



North Carolina Spirits Association

Legislative Report
May 3, 2019

As House members return from their spring break, the budget process moved full speed ahead, as appropriations subcommittees begin the process of approving their area budgets. On Thursday and Friday April 25 and 26. The appropriations subcommittees met and voted on their portion of the State budget bill. Next, the full House Appropriations Committee met on Wednesday to consider and approve the House budget bill. About five hours of debate and more than 50 proposed amendments resulted in mostly minor changes to the House budget bill on Wednesday. Many of the successful amendments were technical, while others proposed minor tweaks to funded programs or sought funding for lawmakers' pet projects in their districts.

The budget bill includes many of the tax provisions from a separate Senate bill (and its House companion) that was discussed in Senate Finance earlier this month. It would raise the standard deduction for personal income taxpayers by 3.75 percent starting in 2021, and it would reduce franchise taxes on businesses while requiring online "marketplace facilitators," such as eBay, to collect sales taxes. For a married couple filing jointly, the standard deduction would increase from \$20,000 to \$20,750 starting in 2021, with similar changes for other types of personal income taxpayers. When fully implemented, the change would reduce state revenue by about \$88 million per year. That's less than the amount of revenue involved in the proposed franchise tax cut for businesses, which would save businesses more than \$230 million annually starting next year. The franchise tax is based on a corporation's overall tax base in North Carolina. The budget would also extend tax breaks for airlines, NASCAR and historic preservation projects.

The budget allocates millions of dollars in Hurricane Florence relief money. That includes \$33 million to buy out flood-prone homes, filling in the gaps of federal buyout programs; \$26.5 million to the Golden LEAF Foundation for utility infrastructure grants for local governments; and \$2 million to fund flood insurance premiums for 1,667 homeowners. The House on Thursday gave preliminary approval to a \$23.9 billion state budget with surprisingly little debate. "There's a lot in this budget that will move the state forward," said Rep. Donnie Lambeth, R-Forsyth, a senior budget writer. House Minority Leader Darren Jackson (D-Wake) tried to derail the budget by sending it back to the House Health committee, where a Medicaid expansion plan could be added. Representative Jackson argued that Medicaid expansion is a top priority for Democrats and that Governor Roy Cooper (D-Nash) will likely veto the budget without it, leading to an impasse with the Republican legislative majority that could last for months. "This is not the proper time" for a Medicaid debate," said Rep. Josh Dobson (R-McDowell), chairman of the House Health committee. The amendment was defeated by a 55-62 vote.

Thirty two (32) budget amendments were considered Thursday on the House floor, with some that failed in committee reappeared on Thursday. Some were adopted, other defeated. After all of the amendments were done, no one spoke in favor of the full budget, and Jackson was the

only one to speak against it. He said it fails state workers and teachers and prioritizes tax cuts over education and health spending. After the 61-55 vote on Thursday, a second required vote occurred on Friday afternoon, with the bill passing 61 to 51. Now that the House has passed its version of the State budget bill, the Senate will start crafting its spending plan.

Thousands of teachers, other school employees and their supporters marched through downtown Raleigh then held a rally near the state legislature Wednesday, demanding that lawmakers increase funding for public education and Medicaid. A sea of protesters wearing red filed up Fayetteville Street from the Duke Energy Center for the Performing Arts to the State Capitol and the Legislative Building. Teachers came for the event from across the state, united by some of the same concerns. Some in the crowd wore green ribbons on their red shirts to remember the victims in Tuesday's shooting on the UNC Charlotte campus. Jewell said the shooting proved, again, that students need access to more medical care and counseling than legislators have been willing to provide.

In a rush to finish deadline-sensitive bills ahead of crossover, the House held a Thursday evening session, making last-minute additions to its calendar even after a lengthy budget debate. While the official crossover deadline is Thursday, May 9, House Speaker Tim Moore told lawmakers that the chamber is currently on schedule to wrap up crossover-related business by the end of the day Tuesday.

Early in the week the Senate voted to override Governor Roy Cooper's veto of Senate Bill 359, Born-Alive Abortion Survivors Protection Act. On Friday, the House was scheduled to consider this bill but as of the publishing of this Report, the House had taken no action on the bill. The House could vote to override the veto later today or could remove the bill from the calendar and take no action. If this occurs, it is an indication that there were not sufficient votes to overturn the veto today. However, this bill could come back before the House later in the Session if sufficient votes are lined up to approve it.

While the Senate concluded business for the week on Thursday, the House had several committee meetings and a full House session on Friday before adjourning for the week. The House and Senate will reconvene on Monday.

BILLS OF INTEREST

House Bill 971, Modern Licensure Model for Alcohol Control, would privatize the sale of spirituous liquor in North Carolina. The bill would:

- Privatizes both wholesale distribution and retail liquor sales.
- Retains local option elections for off-premises liquor sales.
- Provides for off-premises spirituous liquor permit (\$1,000) and a spirituous liquor wholesaler permit (\$1,000).
- Allow for 1,500 off-premises "base" spirituous liquor permits; from the base of 1,500 the ABC Commission shall make available for issuance one base permit to each county and municipality for each ABC store in existence as of January 1, 2019, and

shall distribute the remainder based on population in jurisdictions in which liquor off-premises sales is allowed.

- Requires ABC Commission, beginning January 1, 2021, and annually thereafter, to make available for issuance in a county or municipality one off-premises liquor permit for each additional 7,500 person increase over the 2010 population, as well as to make a permit available where local option elections subsequently allow such sales.
- The ABC Commission would conduct random drawing if permit applications exceed available permits.
- An off-premises liquor permittee, in addition to selling at retail, may ship liquor to individual purchasers inside and outside of the state; no person, firm or corporation shall have an interest in more than 30% interest of the number of permits authorized in an eligible county or municipality.
- The off-premises liquor permit may be issued to a food business or a retail business. Under current law, a food business includes grocery stores, convenience stores, variety stores or drugstores where food is regularly sold for primarily off-premises consumption and includes establishments engaged primarily in selling wine for off-premises consumption. Under current law, a retail business is any retail business regardless of whether food is sold on the premises.
- Requires permittees to display warning signs regarding dangers of alcohol consumption during pregnancy.
- Allows retail sale of liquor between hours of 7 am and 2 am, like current law for beer and wine sales.
- Allows the holder of a distillery permit to (i) receive and sell at the distillery liquor produced in or out of the state under contract with a contract distillery, (ii) act as a wholesaler for liquor manufactured at the distillery if all sales are less than 100,000 proof gallons per year; (iii) sell at retail liquor it manufactures and beer at up to three locations in the state.
- Establishes a new Spirituous Liquor Franchise Law, similar to current laws for beer and wine, which regulates the relationships between wholesalers and distilleries.
- Provides that any county or municipality that has authorized the establishment and operation of an ABC store as January 1, 2020 shall be deemed to have authorized the off-premises sale liquor.
- Adds an off-premises spirituous retail license for cities to issue for \$15.00 and for counties to issue for \$25.00.
- Changes State excise tax on liquor from 28% (based on price) to a flat \$28.00 per gallon.
- Distributes 25% of the amount of the State excise tax collected to cities and counties in which the retail sale of liquor is authorized, similar to distributions for beer and wine but of a different percentage than other products.
- From the State excise taxes distributed to cities and counties, requires the funds to be used as follows: 4% for treatment of alcoholism or substance abuse, 15% for research or education on alcohol or substance abuse; 11% for local law enforcement costs from enforcing alcohol laws; further requires State excise tax to be distributed as follows: \$2 million to DHHS for treatment or education and \$8.5 million to the ABC Commission for operating expenses.

- Allows cities and counties to enact ordinances permitted the sale of liquor beginning at 10 am on Sundays.
- Requires State warehouse to be sold by January 1, 2020.
- By January 1, 2020, requires local ABC boards to liquidate all assets by public sale to the highest bidder; requires the funds received to be paid to the general fund of the county or municipality for which the local ABC board is established to be used only for capital expenses for any public schools in that jurisdiction.

Introduced by Representatives McGrady, Saine, Hardister and Harrison and referred to the House ABC Committee.

BILL STATUS

House Bill 99, Transfer ALE, was considered in the House ABC Committee on Tuesday. The bill would move Alcohol Law Enforcement (ALE) from being a “Branch” of the SBI to become a “Division” of the North Carolina Department of Public Safety (DPS). This bill has been amended to add that the Secretary of DPS would be authorized to appoint and supervise the Director of the Division of ALE. Currently, the Director of the North Carolina State Bureau of Investigation has this supervisory authority. The bill has also been amended to further modify the law enforcement jurisdiction of ALE agents to include any additional duties as directed by the Governor or Secretary of DPS when needed for security at a public event or for protection of persons or property because of a disaster or state of emergency. Currently, ALE’s primary responsibilities are the enforcement of alcoholic beverage control (ABC) laws, lottery laws and enforcement of youth tobacco laws.

The bill was approved by the House ABC and Rules Committees, approved by the full House, and was sent to the Senate.

House Bill 536, ABC Omnibus Regulatory Reform, was considered in the House ABC Committee on Tuesday. The bill would make various changes to the state’s alcohol laws affecting beer, wine and spirits. The bill would, among other things,

- Amend GS 18B-1001(1), concerning on-premises malt beverage permit holders, to expand the authorization of on-premises malt beverage permit holders to allow permittees to transfer malt beverages to another on-premises malt beverage permittee that is under common ownership or control of the transferor. This bill would limit the permittee to no more than four such transfers per calendar year. This bill would clarify that other transfers by on-premises malt beverage permittees, the purchase of malt beverages by a retail permittee from another retail permittee for the purpose of resale, and the sale of malt beverages by a retail permittee to another retail permittee for the purpose of resale is unlawful. This bill would restrict authorized transfers of a particular brand of malt beverages to transferors and transferees located within the territory designated between the brewery and the wholesaler on file with the ABC Commission (Commission). This bill would require the transferor to notify each wholesaler who distributes the product of the transfer prior to or contemporaneous with the transfer, in writing or verifiable electronic format, and identifying the transferor, the transferee, the transfer date, quantity, and items transferred. This bill would make identical additions

- to expand the authorizations for off- premises malt beverage permit holders set out in GS 18B-1001(2) to allow for the transfer of malt beverages from the permittee to another off-premises malt beverage permittee, subject to the same restrictions and requirements.
- Allow for alcohol sales to the general public at a stadium, athletic facility, or arena on the campus or property of a public college or university. The bill would require the Board of Trustees of the public college or university to authorize alcohol sales at these facilities before a permit can be obtained from the North Carolina Alcoholic Beverage Control Commission. Currently, alcohol sales to the general public at a stadium, athletic facility, or arena on the property of a public college or university is prohibited. The bill provides that mixed beverages would not be sold when the event taking place is sponsored by the public college or university.
 - Allow beer and wine to be sold on certain state operated ferries, similar to what is allowed on state operated trains.
 - Amend GS 18B-1001 to allow bars to obtain an on-premises malt beverage permit, on-premises unfortified wine permit, on- premises fortified wine permit, brown-bagging permit, special occasion permit, and mixed beverages permit. This bill would define bar under GS 18B-1000 as an establishment substantially engaged in the business of serving alcoholic beverages for consumption on the premises. This bill would require that in order to qualify as a bar that the establishment's gross receipts from alcoholic beverages for consumption on the premises be no less than 75% of the establishment's total gross receipts.
 - Amend GS 18B-1105 regarding the authorization of distillery permit holders to allow them to sell, deliver and ship spirituous liquor in closed containers at wholesale or retail to consumers in other states or nations, subject to the laws of other jurisdictions.
 - Amend GS 18B-1105 to allow distillery permit holders to sell spirituous liquor distilled at the distillery in closed containers to visitors for consumption off the premises, no longer requiring that the visitors tour the distillery.
 - Add that a distillery is not subject the prohibitions concerning financial interests in, and lending or giving things of value to, a retailer with respect to the distillery's transactions with the retail business allowed on its premises.
 - Require the ABC Commission to implement the Discount Rule (14B NCAC 15B .1004) by limiting a combinations of the use of a coupon, rebate, or a permittee's loyalty card, discount card, or membership card to no more than 35% of the advertised retail price for the purchase of a malt beverage or wine, and prohibiting a coupon or rebate, or a loyalty card, discount card, or membership card from providing a discount exceeding 35% of the advertised retail price for the purchase of a malt beverage or wine. This bill would require the ABC Commission to adopt temporary rules to comply

with the provision, and adopt permanent rules consistent with the provisions no later than September 1, 2019.

- Amend GS 18B-101 to define premises to mean a fixed permanent establishment, including all areas inside or outside the licensed establishment, where the permittee has control through a lease, deed, or other legal process.
- Allow the sale and delivery by the holder of an on-premises malt beverage permit, on-premises wine permit, on-premises fortified wine permit, or mixed beverages permit of four (was, one) alcoholic beverage drink at a time to a single patron for consumption on the premises. The bill would exclude from the 4-drink authorization sales at a stadium, athletic facility, or arena on the campus or property of a public college or university; during a sports event sponsored by a public college or university; and a stadium, athletic facility, arena, or other establishment with a seating capacity of 3,000 or more.
- Repeal GS 18B-308, which made it unlawful to sell or consume alcoholic beverages at bingo games.
- Amend GS 130A-250 to exempt licensed breweries not engaged in the preparation of food on the premises from food and lodging facility public health regulations that prohibit dogs and other pets on the premises.
- Allow local governments the option of operating ABC stores on Sundays between the hours of 12 noon and 5pm.
- Authorize a county or city to adopt an ordinance authorizing its ABC stores to be open, and authorizing ABC store employees to sell alcoholic beverages, on any or all days otherwise prohibited under GS 18B-802(b) (which prohibits opening and sales on Sunday, New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day).
- Allow local ABC boards the option of allowing spirituous liquor tastings at ABC stores, and would require the ABC Commission to adopt rules to provide distillery permit holders the right of first refusal for a certain number of the dates and times made available in a month by the local board for holding tastings. The rules should set forth the date for each month by which a distillery permit holder can exercise the right before the reserved dates and times are made available to all eligible spirituous special event permit holders.
- Amend GS 18B-404 to require local ABC boards to accept electronic payments for spirituous liquor purchased by a mixed beverage permittee. This bill would prohibit the board from charging an electronic payment fee.
- Enact GS 18B-907 to require the ABC Commission to make all permitting forms available on its website, and to allow for electronic submission of permit forms to the

- extent practicable. This bill would provide for submissions with electronic signatures. This bill would require the Commission to accept electronic payment for any permit fees under the Chapter. This bill would authorize the Commission to charge a fee not exceeding \$5 to cover costs incurred in accepting and processing electronic payments.
- Amend GS 18B-1001 by creating a common area entertainment permit to be issued to the owner of a multi-tenant establishment like a mall that has at least two tenants that holds an on-premises malt beverage permit, on-premises unfortified wine permit, on-premises fortified wine permit, or mixed beverages permit. The permit would allow the customer of the mall to exit the licensed premises with an open container of alcohol sold by the tenant and consume the beverage within the confines of any common area of the mall that is designated for such consumption.
 - Enact GS 18B-1001.4 to create a delivery service permit, for third party delivery services or employees of retailers to perform delivery of beer and wine from a retailer. The delivery of beer and wine was studied by an informal group organized by the ABC Commission in 2018. This provision would authorize the holder of a delivery service permit or the holder's employee or independent contractor to deliver malt beverages, unfortified wine, or fortified wine to a location designed by the purchaser on behalf of the retailer holding an on-premises malt beverage permit, off-premises malt beverage permits, on-premises unfortified wine permit, off-premises unfortified wine permit, on-premises fortified wine permit, off-premises fortified wine permit, and a wine shop permit. This bill would further authorize a delivery service permittee to facilitate delivery through certain technology services. This bill would require the permittee to successfully complete a course approved by the ABC Commission prior to making any deliveries. The bill would prohibit a permittee from handling or possessing any funds used to purchase an alcoholic beverage, but allows the permittee to facilitate the sales transaction. This bill would prohibit delivery to a person under 21 years of age and requires packages to contain a statement, as specified, if the manufacturer's original packaging is obscured. This bill would prohibit deliveries from being made more than 50 miles from the retailer's licensed premises or the premises of another retailer. This bill would limit delivery to alcoholic beverages purchased for personal consumption and from a licensed retailer's existing inventory located on the retailer's premises. This bill would not require a delivery service permit for a common carrier to lawfully transport or ship alcoholic beverages. This bill would subject deliveries pursuant to a delivery service permit to the requirements of Article 4 (Transportation). This bill would set the delivery service permit fee at \$400.
 - Amend GS 18B-104, increasing the cap for the penalty the ABC Commission can accept in compromise from \$5,000 to \$10,000 in cases in which the ABC Commission is entitled to suspend or revoke a permit.
 - Direct the Joint Legislative Program Evaluation Oversight Committee to study the ABC Commissions authority, punishments and penalties for violation of the state's ABC laws. This bill would require PED to report its findings to the legislature by March 15, 2020.

Representative Hurley (R-Randolph) attempted to remove a number of the provisions, including the Sunday sales provision. Her attempts to remove sections of the bill were defeated by the Committee.

The bill was approved by the House ABC Committee and referred to the House Finance Committee for further consideration.

For more information about legislation described in the legislative reports, feel free to contact me at dferrell@nexsenpruet.com or (919) 573-7421. Information is also available on the General Assembly's website: www.ncleg.gov.

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