


Hot Topics in the Legislature and Beyond

N.C. Association of County Commissioners Update



February 11, 2012
Presented by Amy Bason, NCACC

Legislative Hot Topics

Justice Reinvestment Act (H642)

What it is...

- DoC/counties with jail capacity enter voluntary agreement for misdemeanants sentenced >90 days <= 180 days
 - Current law requires misdemeanants sentenced > 90 days in state prisons & <90 days to county jails
- Counties reimbursed for new misdemeanants for entirety of sentence
- New state fees seed fund to pay counties
- Changes criminal justice partnership program

Justice Reinvestment Act (H642)

Where things are...

- Sheriff's Assn. assigns beds & sets rate
 - Jan. 2 statewide initiation
- \$40 per day, covers all internal jail expenses
 - NCSA calculates payment & sends month following release
 - External health care billed to NCSA
 - Transportation at IRS rate + \$25/hr officer supervision & sent month following event

Justice Reinvestment Act (H642)

- TECS (formerly CJPP)
 - CJPP statutes repealed in JRA
 - Current contracts will expire at end of fiscal year
- TECS – Treatment for Effective Community Supervision Program
 - All funds will be handled through State
 - RFP to be issued in February 2012?

Statewide Expansion of 1915 (b)(c) Waiver (H916)

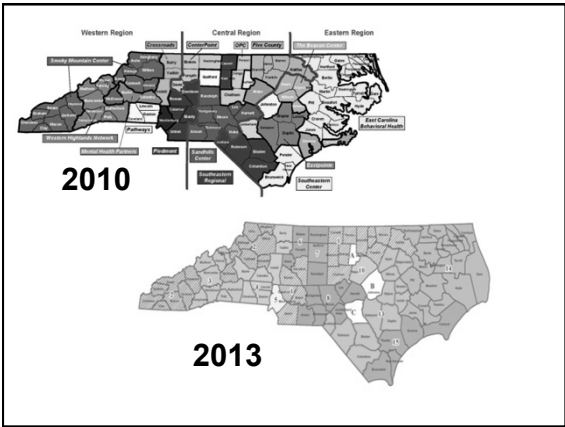
What it is...

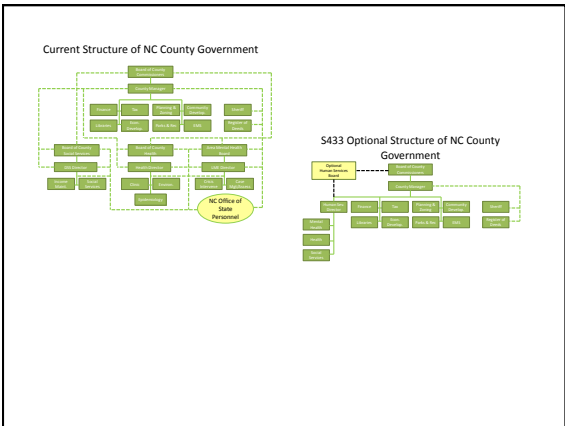
- Expands capitated model of care for all mental health area authorities & single county programs
- Increases population threshold to 300,000 7/1/12 & 500,000 7/1/13, requiring LME merger, interlocal agreement for lead LME
- County changes included:
 - Counties held harmless for cost overruns
 - Governance structure to be studied

Statewide Expansion of 1915 (b)(c) Waiver (H916)

Where things are...

- All LMEs have initiated waiver implementation plans
- Discussion of governance & county role
 - NCGA forms LME governance subcommittee with county representation
 - NC-DHHS forms dept. advisory waiver committee to oversee implementation
 - Counties included





Local Human Services Administration (S433)

What it is...

- Provides option to all boards of commissioners to restructure human services
 - Under BOC or create consolidated human services board
 - Current law only permits counties with pops. >425,000 to restructure
 - Currently in Mecklenburg and Wake Counties
- GA staff report recommends county flexibility

Local Human Services Administration (S433)

Where things are...

- Passed Senate 40/9; received favorable report in House HHS
 - House version includes incentives for regional health depts & authorities
- Attempt on House floor Nov. 29th mini-session
 - 3 votes shy of super majority needed for reconsideration of earlier bill
- Final version to exclude mental health

Fracking (H242)

What it is...

- NCACC goal to create study commission on fracking
- NCGA adopted H242 directing DENR for comprehensive study
- Fracking currently illegal under NC statutory & regulatory framework



Fracking (H242)

Where things are...

- DENR Study underway with public comment in March
- Senate LRC Committee on Energy Policy Issues – Feb 15th
- NCBA workgroup
- Other states' experiences - Preemption

Sweepstakes

- Hest Technologies v. State of NC, COA 11-459 (Guilford County)
- Sandhill Amusements v. State of NC, COA 11-301 (Wake County)
- Status – awaiting COA decision
- Cities can levy privilege taxes (160A-211), Counties cannot (153A-152)

Joint Legislative Oversight on Local Government
What it is...

- Creates Joint Legislative Committee on Local Government
 - Review & monitor lg capital projects >\$1M
 - For debt issuance & LGC approval
 - For projects excluding schools, jails, courthouse, & admin buildings
 - Any projects subject to review to be reported prior to 45 days before LGC
 - Commission may make interim reports on same w/ leg. recommendations

Joint Legislative Oversight on Local Government
Where things are...

- Initial meeting to discuss legislative charge
- Feb 13 mtg – local govt perspective
- Cities/counties submitting project lists
 - Don't submit schools, jails, courthouse, & admin buildings
 - \$750 million to be considered by LGC
 - Airports & hospitals big ticket
 - Water & sewer most numerous

And don't forget...

- Charter Schools
- Voter ID
- Tax Modernization
- ETJ (House Select Committee)
- Emergency Mgmt Rewrite (H 843)
- Personnel Records

General Assembly in Action

A Series of Mini-Sessions

- Reconvenes Feb 16, April 23
 - Limited scope to redistricting, veto overrides, election law bills
- Returning again for: Cherokee Compact? Veto override?
- Short Session convenes - May 16

Legislative Studies

- Appropriations to begin meeting for early budget proposal
- Oversight committees to manage Medicaid deficit, LME governance
- LRCs / Select Committees to backfill studies bill

Legal Hot Topics

Key Appellate Court Cases

To pray or not to pray....



Joyner v. Forsyth County

- The Fourth Circuit Court of Appeals issued opinion July 29, 2011.
- Affirms the earlier ruling of the federal court in North Carolina in the Forsyth County prayer case.
- Forsyth County's Board of Commissioners voted to appeal this ruling to the U.S. Supreme Court and ask that the U.S. Supreme Court elect to hear the case, but on January 17th this request was denied.

Joyner v. Forsyth County

- Counties, cities and other governmental and legislative entities may have an opening invocation.

HOWEVER

- **Prayers which are sectarian in nature, which means they reference a particular type of religion or belief, like referring to Jesus, to Buddha, Allah or even to the Holy Spirit, are in violation of the First Amendment Establishment Clause.**

Joyner v. Forsyth County

- The Establishment Clause prevents government from encouraging or favoring in any one religious sect or denomination over any other.
- Prayer must be “inclusive and unifying.”
- Prayer cannot be “denominational or sectarian.”
- A good policy wasn’t enough.

Governmental Immunity Issues



Williams v. Pasquotank

- May 3, 2011 Court of Appeals unanimous opinion stating that when considering whether governmental immunity applies to a function of government, the task being performed "is proprietary and private when any corporation, individual, or group of individuals could do the same thing."
- Underlying case involves a drowning of an 18-year-old who could not swim but jumped into water at a public park.
- Opinion threatens governmental immunity for Parks and Recreation function and just about everything else, because a private entity could be hired to do most anything on a contract basis.

Williams v. Pasquotank


- Petition for Discretionary Review was filed with the North Carolina Supreme Court
- On November 9th, the North Carolina Supreme Court granted the Motion for Discretionary Review from defendant Pasquotank County, and on the same day, granted the NCACC Motion for Leave to File an Amicus Curiae Brief.
- Briefs have been filed and the case is pending

Questions for Discussion

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Questions / Comments



Thank You!
