

A Surprise Veto Override, Budget Anticipation, and Tax Reform 2.0

Written By **Whitney Campbell Christensen** (wcchristensen@wardandsmith.com)

June 15, 2015



Senate Budget Delay

Last week, the General Assembly largely was characterized by House members, interest groups, and members of the media anxiously waiting for the Senate to unveil its proposed two-year budget for the state, an event that ultimately did not come to pass and is more likely to happen early this week.

Although the Senate originally planned on voting its budget last Wednesday and Thursday, the bill has yet to be released or pushed through the Appropriations and Finance Committees. Senate Majority Leader and Appropriations and Base Budget Co-Chairman Harry Brown attributed the delays to difficulty in piecing together some of the more complex components of the education and health and human services sections of the budget.

The first procedural step in either chamber's vetting of its budget often is scheduling Appropriations Subcommittee meetings in order to review the budget by department. As of last Thursday, Senate Appropriations Subcommittees had been quietly calendared for this evening, leading many to believe that most of us will have our first opportunity tonight to review the Senate's proposed budget.

The current state budget expires on June 30th, the deadline by which lawmakers intend to have the next fiscal year's budget finalized, but is a mark that is often difficult to meet. After the Senate approves its budget, budget leaders from each chamber and the Governor's office likely will have less than two weeks to tackle the hefty task of working out the differences between the three proposals. If a new budget is not enacted before the deadline, which appears likely this year given our current stage in the budget process and the rumored differences in spending amounts and priorities between the three groups, lawmakers easily can pass a continuing resolution to keep state government functioning while the budget process is being finalized.

Senate Tax Proposal

Last week was a very busy one for Senate members. In addition to working to finalize their budget proposal, Senate leaders also unveiled their heavily modified version of House Bill 117. The retooled bill converted the House's economic incentives bill introduced in March, into a broad tax reform and economic development package spanning 46 pages.

Much like the Republican-led tax reform legislation that brought tax cuts to citizens and businesses across the state in 2013, the new House Bill 117 proposes broadening the sales tax base in order to pay for additional personal income tax cuts and corporate tax formula changes. For that reason, many legislators have begun referring to the tax package as "Tax Reform 2.0." Services that the bill proposes subjecting to the sales tax include advertising, vehicle maintenance, vehicle repair, and pet care services, among others.

House Bill 117 also proposes cutting personal income tax rates by an additional quarter percent from 5.75

percent to 5.5 percent beginning in 2016. Additionally, the legislation suggests a gradual increase in the standard deduction, one of the few deductions favored and preserved by tax reform leaders as they attempted to simplify the tax code by removing many other types of deductions and credits.

As we previously have reported, the Senate also demonstrated its interest in a shift to the single sales factor formula for calculating corporate taxes by including in House Bill 117, a gradual shift to that method over the next three years. Perhaps the most significant tax policy change proposed by the Senate's amendments to the bill is a proposal to redistribute state sales tax proceeds to local governments under a new formula that would give more consideration to an area's population than where the sale actually took place. If enacted, experts anticipate the new formula will shift more sales tax dollars to rural, poorer counties and away from the more developed areas where sales typically occur, a concept that began to gain traction during the last legislative session.

Legislative pundits have been quick to point out that the Senate's decision to amend a House bill with these sweeping changes rather than to send the House fresh legislation will enhance the Senate's negotiating position on these issues. After the Senate approves House Bill 117, which now awaits a serial referral to the Senate Finance Committee and two floor votes, the House only will be able to vote down the modified measure and directly negotiate with Senate conferees in the conference process, thereby usurping the House's ability to amend the bill without Senate involvement.

After Delay, House Joins Senate in Overriding Governor's Veto

When Governor McCrory decided to veto Senate Bill 2 - Magistrates Recusal for Civil Ceremonies on May 29th, few doubted that the Senate quickly would vote to override the veto by engaging its Republican super majority (a majority that exceeds the required 3/5ths of the chamber needed to override a gubernatorial veto). Almost immediately upon receiving the veto message, the Senate did just that, swiftly overriding the veto by a margin of 32-16.

What was not as clear was whether the less conservative House would or could do the same. While the House also is home to a Republican super majority, the chamber consistently has taken more moderate positions than the Senate on a variety of social and fiscal issues. Even if only a handful of House Republicans objected to Senate Bill 2, the ability of the House to achieve the requisite percentage of votes to override the veto would have been jeopardized.

Complicating the math and political calculus further was the high and variable number of excused absences of House members throughout last week. Because the 3/5ths veto override threshold is based on the number of lawmakers voting and present, not the total number elected, the target number needed to achieve the override also was consistently in flux for weeks. As the veto override was added to the House calendar day after day without being taken up, many began to speculate whether the House had the appetite to override the veto or if the chamber was just having trouble getting enough votes together.

Last Thursday morning, the House gavelled in and quickly moved to vote on the veto override. Ultimately, the chamber voted to override the Governor's veto by the narrow margin of 69-41 or 62.7 percent of the House members present. Three legislators from each side of the aisle broke with their parties, effectively cancelling out each other's votes, while ten members had excused absences.

The bill, which became effective immediately upon becoming law, has been strongly opposed by members of the gay and lesbian community as it would allow magistrates, assistant registers of deeds, and deputy registers of deeds to recuse themselves from performing duties related to marriage ceremonies if they oppose the ceremonies on personal religious grounds. Governor McCrory publicly has said that he felt compelled to

veto the bill because magistrates take an oath to uphold the law, whether they agree with it or not. Members of several religious and socially conservative groups have come out in support of the bill, arguing for magistrates' rights to refrain from duties related to same sex marriages that violate their religious convictions.

Respected House Member Announces Resignation

Lawmakers from both sides of the aisle were sad to learn Wednesday that Representative Rick Glazier, a seven term Democrat representing Cumberland County, plans to resign his seat at the conclusion of this session. Upon his resignation, Glazier will be named executive director of North Carolina Justice Center. Representative Glazier's eloquent floor speeches, dedication to his party's causes, and personable demeanor will be missed by many, as evidenced by the lengthy standing ovation and applause on the House floor after he announced his decision.

For more information on the legislative session, please call:

- Whitney Campbell Christensen, 919.277.9113
- Angie D. Harris, 919.277.9163
- Lee C. Hodge, 252.672.5430
- James W. Norment, 252.672.5453

--

© 2022 Ward and Smith, P.A. For further information regarding the issues described above, please contact Whitney Campbell Christensen.

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.