

# ALERTS

## North Carolina Legislative Report - April 11, 2014

March 29 - April 11, 2014

The General Assembly's short session will begin on Wednesday, May 14, 2014. The MVA Public Affairs Legislative Report on North Carolina will be distributed bi-weekly to keep you up to date on the latest legislative issues facing the state during the interim.

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### *Committee Reports*

#### **Joint Legislative Administrative Procedure Oversight Committee**

The Committee met on Tuesday, April 1. The Committee began by continuing its review of State entities that enjoy full or partial exemptions from the rulemaking process specified in the Administrative Procedure Act. This month the Committee heard from the Department of Cultural Resources and the Department of Public Safety on their exemptions. Next, the Committee heard a summary of some significant administrative law issues raised in a recent Court of Appeals decision. The Court's decision in NC State Board of Education v. NC Learns, Inc. d/b/a North Carolina Virtual Academy dealt specifically with the State Board's decision not to consider applications for virtual charter schools, but could have significant impacts on many areas of law due to its holdings with respect to statutory interpretation and administrative procedure. The discussion of the broad issues raised in this case was followed later in the meeting by a more narrow discussion of the procedures used in the approval of charter school applications. Julian Mann, Chief Administrative Law Judge at the Office of Administrative Hearings (OAH), made some recommendations to the Committee regarding general procedures for setting the burden of proof in contested case hearings. Finally, the Committee received an update from staff at OAH on the ongoing rules review process.

#### **Joint Legislative Commission on Energy Policy**

The Commission met on Tuesday, April 1. To start the meeting, Dr. Michael Walden, Department of Agricultural and Resource Economics Professor, gave a presentation a report he completed on "The Economic Potential from Developing North Carolina's On-Shore and Off-Shore Energy Resources."

Raymond Tesiero, Mechanical Engineer and Research Coordinator with CRET at NC A&T State University, Louis Martin-Vega, Dean of the College of Engineering, NC State University and Dr. Johan Enslin, EPIC Director at UNCC, gave presentations on the energy programs at their respective institutions.

Following those presentations, Jim Womack, Mining and Energy Commission Chairman, gave a report on legislative changes requested by the MEC in association with development of a modern regulatory program for the management of oil and gas exploration and development activities in the State, and the use of natural

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gas fracturing for that purpose.

Don van der Vaart, Energy Policy Director at DENR, gave a report on the legislative changes requested by DENR in association with development of a modern regulatory program for the management of oil and gas exploration and development activities in the State, and the use of natural gas fracturing for that purpose.

Jon Nancy, Deputy Chief Engineer at NC DOT, gave the last presentation for the day. Mr. Nance gave a presentation on changes needed for energy-related road use.

**Joint Legislative Elections Oversight Committee**

The Committee met on Wednesday, April 2. The Committee began with presentations from legislative staff and staff with the State Board of Elections on statutory requirements for voter registration and voter list maintenance and how the State Board implements those requirements. Legislative and State Board staff then presented on efforts related to implementation of voter identification requirements. State Board staff reported that recent efforts by the State Board had provided some evidence of possible voter fraud. There were several cases where a deceased individual was marked as having voted and numerous cases that suggested an individual may have voted in both North Carolina and another state during the same election. State Board staff was careful to note that these cases remained under investigation and that there could be multiple explanations for cases identified. In addition to voting fraud, these explanations could include poll worker error or sheer coincidence (in the case of persons with the same name and birth date voting in multiple states during the same election). The possible instances of voting fraud drew a great deal of discussion from Committee members.

**Joint Legislative Oversight Committee on Unemployment Insurance**

The Committee met on Wednesday, April 2. The Committee began with a presentation by legislative staff of draft legislation making technical, clarifying, and administrative changes with respect to unemployment insurance. Next, the Committee heard from Assistant Secretary Dale Folwell of the Department of Commerce, Division of Employment Security. Secretary Folwell gave the Committee an update on the status of the State's request for a waiver related to the repayment of unemployment insurance debt owed to the federal government, the State's progress in repaying that debt, and the status of a backlog in unemployment insurance claims. Secretary Folwell reported that the State continues to make progress on repaying its debt to the federal government for unemployment insurance benefits and that the amount of the outstanding debt is now slightly below \$1.65 billion. Secretary Folwell reported that the State has made some progress in eliminating a backlog in processing unemployment claims, but also noted that the State has made significant improvement with respect to the accuracy of its initial determinations of eligibility. Legislative staff gave an overview of issues raised in the case of [Wilson v. Division of Employment Security](#). This case involves the release of unemployment case hearings records to private attorneys. The State has found itself in a Catch-22 as it deals with an order from a State court to continue releasing the information and a warning from the federal Department of Labor that release of the information may violate federal law. Next the Committee heard from the Division of Workforce Solutions on efforts undertaken by that division with respect to office and service realignment and cooperative efforts with the Division of Employment Security. Finally, the Committee heard an update from legislative staff with respect to federal legislation that could extend

emergency unemployment compensation benefits and administrative issues associated with such an extension.

#### **Joint Legislative Economic Development and Global Engagement Oversight Committee**

The Committee met on Thursday, April 3. The Committee began by hearing a legislative proposal related to the establishment of a public-private partnership with responsibility for business and economic development and recruitment efforts. The legislation was based on Senate Bill 127, separate versions of which passed both chambers during the 2013 Regular Session but which failed to be enacted because the chambers could not reach final resolution on numerous differences. This proposal would remove some unrelated, controversial language regarding a severance tax and would place more restrictions on the operation of the public-private partnership. Next the Committee approved a legislative proposal involving abusive patent practice. The issue to be addressed by the legislation involves frivolous lawsuits filed by companies making spurious claims to patent rights. Despite some concerns from members, the proposal was approved. The Committee next heard a presentation on new market tax credits, and how these credits could be used to spur private investment in economically distressed areas. Finally, the Committee heard updates from the Department of Commerce with respect to ongoing efforts with respect to the public-private partnership with responsibility for business and economic development and recruitment efforts and the administration of grants under the Rural Economic Development Division.

#### **Joint Legislative Oversight Committee on Information Technology**

The Committee met Thursday, April 3 at the UNC-Charlotte PORTAL campus. Members heard presentations from UNCC administration regarding the university's Data Science and Business Analytics Program. The Committee also reviewed a case study performed by e.Republic regarding North Carolina's online presence as compared to other states. Cathilea Robinett, Executive Vice President of e.Republic also showed examples of innovative and best-practices other states have implemented to stay at the forefront of constituent connectivity using the internet and web technology.

Finally, the Committee was briefed by Deputy Chief Jeff King and Chief Information Officer Chris Estes on items including infrastructure improvements, electronic forms and digital signatures, Government Data Analytics Center (GDAC), Enterprise Resource Planning (ERP), the IT reserve fund, and digital commons. Members stressed the importance of bolstering the state's ability to weather and recover from an IT disaster while maintaining digital files, archives, personal information and online security.

In addition to its regular monthly meeting, the Committee toured the Microsoft campus in Charlotte, the ITS Western Data Center and Facebook Data Center in Forest City.

#### **Joint Legislative Education Oversight Committee**

The Committee met Tuesday, April 8. The meeting started with an overview of the Beyond Academics program at UNC-Greensboro, a four year certificate program for young adults with intellectual and/or developmental disabilities. The programs curriculum is designed to promote employment and career opportunities, independent living, citizen engagement and an interdependence network of friends colleges and families. Following the presentation, parents of a student currently enrolled in Beyond Basics gave their

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perspective and the impact the program has had on their child's life.

Next on the agenda was a presentation on the State's three Regional Leadership Academies. The academies are designed to provide leadership preparation for talented school administrators who are placed in high need schools across the state. Graduates of the program and local superintendents discussed their experiences with the academies and the impact it has had on students in their districts. Kathleen Fallon, Department of Defense Education Activity, followed discussing how identifying and tracking military children's educational performance can assist schools by providing data that can help inform policy and program decisions for this unique group of students. Dr. Benjamin Wright, Duke University, discussed the importance of access to EpiPens in schools.

Closing the meeting was a presentation by superintendents from Randolph, Richmond and Cabarrus counties on the Read to Achieve Summer Reading Camps. These are six-week summer reading camps required for all third grade students who do not meet reading proficiency benchmarks by the end of this school year. The superintendents asked for flexibility in designing plans to meet the minimum of 72 hours of instruction. The Committee will hold its final meeting of the interim on Wednesday, May 7 at 2:00 p.m.

### **Environmental Review Commission**

The Commission held its six meeting of the interim on Wednesday, April 9. The purpose of this meeting was to review and vote on the Commission's legislative proposal package. Legislators from each of the Commission's working groups presented their proposals and answered questions from fellow members. Proposals addressed the following issues:

- Clarification of gravel under storm water laws
- Amending isolated wetland regulation
- DENR study of interbasin transfer laws
- Program Evaluation Division study of water and sewer systems
- Reform agency review of engineering work
- Authority to adopt certain ordinances
- Reporting and notice of wastewater spills
- Amend hotel carbon monoxide alarm requirement
- Legislative oversight of fish and wildlife management
- Terminate certain executive orders
- State nature and historic preserve deletions.

The complete copy of the report and legislative proposals approved can be found on the Commission's website. The Commission will hold its next meeting on Tuesday, April 22 to address coal ash.

### **Revenue Laws Study Committee**

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The Committee met on Wednesday, April 9. The Committee had a packed agenda, addressing numerous subjects. First, the Committee approved a recommendation of a subcommittee that endorsed a change to North Carolina law so that a corporate taxpayer would be allowed a deduction for a net operating loss rather than for a net economic loss. The proposal would bring the State more in line with other states and the federal government. Next, the Committee took up four separate proposals dealing with clarifying changes needed as a result of tax reform efforts enacted during the 2013 Regular Session. Specifically, these proposals dealt with sales and use tax issues related to a) exemption certifications, particularly those allowed to farmers, b) meal plans offered to students by colleges and universities, c) admissions charges, and d) service contracts. The Committee then moved on to two separate drafts involving technical, clarifying, and administrative changes. The first of these drafts included only technical changes (such as corrected statute references). The second draft dealt with issues that were less technical, but generally still noncontroversial, that will ease administration of or compliance with the revenue laws. Significant provisions in this bill included a) a clarification of which individuals may not claim a standard deduction for personal income taxes (those that may not claim a standard deduction for federal purposes) and how the deduction for mortgage interest expense applies to married individuals filing separately, b) a reduction in the sales tax imposed on sales of manufactured and modular homes, c) the disallowance of a sales tax refund to certain entities on sales taxes paid on video programming services and piped natural gas (in line with the treatment of sales tax on other utilities), and d) providing for the central assessment of mobile telecommunications equipment by experienced public service company appraisers at the Department of Revenue rather than at the county level. The Committee then took up several items given tentative approval at earlier meetings. The Committee approved draft legislation related to a) the compensation of private license plate agents for the collection of local property taxes at the same time the agent collects DMV fees, b) noncontroversial excise tax changes recommended by the Department of Revenue, c) the application of the sales and use tax to retailer-contractors on materials used in performing contracts for real estate improvements, and d) enhanced tax compliance initiatives requested by the Department of Revenue with respect to the enhanced use of collection assistance fee proceeds to purchase locator services and conditioning receipt or retention of certain alcoholic beverage control licenses on the licensee maintaining a clean tax record. Finally, the Committee again addressed the issue of local business privilege taxes. Legislative staff presented draft legislation that would limit a city's ability to impose a local business privilege tax and eliminate a county's ability to do so altogether. Under current law, cities have wide latitude in imposing a local business privilege tax whereas counties' authority to do so is severely limited. Earlier versions of this draft were presented in February and March. This was by far the most hotly debated proposal of the meeting. Most legislators agreed that the system needs to be reformed in some manner. Many legislators argued that the current system is too complex and that cities have overreached with imposing the tax in some instances. However, numerous legislators highlighted the fiscal impact of the proposal on municipalities and the possibility that municipalities may need to raise property taxes or other fees in order to make up for that impact. The proposal was approved for inclusion as recommendation of the Committee after significant debate.

***In the News***

News & Observer: Democrats launch call campaign against Renee Ellmers

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AP: NC local business taxes capped in proposal

Observer: McCrory, Clodfelter talk teamwork, ethics

News & Observer: NC rejects Raleigh's \$38 million bid for Dorothea Dix property

News & Observer: Legislators say they will work to raise NC teacher pay this year

News & Observer: Lorrie Dollar named COO at Public Safety

Observer: Dan Clodfelter sworn in as Charlotte's mayor, pledges to restore faith in city hall

WRAL: Tax changes could jeopardize teacher raises

News & Observer: North Carolina personal income tax collections lag

News & Observer: Early speculators let drilling leases lapse as NC fracking prospects remain uncertain

WRAL: Tillis maintains lead in latest Republican U.S. Senate primary polls

### *Calendar*

Mon, April 14, 2014

2:00 PM

North Carolina Educator Effectiveness and Compensation Task Force

643 LOB

Tue, April 15, 2014

9:00 AM

Committee on Market Based Solutions and Elimination of Anti-Competitive Practices in Health Care (LRC)  
(2013)

643 LOB

10:00 AM

Lottery Oversight Committee

415 LOB

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10:00 AM

Committee on Civilian Credit for Military Training and State Adjutant General Selection Criteria (LRC)(2013)

544 LOB

2:00 PM

Committee on Onmbus Foster Care and Dependency (LRC)(2013)

414 LOB

Wed, April 16, 2014

9:00 AM

Committee on Jordan Lake (LRC)(2013) -- CORRECTED

544 LOB

1:00 PM

Purchase and Contract Study Committee (2013)

544 LOB

1:00 PM

Joint Legislative Program Evaluation Oversight Committee

643 LOB

2:00 PM

Permanency Innovation Initiative Oversight Committee

414 LOB

Thu, April 17, 2014

10:00 AM

Joint Legislative Oversight Committee on Health and Human Services

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643 LOB

1:00 PM

**Committee on Cultural and Natural Resources (LRC)(2013) -- CORRECTED**

544 LOB

**Mon, April 21, 2014**

1:00 PM

**Committee on Food Desert Zones (LRC)(2013)**

544 LOB

1:00 PM

**Committee on Health Care Provider Practice Sustainability and Training/Additional Transparency in Health Care (LRC)(2013)**

643 LOB

**Tue, April 22, 2014**

10:00 AM

**Joint Study Committee on the Affordable Care Act and Implementation Issues (2013)**

Elliot University Center Auditorium (see comments)

1:00 PM

**Committee on Banking Law Amendments (LRC)(2013)**

425 LOB

1:30 PM

**Environmental Review Commission**

643 LOB

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**Wed, April 23, 2014**

1:00 PM

Committee on Unmanned Aircraft Systems (LRC)(2013)

1228/1327 LB

1:00 PM

Committee on Funeral and Cemetery Regulation (LRC)(2013)

415 LOB

1:00 PM

House Study Committee on Education Innovation (2013)

643 LOB

**Thu, April 24, 2014**

10:00 AM

Committee on Common Core State Standards (LRC)(2013)

643 LOB

1:00 PM

Committee on Land Development (LRC)(2013)

421 LOB

**Wed, April 30, 2014**

9:00 AM

Agriculture and Forestry Awareness Study Commission

643 LOB

**Wed, May 07, 2014**

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2:00 PM

**Joint Legislative Education Oversight Committee**

643 LOB

**Thu, May 08, 2014**

10:00 AM

**Joint Legislative Administrative Procedure Oversight Committee**

544 LOB

**Mon, May 12, 2014**

10:00 AM

**Rep. Insko - Press Conference**

Press Room LB

**Wed, May 14, 2014**

12:00 PM

**Session Convenes (House)**

House

12:00 PM

**Session Convenes (Senate)**

Senate

**Thu, May 22, 2014**

8:00 AM

**Skin Cancer Screening**

1124/1224 LB