



## INTRODUCTION



After years without a new comprehensive budget, our state officially has a new state budget! Gov. Cooper signed his first budget into law since taking office in 2017 after a roller coaster of negotiations. Although it did not expand Medicaid as the Governor had hoped, it does extend Medicaid benefits for low-income mothers for up to a year after a child is born, and it provides raises and bonuses to teachers and other state employees. "While I believe it is a budget of some missed opportunities and misguided policy, it is also a budget we desperately need at this unique time in the history of our state," Gov. Cooper said.

The budget passed both chambers with strong bi-partisan support. Senate Bill 105, 2021 Appropriations Act, passed the House 104-10, with 40 Democrats voting in favor alongside all of their Republican colleagues. The budget passed the Senate 41-7, with 7 Democrats voting in support, as well. It's been a long road to get this budget done and House budget writer Rep. Donny Lambeth compared it to "a fine wine that was months or years in the aging process."

See below for some of the key budget items and policies that were included in this highly-anticipated budget compromise.

## CAMPAIGN ANNOUNCEMENTS

In light of the newly drawn maps and as primaries move closer, many politicians are currently considering their next move. Some have announced their retirement, while others have decided to run for new roles, like for a seat in Congress. Here are the official announcements from last week:

- Democratic 1st District Congressman G.K. Butterfield announces his retirement at the end of his term in December 2022. Rep. Butterfield has served this eastern district for nearly 18 years. Senator Don Davis of Pitt County has said he would likely run for this seat. Under the new maps, this district will now become the 2nd Congressional District and is identified as a "toss-up" race for either party.
- Rep. Rachel Hunt of Charlotte will run for state Senate. She will be running in southeastern Mecklenburg County, which is currently represented by Sen. Jeff Jackson who is running for U.S. Senate.

## NORTH CAROLINA SECURITY AND LOW VOLTAGE ASSOCIATION



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- State Senator Wiley Nickel of Wake County will run for U.S. Rep. David Price's seat in North Carolina's new 6th Congressional District. Rep. Gale Adcock of Cary will be running for his seat in the state Senate.
- State Senator Valerie Foushee of Orange County will also run for Congress in North Carolina's new 6th Congressional District. Rep. Graig Meyer will run for her seat in the state Senate.
- While his announcement is not yet official, we can confirm that Rep. John Szoka will be running for Congress in North Carolina's newly created 4th Congressional District which contains Cumberland, Johnston, Sampson, most of Harnett, and part of Wayne counties.

## ELECTION BILLS PASS HOUSE

Three elections-related bills passed the House floor on party-line votes this week. Senate Bill 326, the Election Day Integrity Act, would require absentee ballots to be received by the time polls closed on Election Day, or else they would not be counted. Under current law there is a three-day grace period for absentee ballots to be received and counted, so long as they are postmarked on or before Election Day. Senate Bill 725, Prohibit Private Money in Elections Administration, was in response to private donations in the past election, specifically donations from Facebook founder Mark Zuckerberg. Zuckerberg's foundation donated over \$400 million across the nation to help conduct elections while in a pandemic. Under this bill, private donations could not be used to pay poll workers or used for other election expenses. House Bill 259, Election Integrity Act, would require that all new voting systems and software be manufactured in the United States. It would also require court officials to send the names of people who get out of jury duty by claiming that they are not citizens to the State Board of Elections so that they can be removed from voter rolls. Democratic members argued against these bills and the overall concept that our elections are not safe and secure. Some Democratic members voiced their frustration with these bills being presented when they felt like the parties were just starting to come together with the state budget. Rep. Richardson suggested all three bills were being used for political games and later campaign ads, as he suspected Republicans knew these bills would ultimately be vetoed by the Democratic Governor. "Let's don't use this stuff to shoot at one another," Rep. Richardson said. "What we're doing now is not helpful. It is not going to bring North Carolina together."

## LEGISLATIVE SCHEDULE

We can expect a light week this week, as legislators celebrate Thanksgiving and the passing of a state budget! Speaker Moore announced on the floor that he expects the House to return on Monday, November 29th to begin finishing up their work for this session. He suggested that it remains unclear just how much longer they will be in session to carry out the remainder of their business, but it sounded like the hope was to be done in one to two more weeks upon their return on the 29th.

## BUDGET

Here are some of the key highlights in the budget:

### Total Spend

- This budget totals \$25.9 billion in spending for this fiscal year and \$27 billion for the 2022-2023 fiscal year.
- The state's Rainy-Day Fund balance will grow to \$4.25 billion at the end of the biennium.

## Salaries

- Includes a 5% pay raise for most state employees and an average 6.7% pay raise for teachers over the biennium.
- Increases the minimum wage for all non-certified personnel and community college staff to \$15 per hour beginning next year.
- Provides bonuses for most teachers using federal funds.
- Provides bonuses for all state employees using federal funds.
- As part of the response to Leandro, this budget includes \$100 million in recurring funds for a new state-funded teacher salary supplement focused on low-wealth counties to help alleviate some of the inequities between high-wealth counties and low-wealth counties in recruiting teachers.

## Capital/Infrastructure

- Provides \$6 billion to the State Capital and Infrastructure Fund over the biennium to fund infrastructure projects and pay down debt.
- Sets to provide annual contributions to capital and infrastructure projects and related debt to around \$16.1 billion over the next decade.
- Includes \$84 million to Elizabeth City State University for a residence hall, sky bridge, dining facility, and flight school.
- Includes \$215 million for construction of a new Brody School of Medicine.
- Provides \$1 billion for broadband expansion.

## Taxes

- **Conforms the state tax treatment of Paycheck Protection Act loans to federal law, resolving a long-running issue between the chambers and allows for deductibility of qualified business expenses paid for by PPP loan proceeds. This is an issue our firm worked on throughout this session to ensure that these loans were treated fairly.**
- Lowers the personal income tax rate from 5.25% to 3.99% over six years, starting with 4.99% in 2022.
- Sets out to gradually eliminate corporate income tax starting in 2025 and ending in 2031.
- Increases the zero-tax bracket to \$25,500.
- Increases child tax deduction by \$500 per child.
- Eliminates state income tax on military pensions.

## Education

- Adds an additional \$1.5 billion above the base budget over the biennium in recurring funds for K-12 education.
- Arranges for a \$528 million transfer over the biennium from the N.C. Education Lottery to the Needs-Based Public School Capital Building Fund, \$200 million to the Public School Capital Fund, and \$80 million into a newly created repair and renovations fund.
- Adds Fayetteville State University to the N.C. Promise program, which guarantees \$500 in-state tuition per semester at participating schools.

## Other Items

- Provides a 5% supplement for state retirees over the biennium.
- Appropriates remaining 2020 HAVA funds (for Elections) to enhance technology and improve cybersecurity.

- Revises Emergency Management Act to require a vote of the Council of State to extend a statewide emergency beyond 30 days, starting January 1, 2023.
- Prohibits the Attorney General from settling lawsuits that involve the General Assembly without leadership's approval.
- Provides \$283 million to support deepening and expanding the Wilmington Harbor.
- Creates a Joint Legislative Study Committee on Access to Healthcare that will study and report to the General Assembly in the 2022 Session on Healthcare Access and Medicaid Expansion.

Below are more items of interest to the North Carolina Security and Low Voltage Association:

- Provides \$12 million to temporarily expand apprenticeship opportunities for youth ages 16 to 25 in high-demand fields, including surveying, engineering, and construction, at small businesses located in Tier 1 and Tier 2 counties;
- Directs the Community Colleges System Office to establish a temporary program to expand apprenticeship opportunities for high school apprentices and non-high school apprentices between the ages of 16 and 25 by providing incentives for small businesses in high-demand fields and careers, including, but not limited to, surveying, engineering, design, and all construction trades, as well as welding, pipe fitting, and engine mechanics. The program shall provide for small businesses to participate in apprenticeships to meet business needs, assist with financial challenges and employment demands in their local communities, and provide opportunities for apprenticeships that will lead to certifications, licensing, or an associate degree in a career field and full-time employment. Funds for the grant program shall be used to award grants to reimburse employers for the costs associated with new apprentices within a Registered Apprenticeship with ApprenticeshipNC and for tuition, fees, and cost of books for curriculum programs and short-term workforce credentials. For the purposes of this section, a small business shall mean a business concern or other organization that (i) has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry;
- Provides \$3 million in each of the next two years for financial assistance of up to \$750 for resident students who enroll in noncredit, short-term workforce training programs that lead to an industry credential in fields with employer demand and competitive wages;
- Provides \$9.7 million in each of next two years for a new competitive grant program to support students in crisis, school safety training, and safety equipment in schools;
- Provides \$10 million to the Division of Workforce Solutions (DWS) to establish a three-year, work-based learning program targeting businesses with fewer than 25 employees;
- Provides \$7 million to the Carolina Small Business Development Fund for small business loans and financial training to startups and existing businesses, and lending services to community-based organizations;
- Provides \$120.4 million to the North Carolina Rural Center, Inc. for the State Small Business Credit Initiative pursuant to the American Rescue Plan Act;
- Provides funds for matching and incentive grant programs to help NC small businesses obtain and leverage competitive funding from the federal Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) programs. The revised net appropriation for this program is \$5 million in FY 2021-22 and \$2 million in FY 2022-23;

- Reduces by \$15 million in each of the next two years funding for the Job Development Investment Special Fund;
- Provides \$19.3 million to update obsolete Voice Interoperability Plan for Emergency Responders (VIPER) equipment to facilitate timely service from emergency first responders during the COVID-19 pandemic;
- **Provides \$220,000 in each of the next two years and \$4.5 million to implement mobile panic alarm capability in all public K-12 and charter schools;**
- Provides \$7.5 million in each of the next two years as a grant to Western Piedmont Community College to construct a state-of-the-art fire emergency services training center on the Catawba River

## BILL UPDATES

HOUSE BILL 259, Election Integrity Act, was amended in the House Rules Committee to:

- require the clerk of superior court to also retain the age or date of birth provided by each person who requests to be excused from jury duty on the basis of disqualification;
- direct the State Board of Elections, in its review and report of jury duty disqualifications based on US citizenship, to exclude a person's name from the report if determined that the individual is a US citizen (was, persons who since attained US citizenship). Now requires the State Board to furnish its investigation of a prospective juror who voted prior to becoming a US citizen to the relevant county board(s) of election, in addition to the district attorney for prosecution;
- require the State Board of Elections to adopt rules establishing post-election audit processes to be used by counties following each election, including means of testing, assessing, and reporting the accuracy of the votes cast and counted;
- require county boards to report as required by the rules adopted by the State Board of Elections;
- direct that the State Board of Elections conduct a post-election audit of one-third of the counties following each general and municipal election, with counties required to provide the State Board full access to all documents, records, voting systems, and other necessary materials;
- prohibit counties from being selected for auditing in two consecutive elections, and requires that at least one county with a population of above 375,000 persons is included in each post-election audit by the State Board of Elections.

**The bill as amended was approved by the House Rules Committee and the full House and has been sent to the Senate Rules Committee.**

SENATE BILL 219, Surveyor Lic.& Ed.Req's/Constr.Contract Rev's, was amended in the House Rules Committee to:

- amend the statute that governs design-build contracts to:
  - define the following terms *design professional*; *first-tier subcontractor*; *licensed contractor*; *licensed subcontractor*; and *unlicensed subcontractor*;
  - modify the project team selection options for the statement a design-builder must include in its response to a governmental entity's request for qualifications, with the governmental entity permitted to specify which option is to be used in a response to:

- require either a list of the licensed contractors, licensed subcontractors, and design professionals (was, licensed design professionals) whom the design-builder proposes to use for the project's design and construction, or a list of the licensed contractors and design professionals whom the design-builder proposes to use for the project's design and construction and an outline of the strategy the design-builder plans to use for open subcontractor selection. In either case, now allows the design-builder to self-perform some or all of the work with employees of the design-builder. If using the first project team selection option, allows design-builders to enter into negotiated subcontracts to perform some or all of the work with subcontractors without bidding and whether or not identified on the list, and allows the list to include one or more unlicensed subcontractors the design-builder proposes to use;
    - allow for the design-builder to accept bids for the selection of one or more of its first-tier subcontractors under the first option, with or without the use of negotiated subcontracts;
  - specify that the required certification of the design-builder regarding the qualification of each design professional on the design-build team must be included in the response to the request for qualifications no longer limiting the certification to licensed design professionals on the team only;
  - require the design builder to obtain written approval from the governmental entity prior to changing key personnel listed in either project team selection option (was, required of the first project team selection option only) after the contract has been awarded;
  - define *key personnel* based on the project team selection option, with (1) licensed contractors, licensed subcontractors and design professionals identified in the response to the request for qualifications under the first option and (2) licensed contractors and design professionals identified in the response to the request for qualifications under the second option;
- amend the statute concerning public design-build bridging contracts to:
  - define *costs of the subcontractor work, general conditions, and licensed contractor*;
  - prohibit requiring a design-builder to provide the *costs of the subcontractor work*, defined as the sum of all first-tier subcontract packages bid or proposed to be bid for all construction work under the statute, in the design criteria package;
  - add to the required contents of the design criteria package the list of general conditions prepared by the governmental entity for which the design-builder is to provide a fixed fee; the form of the contract to be entered into by the successful design-builder to whom the project is awarded, allowing for the contract to include (at the governmental entity's discretion) multiple phases, termination for convenience and rights arising from the contract, and subsequent setting of guaranteed maximum prices; and a statement directing each design-builder to submit in its response to the request for qualifications an explanation of its proposed plan for its good-faith compliance regarding minority business participation;
  - require the governmental entity's request for proposal to include a statement submitted in a separate sealed envelope, contemporaneously with the response to the RFP, the design builder's fixed fees, separately listed, and excluding the costs of the subcontractor work, for designing and constructing the project pursuant to

the criteria of the governmental entity and terms and conditions set forth in the contract: the general conditions identified in the request for proposal, the general construction services not otherwise provided for, and the design-builder's design services necessary to complete the project;

- enact a new statute that would deem void provisions in lien waivers, releases, construction agreements or design professional agreements which purport to require a promisor to submit a waiver or release of liens or claims as a condition of receiving an interim or progress payments due from a promise under a construction agreement or a design professional agreement, unless the provision is limited to the specific interim or progress payment actually received by the promisor in exchange for the lien waiver with two exceptions; and
- amend the statute that authorizes the presiding judge over a suit brought or defended under the provisions governing statutory liens on real property and model payment and performance bonds to:
  - allow a reasonable attorneys' fee to the attorney representing the prevailing party;
  - replace the definition provided for prevailing party to now define the term as the party whose monetary position at the commencement of the trial, arbitration, or hearing is closest to the amount of the judgment or arbitration award, determined by the court or arbitrator based upon the principal amount in controversy between the parties as of the commencement of the trial, arbitration, or hearing resulting in a judgment or arbitration award, considering all relevant facts and circumstances (previously defined as the plaintiff or third party who obtains a judgment exceeding a specified threshold, with an alternate definition for offers of judgment);
  - provide for the attorneys' fee to be taxed as part of the court costs with the final judgement or arbitration award;
  - no longer provide for payment of the attorneys' fee by the losing party upon finding that there was an unreasonable refusal by the losing party to fully resolve the matter of the suit or the basis of the defense;
  - explicitly require a court or arbitrator to determine the prevailing party as specified in the term's new definition, with parameters given for inclusion of offers or judgment or settlement offers for calculating the amount in controversy;
  - list relevant facts and circumstances to be considered in determining the amount of reasonable attorneys' fees and expenses, and allow a party to submit evidence relating to an award of attorneys' fees by affidavit or declaration;
  - allow the court to admit other evidence such as live or deposition testimony and
  - allow the submission of expert testimony to support an award.

**The bill as amended was approved by the House Rules Committee and the full House. The bill has been sent back to the Senate to consider the changes made to the bill by the House.**

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