



INTRODUCTION

The pace of session is speeding up and what would session be without some controversy! Budget concerns loom large due to the reduced revenue forecast, casting uncertainty on the session's pace and duration. "Once we got those initial numbers, we went ahead and started baking in some of the proposed funding, so when you pulled that \$400 million, it certainly made an impact," Speaker Moore told reporters last week. All seemed to be on track with the budget until this week when Senator Berger told reporters that there was an impasse on the budget with the House since the House wanted too much "pork" spending in the budget. I would call this a shot across the bow of the annual House vs. Senate budget negotiation process. Speaker Moore quickly responded that discussions were continuing to reach a resolution. The announced plan to have the budget done in June before the fiscal year starts July 1st seems to be a bit in doubt.

Medicaid reimbursements and Opportunity Scholarships have been expected to take up the vast majority of the surplus. However, there are many other important causes on the list, including teacher and state employee raises, helping child care centers stay open, providing more funding for mental health and substance abuse services, staffing shortages for care management and nursing as well as requests from just about every agency and department in State government. Speaker Moore hopes to aid at least the Opportunity Scholarship expansion with funding found elsewhere. "Really the question now is not the funding and nor really the amount of funding, it's going to be the source of funds," he said. "The Senate's version that they've sent over simply takes those funds from the bottom line. We believe there may be some other sources where that funding can be taken that wouldn't affect later appropriations in the budget process."

MASK BAN CLEARS SENATE

A controversial mask bill cleared the Senate on party lines. House Bill 237, Unmasking Mobs and Criminals, would repeal the health and safety exception to the state's ban on wearing masks in public and increase penalties for mask-wearing while in the act of a crime. The bill also creates new penalties for protesters who block highways. A major point of contention is the removal of the health and safety exception



NORTH CAROLINA COLLEGE OF EMERGENCY PHYSICIANS



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from the law dating back to 1953. While Republicans argue that the pandemic-era exception is no longer necessary, Democrats advocate for increasing penalties for criminal mask use while maintaining the health exception. “I should have the freedom, my children should have the freedom and my husband should have the freedom to wear a mask in order to protect and save my life, without fear of being arrested and charged with a Class 1 misdemeanor, which is what this bill would do,” Sen. Sydney Batch said during the heated floor debate. “You only have to watch the news at night to understand what the purpose of this bill is. There’s a whole crowd of people out there that are running around, taking advantage of this mask hangover from when we had the pandemic. And using it as an opportunity to do things that they shouldn’t be doing, say things that they shouldn’t do, intimidate people in public places, smash and grab all over the place. This bill addresses those situations,” Sen. Buck Newton told his colleagues on the floor.

Several Republican leaders in the House spoke out against the removal of the health exception in the bill and when heard on the House floor earlier this week the House in a bi-partisan vote rejected the changes that the Senate made to the bill. The bill will now go to a conference committee when appointed House and Senate members will work on language that can pass both chambers.

PRIMARY RUNOFF RESULTS

The North Carolina primary runoffs concluded with the Republican party selecting Hal Weatherman for lieutenant governor and Dave Boliek for state auditor. Weatherman will compete against state Sen. Rachel Hunt and Libertarian Shannon Bray, while Boliek will face current state auditor Jessica Holmes and Libertarian Bob Drach. Brad Knott also secured the Republican nomination for the 13th Congressional District. Approximately 131,497 North Carolinians, nearly 3% of eligible voters, participated in the runoffs which many derided as a waste of taxpayer money and called for a better runoff system which some other states use.

BILLY GRAHAM STATUE REVEALED

A bronze statue honoring the late Rev. Billy Graham, known as "America's Pastor," was unveiled at the U.S. Capitol, depicting him with his iconic gesture holding an open Bible. The 7-foot tall sculpture, representing one of two statues allotted to North Carolina, was revealed in the National Statuary Hall on Thursday. The process to replace one of North Carolina's statues with Graham's began nine years ago. Graham, who resided in Montreat, passed away in 2018 at the age of 99, having preached to millions worldwide and served as an advisor to multiple U.S. presidents. His body laid in honor in the Capitol Rotunda after his death, a rare distinction for a private citizen. The ceremony was attended by House Speaker Mike Johnson, Gov. Cooper, former Vice President Mike Pence, Sen. Thom Tillis, state congressional members, legislative members, and Graham's family. With Gov. Cooper, Sen. Berger, Lt. Gov. Robinson, and Speaker Moore out of the state on Thursday, our acting governor by law was Secretary of State Elaine Marshall for the day.

BILLS OF INTEREST

HOUSE BILL 1071, Use Methods of Certain Groups/Voter Rolls, would require the State Board of Elections to establish a system that, on an ongoing basis, implements a uniform method for investigating and correcting the data provided by election integrity organizations to assist in its list maintenance efforts in identifying and removing ineligible and duplicate registrations. The State Board would provide quarterly reports on (i) what corrections were made and (ii) the number of corrections made, by county, to the House of Representatives Committee on Election Law and Campaign Finance Reform, the Senate Committee on Redistricting and Elections, the Joint Legislative Elections Oversight Committee, and the Joint Legislative Oversight Committee on

General Government. **Introduced by Representatives Cleveland and Warren and referred to the House Election Law and Campaign Finance Reform Committee.**

HOUSE BILL 1072, Require Disclaimer/Use of AI in Political Ads, would require a political advertisement that is created in whole or in part by using AI to bear in its legend or include the statement that the advertisement was created using AI, in addition to following the general disclosure requirements. The disclosure would have to adhere to the size requirements provided in the statute governing basic disclosure requirements for all political advertisements if the AI is used in a political ad distributed through social media and for the disclosure statement to last at least two seconds if the ad is transmitted through automated calling. It would be a Class 1 misdemeanor for a candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor using AI in a political advertisement to fail to include the required disclaimer. **Introduced by Representatives Cleveland and Riddell and referred to the House Election Law and Campaign Finance Reform Committee.**

SENATE BILL 909, Protect Women's Healthcare, would amend the State Constitution, if approved by a majority of the qualified voters of the State at the general election in 2024, to prohibit the State from restricting a woman's right to decide to have an abortion or from restricting access to contraception, fertility treatment, continuing one's own pregnancy, or miscarriage care. The State could restrict the ability of a woman to choose whether or not to terminate a pregnancy after fetal viability, unless such a termination is necessary to preserve the life or health of the woman, or enact laws, rules, or regulations, as applicable, to further the health or safety of a woman seeking to terminate a pregnancy. The term "undue burden" would mean any burden that places a substantial obstacle in the path of a woman seeking to terminate a pregnancy prior to fetal viability. Nothing in this provision could be construed to have any effect on laws regarding conscience protection. **Introduced by Senator Hunt and referred to the Senate Rules Committee.**

BILL UPDATES

HOUSE BILL 228, Rev. Laws Tech., Clarifying, & Admin. Chngs, was amended in the House Finance Committee to:

- delay the effective date of the changes to GS 105-236, which decreased the penalty for failure to pay a tax when it is due from 5% to 2%, with an additional 2% for each month after one month, not exceeding 10% in aggregate from July 1, 2024 to July 1, 2027;
- amend the calculation of the State administration and the county administration subcomponents of the Medicaid hospital assessments to specify that it is to be increased by a percentage that is the sum of each monthly percentage change in the Consumer Price Index: All Urban Consumers for the most recent twelve months available on the first day of the current quarter (was, increased by the Consumer Price Index: All Urban Consumers);
- amend the following definitions as they apply to the Hospital Assessment Act: (1) define *private hospital historical assessment share* as 80.17% instead of 80.2%; and (2) define *public hospital historical assessment share* as 19.83% instead of 19.8%;
- define the term *rural emergency hospital* as it is used in the Hospital Assessment Act;
- amend the definitions of *private acute care hospital* and *public acute care hospital* to specify that they cannot be a rural emergency hospital;
- amend the statute concerning the fee-for-service component, by providing that the subcomponent pertaining to claims for which there is third-party coverage is the product of the total fee-for-service payments for claims not attributable to newly eligible individuals for which there is third-party coverage made for inpatient hospital services and

outpatient services to rural emergency hospitals (along with already included public acute care and private acute care hospitals and critical access hospitals) multiplied by the nonfederal share for not newly eligible individuals; and

- treat rural emergency hospitals the same as critical access hospitals in (1) the calculation of the UNC Health Care System share and East Carolina University share and (2) the calculation of the share of public hospital costs.

The bill was further amended in the House Rules Committee and on the House floor and will next be considered by the full House.

HOUSE BILL 237, Unmasking Mobs and Criminals, was amended in the Senate Judiciary Committee to:

- repeal the health and safety exemption from laws prohibiting the wearing of masks in public places including public ways, public property, and the house of another person;
- provide that if a person is convicted of a misdemeanor or felony and it is found that the person wore a mask or other clothing or device that concealed or attempted to conceal the person's identity at the time of the offense, then the person is guilty of a misdemeanor or felony that is one class higher than the underlying misdemeanor or felony for which the person was convicted;
- expand the limitations of the NC Emergency Management Act by excluding religious institutions from having to follow an executive order, secretarial declaration, municipal or local government prohibition or restriction, or a rule or regulation by a political subdivision of this State that distinguishes between religious institutions and other public or private for-profit or non-profit entities that are subject to or affected by the same or similar emergency in a way that imposes additional limitations on the religious institution;
- amend the statute barring standing, sitting or lying upon highways or streets to enhance the penalty for persons who violate the statute as part of a demonstration intended to prohibit or impede the use of the highway or street.

The bill as amended was approved by the Senate Judiciary Committee and the full Senate. However, the House did not agree to the changes made to the bill regarding the repeal of the health and safety exemption for wearing masks in public. A conference committee has been appointed to settle the differences between the House and Senate versions of the bill.

HOUSE BILL 591, Modernize Sex Crimes. The provisions of this bill were removed in the Senate Judiciary Committee and replaced with new provisions that would:

- establish the crimes of sexual extortion and aggravated sexual extortion;
- define nine terms, including *private image* (An image depicting sexual activity or sexually explicit nudity);
- specify that a person commits the offense of sexual extortion if the person intentionally threatens to disclose a private image, or to decline to delete, remove, or retract a previously disclosed private image, of the victim or of an immediate family member of the victim in order to compel or attempt to compel the victim or an immediate family member of the victim to do any act or refrain from doing any act against the victim's will, with the intent to obtain additional private images or anything else of value or any acquittance, advantage, or immunity;
- specify that, if a person is an adult at the time of the offense, the violation is a Class F felony, and if the person is a minor at the time of the first offense the violation is a Class 1 misdemeanor and a Class 2 felony for subsequent or second offenses;
- add a new Class E felony for aggravated sexual extortion, which consists of the above acts, but the victim must either be a minor or a person with a disability and the offender must be an adult at the time of the offense;

- establish the offense of obscene visual representation of sexual exploitation of a minor, which makes it a Class E felony for a person to knowingly produce, distribute, receive, or possess with intent to distribute material that meets both of the following criteria: (1) depicts a minor engaging in sexual activity and (2) is obscene. Makes it a Class H felony for any person to knowingly possess material that meets both of the following criteria: (1) depicts a minor engaging in sexual activity and (2) is obscene. Specifies it is not a required element of the offense that the visual depiction be of a minor that actually exists;
- amend the definitions for certain offenses concerning minors as follows:
- define *identifiable minor* to mean an individual who meets all of the following criteria: (1) was a minor at the time either of the following occurred: (i) the material was created, adapted, or modified, or (ii) the image that was used in creating, adapting, or modifying the material was taken and (2) is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature;
- specify that the term does not require proof of actual identity of the minor;
- define *obscene* to mean material that meets all of the following criteria: (1) it depicts or describes in a patently offensive way sexual activity; (2) the average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; (3) the material lacks serious literary, artistic, political, or scientific value; and (4) the material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina;
- define *child sex doll*;
- amend the offense of first degree sexual exploitation of a minor to include when a person creates for sale or pecuniary gain material created, adapted, or modified to appear that an identifiable minor is engaged in sexual activity (designated as a Class D felony) or creates for sale or pecuniary gain a child sex doll of an identifiable minor (designated as a Class C felony);
- amend the statute regarding second degree exploitation of a minor to include when a person distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits a child sex doll as one of the underlying acts for the offense. Amends the prong of the offense relating to when a person distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity, to include material that has been created, adapted, or modified to appear that an identifiable minor is engaged in sexual activity;
- amend the statute regarding third degree sexual exploitation of a minor to include possession of a child sex doll or possession of material that has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual activity;
- amend the types of acts that fall under GS 14-202.3, solicitation of child by computer or certain other electronic devices to commit an unlawful sex act, to specify that solicitation of a child less than sixteen years of age and at least five years younger than the defendant falls under the act if the child is meeting with the defendant or any other person for the purpose of committing an unlawful sex act (currently, solicitation is limited to the child meeting with the defendant for such purpose). Adds solicitation of a person the defendant believes to be the parent, guardian, or caretaker of a child who is less than sixteen years of age and who the defendant believes to be at least five years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act;
- add the offense of obscene visual representation of sexual exploitation of a minor as a sexually violent offense under the statute pertaining to the State's sex offender registry;

- amend the statute pertaining to when a covered entity must release an online identifier of a person suspected of violating certain sex crime statutes to the Cyber Tip Line at that National Center for Missing and Exploited Children to include obscene visual representation of sexual exploitation of a minor as one of the offenses;
- amend the definition of *image* under GS 14-190.5A (disclosure of private images) to include a realistic visual depiction created, adapted, or modified by technological means, including algorithms or artificial intelligence, such that a reasonable person would believe the image depicts an identifiable individual, or any other reproduction that is created, adapted, or modified by electronic, mechanical, or other means. (Current version does not include description of realistic visual depiction and limits reproductions only to those made.) Amend the elements of the offense to also now include (1) when the depicted person's intimate parts are realistically depicted to be exposed or the depicted person is realistically depicted to be engaged in sexual conduct in the disclosed image and (2) when a person created, adapted, or modified the image with without the depicted person's consent.

The bill as amended was approved by the Senate Judiciary Committee, the Senate Rules Committee, and the full Senate. The bill will next be considered by the House Rules Committee.

HOUSE BILL 681, Healthcare Flexibility Act. This bill was originally an Interstate Compact bill that was widely supported by the health care community and last week the Senate Health Care Committee attempted to add new provisions to the bill that would change the supervision for Anesthesiologists, allow nurses to practice independently and change facility fees for hospitals. The bill was heard in committee last week for discussion only (no vote) and many Legislators brought up concerns about the new provisions. After the committee meeting, the North Carolina College of Emergency Physicians sent an alert to all members about the independent nursing part of the bill. Thank you to the many physicians who contacted your legislators and those on the committee with your concerns.

This week the bill appeared in committee again with many changes to the prior draft. The new draft would authorize nurse practitioners with at least 4,000 hours of practice who have not been disciplined by the NC Board of Nursing in the preceding five years to engage in independent advanced practice nursing without physician supervision. Nurse practitioners without at least 4,000 hours of practice must practice with a collaborating provider, defined as a licensed physician or nurse practitioner with at least 8,000 hours of practice experience. Only licensed advanced practice registered nurses may use the title "nurse practitioner." APRNs include nurse practitioners, certified nurse midwives, certified registered nurse anesthetists, and clinical nurse specialists licensed by the Board of Nursing who have completed an advanced graduate-level education program in a specialty category of nursing and passed a national certification examination.

The change allows the Board of Nursing to adopt rules without involvement of the NC Medical Board, as required by current law, to authorize nurse practitioners to write prescriptions and order medications, tests and treatments. The bill establishes the Nurse Practitioner Advisory Committee to assist the Board of Nursing in proposing regulations for nurse practitioners. The committee membership would be three nurse practitioners and two physicians.

The amended bill includes several other provisions:

- removes the proposed new language from an earlier version allowing members of the military or their spouses to practice as a physician or physician assistant in North Carolina under certain circumstances;

- requires anesthesiologists providing medical direction to certified registered nurse anesthetists to comply with certain federal requirements regarding the anesthesia plan to bill any third-party payor for medical direction services;
- requires insurers to reimburse claims for medical direction of a nurse anesthetist at 50% of the rate of reimbursement the anesthesiologist would have received for services without the nurse anesthetist;
- requires in-network health service facilities to provide written notice to insured patients of any out-of-network providers that may provide services to the insured at that facility and the estimated cost of the out-of-network services;
- prohibits health care providers from charging a facility fee for services not provided at a hospital facility or a facility that includes an emergency department.

The bill, as amended was approved by the Senate Health Care Committee and will next be considered by the Senate Finance Committee. The North Carolina College of Emergency Physicians remains opposed to the independent practice of medicine by nurses as provided in the current version of the bill. The College also has concerns about the notice/estimated costs provisions in the bill and have provided details about those concerns to Senators and staff who are working on this legislation. We will continue to speak to Legislators about our concerns along with the rest of the House of Medicine.

SENATE BILL 303, Court/Out-of-State Atty Changes, had added in the House Judiciary 2 committee language regarding who may receive confidential court information about involuntary commitment proceedings. The new language allows counsel for the respondent and counsel for the state in a commitment hearing, and a judge presiding over a criminal case related to an involuntary commitment proceeding, all to have access to confidential information without filing a motion. Other people involved in a proceeding may obtain a court file number of the proceeding upon request to the clerk's office. The bill also makes technical changes to the statute governing custody orders for persons with mental illness who are a dangerous to self or others. **The bill as amended was approved by the House Judiciary 2 Committee and will next be considered by the House Rules Committee.**

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