehicles owned by the dealer that are loaned to customers having their vehicles serviced by the dealer. Use of the LD plates was to be mandatory on January 1, 2019. Prior to that date, the legislation authorized use of "u-drive-it" license plates or demonstration permits for vehicles with dealer plates on loaner vehicles. **Effective: June 22, 2018.**

HOUSE BILL 646, Amend PED Statutes. This legislation amends the program evaluation statutes to: (1) make it explicit that **the Division may evaluate non-state entities that receive or expend any State funds**; (2) add administration of measurability assessments as a function of the Division; (3) create standardized evaluation reports; and (4) revise the powers and duties of the Joint Legislative Program Evaluation Oversight Committee. **The Governor did not sign or veto this**

bill within the time allowed, and the bill became law without his signature. Effective: June 26, 2018.

HOUSE BILL 659, Filling Vacancies/US Senate. This legislation clarifies the manner in which vacancies are filled in the office of United States Senator by requiring the Governor, if the Senator was elected as the nominee of a political party, to appoint from a list of three persons recommended by the State executive committee of the political party with which the vacating member was affiliated when elected if that party executive committee makes recommendations within 30 days of the occurrence of the vacancy. Previously, the Governor was required, if the Senator was elected as the nominee of a political party, to appoint a person affiliated with that same political party. **The Governor did not sign or veto this bill within the time allowed, and the bill became law without his signature. Effective: June 26, 2018, and applies to vacancies filled on or after that date.**

HOUSE BILL 670, Protect Educational Property. This law will make it a Class H felony to communicate a threat to commit (1) an act of mass violence on educational property or at a curricular or extracurricular activity sponsored by a school, or an act of mass violence at a place of religious worship. The bill also provides for the conditional discharge of persons convicted of these offenses when the offense is committed under the age of twenty and requires a judge to set conditions of release for these offenses. **Effective: December 1, 2018, and applies to offenses committed on or after that date.**

HOUSE BILL 774, Amend Certificates of Relief. This legislation amends the law regarding a certificate of relief for criminal convictions to:

- allow an individual who is convicted of no more than (i) three Class H or I felonies and (ii) any misdemeanors to petition the court where the individual was convicted for a Certificate of Relief relieving collateral consequences as permitted;
- provide that if the person is convicted of more than one Class H or I felony in the same session of court, then the multiple felony convictions will be treated as one felony conviction;
- require a Certificate of Relief to be automatically revoked if the individual is subsequently convicted of a felony or misdemeanor other than a traffic violation, and require the Administrative Office of the Courts to provide the following declaration on the forms that record criminal judgments: "Any Certificate of Relief is automatically revoked for a subsequent conviction of a felony or misdemeanor other than a traffic violation in this State";
- require the petitioner to pay a one-time \$50 filing fee to the clerk of superior court;
- require a person who is granted a Certificate of Relief under this Article **to notify any employer, landlord, or other party who has relied on the Certificate of Relief of any conviction, modification, or revocation, subsequent to the Certificate of Relief within 10 days of the conviction, modification, or revocation;**
- allow the court to modify or revoke a Certificate of Relief if it finds by a preponderance of the evidence that the petitioner made a material misrepresentation in the petition; and
- **provide that, in a judicial or administrative proceeding alleging negligence, a Certificate of Relief is a bar to any action alleging lack of due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the Certificate of Relief was issued, if the person against whom the judicial or administrative proceeding is brought relied on (previously, knew of) the Certificate of Relief at the time of the alleged negligence.**

Effective: December 1, 2018, and applies to petitions filed on or after that date.

HOUSE BILL 931, UI Technical Changes. This law makes various technical, administrative, and clarifying changes to the State's unemployment insurance laws, to:

- exclude direct sellers from the definition of employment for unemployment insurance;
- delay the effective date for a requirement that employers respond to unemployment insurance claims in 10 days from July 1, 2018, to January 1, 2019;
- reduce from five to three the number of job contacts with potential employers an individual must make during the week in order to be determined that the individual is actively seeking work for unemployment insurance eligibility purposes;
- require electronic filing of the "Employer's Quarterly Tax and Wage Report" if the employer has 10 or more employees (was, 25 or more employees); and
- provide that a claim for benefits may not be withdrawn by a claimant except upon the filing of a notice of withdrawal within 10 days from the earlier of mailing or delivery of his monetary determination to him and a finding of good cause by the Assistant Secretary or designee.

Effective: June 25, 2018, except as otherwise provided.

HOUSE BILL 1083, Appointments Bill 2018. This law appoints persons to various public offices upon the recommendation of the Speaker of the House of Representatives and President Pro Tempore of the Senate, including, effective July 1, 2018, Paul Powell of Guilford County and Jeanette K. Doran of Wake County, Margaret Currin of Wake County, Jeffrey T. Hyde of Guilford County, and Brian P. LiVecchi of Wake County are appointed to the Rules Review Commission for terms expiring on June 30, 2020. **Effective: June 29, 2018, unless otherwise provided.**

HOUSE JOINT RESOLUTION 1100, Confirm Myra L. Griffin/Industrial Commission. This law confirms the appointment of Myra L. Griffin of Durham County to a term on the North Carolina Industrial Commission, to expire on April 30, 2022. **Effective: June 29, 2018.**

HOUSE JOINT RESOLUTION 1101, Adjourn 2018 Session to November, adjourns the 2018 "Short" session from Friday, June 29, 2018, until Tuesday, November 27, 2018, at noon. The resolution provides that there are basically no restrictions on what the General Assembly can take up during this November session. Many commentators have theorized that the November session is planned for additional changes to the balance of power between the Governor and the Legislature in case the election does not go the Republicans way and they lose their super majority in either chamber. **Effective: June 29, 2018.**

SENATE BILL 145, DOT/DMV Legislative Requests, among other provisions:

- allows DMV, effective October 1, 2018, to waive the knowledge and skills test for a qualified military applicant who has been issued a military license that authorizes the holder to operate a motor vehicle representative of the class and endorsements for which the applicant seeks to be licensed. The applicant must certify and provide satisfactory evidence on the date of application that the applicant meets all of the following requirements:
 - the applicant is a current or former member of an active or reserve component of the Armed Forces of the United States and was issued a military license that authorized the applicant to operate a vehicle that is representative of the class and type of commercial motor vehicle for which the applicant seeks to be licensed and whose military occupational specialty or rating are eligible for waiver, as allowed by the Federal Motor Carrier Safety Administration; and

- the applicant is or was, within the year prior to the date of application, regularly employed in a military position requiring operation of a motor vehicle representative of the class of commercial motor vehicle for which the applicant seeks to be licensed.
- allows DMV to, as it deems necessary, release medical information to any other State or federal government agency for purposes of determining an individual's ability to safely operate a commercial motor vehicle or to obtain a commercial driver's license.

Effective: Except as noted, July 1, 2018.

SENATE BILL 168, AOC Omnibus Changes. This law authorizes the Administrative Office of the Courts (AOC) or the Clerks of the superior court to keep confidential personally identifiable information collected for the purpose of a court proceeding notification system, and permits the use of an automatic dialing and recorded message player to make unsolicited telephone calls generated from a court proceeding notification system established by the AOC. **Effective: June 22, 2018, except as otherwise provided.**

SENATE BILL 325, The Uniform & Expanded Early Voting Act. This law changes the schedules and rules of early voting – a hotly contested topic between the Republicans and Democrats – as follows:

- amends the days/times for early voting to not earlier than the third Wednesday (currently, second Thursday) before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than 7:00 pm on the last Friday (currently, 1:00 pm on Saturday) before that election;
- removes the requirement that county boards of elections conduct one-stop voting on the last Saturday before the election until 1:00 pm;
- removes the requirement that any plan adopted by either the county board of elections or the State Board under this subsection shall provide for the same days of operation and same number of hours of operation on each day for all sites in that county for that election;
- requires a county board of elections, for all sites approved for one-stop voting, to provide that: (1) each one-stop site across the county must be open at that same location during the period required; (2) if any one-stop site across the county is opened, all one-stop sites must be open on that day; (3) on each weekday during the period required, all one-stop sites must be open from 7:00 A.M. to 7:00 P.M; and (4) if the county board of elections opens one-stop sites on Saturdays or Sundays, then all one-stop sites must be open for the same number of hours uniformly throughout the county on those Saturdays or Sundays; and
- requires county board of elections to submit to the State Board an annual report, on or before September 1 of each year, of its list maintenance, and direct the State Board to compile annual reports received from the county board of elections and submit the reports to the Joint Legislative Elections Oversight Committee on or before October 1 of each year.

The Governor vetoed this bill on June 25th, and the House and Senate voted to override the veto. This legislation was also challenged in Court and the legislature made changes in House Bill 335 (see the summary above) to address the Court. Effective: June 27, 2018.

SENATE BILL 335, Budget Technical Corrections and Study. This bill is typically done every year to correct errors and make adjustments to the budget. This year the leadership put the bill into a conference committee report, just like they handled the budget itself, which means no amendments were permitted and it received an up or down vote in each chamber. This legislation will:

- establish the Center for Safe Schools within the Department of Public Instruction, provide for the appointment of an Executive Director, and require all agencies to cooperate with

the Center. The Center will work with the Division of Emergency Management, the Department of Public Instruction, and the Division of School Operations to develop school crisis kits;

- require that \$348,558 of the funds appropriated to DHHS, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, be used to fund a suicide prevention lifeline;
- clarify that State funding cannot be used for a light rail project until all necessary non-State funding has been committed; clarify that total State funding committed for a commuter rail or light rail project may not exceed the lesser of 10% of the regional allocation or 10% of the total project costs; and limit the amount of state funding for the Durham-Orange Light Rail Project to \$190 million.

The Governor did not sign or veto this bill within the time required and the bill became law without his signature. Effective: July 1, 2018, except as otherwise provided.

SENATE BILL 411, Various Motor Vehicle Law Revisions. This new law makes a variety of changes in motor vehicle laws including those that:

- require all individuals and lienholders who conduct at least five transactions a year to use the electronic lien system;
- clarify the process allowing dealers to transfer motor vehicles without the vehicle's statement of origin or certificate of title, and allows the purchaser to collect liquidated damages if the dealer fails to deliver the title to the Division within 60 days after the sale of the vehicle;
- require the Division, in consultation with the Automobile Dealers Association, to study motor vehicle transfers and potential improvements to processes;
- delay the date dealers are required to start using LD plates for loaner vehicles from January 1, 2019, to January 1, 2021;
- require dealers issuing temporary registration plates to purchasers to deliver sales documents and fees to the Division within 20 days, rather than 10 working days.
- require new motor vehicles to be inspected prior to delivery to the purchaser, rather than prior to sale; and
- clarify the applicability of certain taxes and fees on motor vehicle sales, making clear that the applicable rate is the one in effect on the date of sale;

Effective: The provisions pertaining to transfer of vehicles become effective January 1, 2019, the remainder of the act is effective June 22, 2018.

SENATE BILL 412, Abandoned Vehicles/Charities. The Towing and Recovery Professionals of North Carolina attempted to amend this legislation to include our concerns; however, the bill was an agreed upon compromise with the various stakeholders. We will attempt to use this language to make changes to the law in the future. The new law:

- provides a process for used motor vehicle dealers to sell vehicles donated to charitable organizations when the donated vehicle is titled in this State but the title is not provided with the donation;
- provides that failure to comply with the new statutory process is grounds for denying, suspending, placing on probation, or revoking a motor vehicle dealer's license;
- provides that a charitable organization is not required to register and title a vehicle that was donated to the organization solely for purposes of resale;
- exempts from the definition of 'motor vehicle dealer' a charitable organization where a vehicle was donated to the organization solely for purposes of resale; and

- exempts a charitable organization from paying highway use tax for a title issued as the result of a transfer of a vehicle to the organization that was donated solely for purposes of resale.

Effective: June 22, 2018.

SENATE BILL 486, The Elections Security and Transparency Act. This law will make various changes related to election laws to:

- authorize criminal record checks for certain employees and contractors of the State Board of Elections and Ethics Enforcement (State Board) and certain employees of county boards of elections;
- require additional information for voters related to judicial elections be included on the 2018 general election ballot;
- authorize the State Board to seek judicial review of temporary restraining orders and preliminary injunctions issued by the Office of Administrative Hearings;
- require county boards of elections to provide any requested information in the board's possession to the State Board;
- authorize the chair and vice-chair of the State Board to designate a staff member to act when the Executive Director has a conflict related to hiring or dismissal of a county director of elections;
- prohibit a new party from selecting a candidate on a primary ballot in that year as their candidate for the general election ballot at the party convention;
- clarify the ballot order for judicial offices;
- authorize the State Board to establish a limit for bonds or letters of credit for defects in voting systems;
- require electronic poll books and ballot duplication systems to be either certified by or developed and maintained by the State Board, and requires vendors to meet certain statutory elements for certification by the State Board;
- clarify that certification of electronic poll books and voting systems by the State Board does not constitute a license under the Administrative Procedures Act;
- authorize the State Board to decertify and halt the use of electronic poll books;
- prohibit the connection of any voting system used in an election to a network;
- establish a Class 2 misdemeanor for any person not an elections official or otherwise authorized by law to retain information from a voter registration form;
- clarify when a candidate must appoint a treasurer;
- delay the decertification of direct record electronic voting systems until December 1, 2019;
- authorize a policeman, chief of police, or auxiliary policeman as offices that may be held concurrently with other elective offices; and
- reenact all of the previously enjoined G.S. 163A-2, to provide effective language on the terms of office, eligibility requirements, prohibitions during service, and per diem, subsistence and travel expenses for the State Board.

Effective: June 20, 2018, notwithstanding the Governor's veto.

SENATE BILL 622, Business Corporation Act Revisions, makes various revisions to the North Carolina Business Corporation Act, including provisions to:

- direct the Secretary of State to collect a \$150 filing fee for Articles of Validation;
- allow Articles of Incorporation to include a provision limiting or eliminating any duty of a director, an officer, or any other person, to offer the corporation the right to have or participate in any business opportunities, or classes or categories of business opportunities, prior to the pursuit or taking of the opportunity by the director, officer, or other person;
- enact new provisions regarding ratification of defective corporate actions;

- provide that a defective corporate action is not void or voidable if ratified or validated as provided;
- remove the statutory 10-year limit on the duration of a voting trust and would provide that its duration shall be as set forth in the voting trust, in the case of voting trusts that become effective on or after October 1, 2018;
- amend provisions regarding shareholders' agreements;
- provide that, unless the articles of incorporation or bylaws provide otherwise, the board of directors, without regard to personal interest, may fix the compensation of directors for services in any capacity. The compensation of directors established pursuant to this section is presumed to be fair to the corporation unless proven not to be fair to the corporation by a preponderance of the evidence;
- provide that, unless otherwise provided in the articles of incorporation, the bylaws, or the resolution of the board of directors designating the committee, a committee, by action of a majority of its members then in office when the action is taken, may create one or more subcommittees consisting of one or more members of the committee and delegate to the one or more subcommittees any or all of the powers and authority of the committee;
- provide that a director or officer is not liable for (i) any action taken as a director, or any failure to take any action, if the director or officer performed the duties of his/her office in compliance with this section or (ii) any failure to offer the corporation the right to have or participate in a business opportunity prior to the pursuit or taking of the opportunity by the director or other person if the corporation's articles of incorporation include a provision authorized by G.S. 55-2-02(b)(4) and the procedures and approvals required by the provision, if any, were complied with or obtained prior to the pursuit or taking of the opportunity by the director or other person;
- provide that, unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if all of the specified requirements are met;
- include provisions regarding merger between parent unincorporated entity and subsidiary corporation or corporations; and
- amend provisions regarding right to and notice of appraisal.

Effective: October 1, 2018.

SENATE BILL 655, Change Date When Primary Elections Held. This law requires primary elections to be held on the Tuesday after the first Monday in March (previously, May) preceding the general election, and requires the presidential primary to occur every four years on the Tuesday after the first Monday in March, 2020. **Effective: January 1, 2019, applies to even-year elections held on or after that date.**

2018 BUDGET

Every year when the General Assembly puts the budget together for the State, there is controversy over what is in it, what is not in it, how much is spent, new taxes and fees and the pork spending that is included. This year, the main controversy was not what was in the budget, but the procedure used to complete it. Normally, the process looks like this:

- Subcommittee meetings to hear from the agencies and groups who are requesting funding;
- Budget rolls out with subcommittees meeting to review their particular details, answer questions and allow limited amendments;

- Budget get approved by subcommittees and goes to the Appropriations Committee where it is reviewed, amended and debated (almost half the members of each chamber serve on their Appropriations Committee) before being approved;
- Budget goes to the full chamber where again, the details are reviewed, amendments are offered and the budget bill is debated;
- Once one chamber approves the budget, it goes to the next chamber who goes through a similar process with their subcommittees rolling out their version of funding for their particular group (HHS, Education, Transportation, General Govt., etc.);
- The two budgets are different so once each chamber approves their version of the budget and the bill goes to a conference committee to debate and negotiate a final budget;
- Many groups, agencies and other continue to discuss their priorities with legislators on the final version of the budget;
- The conference report is issued for both chambers to vote on – the report may NOT be amended and must be an up or down vote;
- Once the same budget is approved by both chambers, it is sent to the Governor;
- If the Governor signs the budget, it becomes law, or he can let it become law after a certain number of days without his signature or he can veto the bill and the legislature has the option to try to override the veto or send him another version of the bill.

This year, here was the process used to complete the budget:

- Both chambers released a conference report in the Appropriations Committee, and it was reviewed and approved without any comment from the public;
- Both chambers reviewed and debated the final budget in the full House and Senate and approved the budget on a mostly party line vote;
- The Governor vetoed the budget and the General Assembly quickly over-rode the Governor's veto and the budget became law.

This unprecedented procedural move was shocking to most legislative observers and lobbyists and left the public out of the process completely. There were objections from many quarters about the lack of notice, transparency and basic due process for such an important piece of legislation. There were also objections about the content of the budget including small appropriations to almost every Republican legislator for small projects or groups in their district (most call this “pork” in the budget), but those objections were minor in comparison to the press and issues that many had with how the budget was done. Meanwhile the legislative leadership defended the procedural strategy and were pleased with the speed of the process.

SENATE BILL 99, Appropriations Act of 2018. We have included below a general summary of the key provisions of the 2018 budget that was effective July 1, 2018 to June 30, 2019.

Health Care

- Medicaid Rebase: For the first time in recent memory, the budget did not include a Medicaid rebase to reflect changes in enrollment.
- Single stream funding reduction: LME/MCOs received a nonrecurring reduction of \$17 million.
- Medicaid and Health Choice Provider Screening Changes: The budget moved behavioral health and intellectual and developmental disability provider agencies that are nationally accredited to a limited categorical risk provider type instead of a high-risk provider type. This is a positive change for accredited providers who focus on behavioral health and intellectual and developmental disabilities.

- **Newborn Screening:** The budget includes funding to add additional tests to the newborn screening panel.
- **ABLE accounts:** The budget allows money to be rolled over from a college savings account in the Parental Savings Trust Fund of the State Education Assistance Authority to an ABLE account without negative tax consequences.
- **Use of Dorothea Dix Hospital Property Funds to Purchase Additional Behavioral Health Beds:** The budget requires the Department of Health and Human Services beginning on November 1, 2018, to annually report to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division on the number and location of additional licensed inpatient behavioral health beds, the number of beds or bed days reserved for and purchased by the Department under the State-administered, three-way contract for individuals who are indigent or Medicaid recipients.
- **Funds for Evidence-Based Supported Employment Services for Individuals with Serious Mental Illness, Intellectual Disabilities, or Developmental Disabilities:** The budget directs the Department of Health and Human Services to use \$125,000 in recurring funds to be allocated as a grant to the North Carolina Association of People Supporting Employment First (NC APSE) to develop and implement training programs for the Department.

Education

- **NC Pre-K:** The budget replaces \$50 million in state funding for Pre-K with \$50 million in federal funding. Critics of the move argue that this is a missed opportunity for the General Assembly to expand Pre-K services.
- **Salary Increases:**
 - An average salary increase of 6.5% for teachers
 - \$3,150 average principal pay raise
 - \$700/year increase for veteran teachers with 25+ years' experience
 - A 2% raise for most state employees
- **School Safety:** The budget provides \$35 million for school safety initiatives including:
 - \$10 million in non-recurring funding for mental health support personnel (school nurses, school psychologists, counselors and social workers).
 - \$5 million for a statewide anonymous tip hotline for student safety threats.
 - \$12 million in recurring funding for grants for elementary and middle school resource officers.
- **Public Education:**
 - \$241 million lottery funds to build or upgrade school facilities;
 - \$700 million increase in public education funding;

General Government

- A new baseline salary of \$31,200 for all state employees;
- A 2% raise for most state employees and a cost-of-living supplement for retirees;
- The zero-tax bracket for working families increased to \$20,000, tripling since 2011;
- 5.25% new state income tax rate, down from a top rate of 7.75% since 2011;
- A 4% pay raise for all corrections officers;
- \$44,000 starting pay for State Troopers;
- In 6 years, a State Trooper will reach top of pay scale: \$64,202;
- \$15 million for security and safety improvements in state prisons;
- \$60 million to prepare for Medicaid transformation to a managed-care system;
- Over \$10 million to address GenX and provide access to clean drinking water;
- \$60 million new funds for disaster relief;
- State disaster relief funds total over \$360 million since Hurricane Matthew;

- \$2 billion savings reserve fund for emergencies is a state record; and
- \$10 million investment in broadband access to non-urban communities.

Despite these investments, there were plenty of criticisms of the budget, mostly from Democrats but some from fellow Republicans. These include:

- The budget provides only \$10 million for additional school mental health personnel. The money is nonrecurring, which makes it an unreliable source for salaries, and is a fraction of what it would cost to provide the recommended number of mental health personnel to each school (it would cost \$79 million per year to provide a school nurse in every school, for example);
- The budget does not include funding for testing of a backlog of rape kits, which drew a sharp response from Attorney General Josh Stein;
- The GenX provisions were far more favorable to the company responsible for the chemical than previous versions had been;
- Measures to clean up pollution at Jordan Lake and Falls Lake were postponed for a fifth year, so that studies of various cleanup options can be completed;
- A provision dealing with light rail funding could effectively kill projects across the state. The provision requires cities and counties that want state funding for light rail must first secure all other funding, including federal, before the state will consider contributing. The issue is the federal grant program that helps pay for light rail projects requires that municipalities secure local and state funding before seeking federal funds.

CONSTITUTIONAL AMENDMENTS

The House and Senate approved six state Constitutional amendments which will be voted on by the State’s citizens in November 2018. (Please see the discussion of the Amendments in the Introduction of the Report.) There are several groups advocating that voters reject all of the amendments, not necessarily for their content but for the limited process and lack of transparency that was used to add them to the ballot. Here are the bills, title, and a short description of what each amendment would do:

<u>Bill/Title</u>	<u>What It Does</u>
House Bill 3, Nonpartisan Judicial Merit Commission	Would provide for nonpartisan judicial merit commissions for the nomination and recommendation of nominees when filling vacancies in the office of justice or judge of the General Court of Justice and make other conforming changes to the constitution. Would shift most of the power for appointing judges from the governor to the legislature.
House Bill 4, Bipartisan Board of Ethics and Elections	Would establish a bipartisan Board of Ethics and Elections Enforcement.
House Bill 551, Strengthening Victims' Rights	Would amend the Constitution to “strengthen protections for victims of crime; to establish certain absolute basic rights for victims; and to ensure the enforcement of these rights.” Expands the offenses that trigger victims' rights to include: Crimes against the person; Felony

	property crimes; Delinquent acts against the person; Delinquent acts equivalent to felony property crimes. Guarantees victims the following rights: To be treated with dignity and respect; Reasonable, accurate, and timely notice, upon request; To be present at any proceeding; To be reasonably heard at certain proceedings; Restitution in a reasonably timely manner; Information, upon request; To reasonably confer with the prosecutor.
House Bill 1092, Const. Amendment - Require Photo ID to Vote	Would require voters offering to vote in person to present photographic identification before voting, and would require the General Assembly to enact general laws governing the photo ID requirements, which could include exceptions.
Senate Bill 75, Const. Amd. - Max. Income Tax Rate of 7.0%	Would reduce the income tax rate in North Carolina to a maximum allowable rate of seven percent (7%). The current maximum allowable is (10%).
Senate Bill 677, Protect Right to Hunt and Fish	Would protect the right of the people to hunt, fish, and harvest wildlife.

- 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.